

# NEW JERSEY REGISTER



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## THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 19 NUMBER 18

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(Includes adopted rules filed through August 28, 1987)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 20, 1987

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE WILL BE DATED AUGUST 17, 1987.

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**Interested persons** may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **October 21, 1987**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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## NEW JERSEY REGISTER

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# RULE PROPOSALS

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW

#### Uniform Administrative Procedure Rules Exceptions

#### Withdrawal of Proposed Amendment: N.J.A.C. 1:1-18.4

The OAL recently proposed an amendment to N.J.A.C. 1:1-18.4 because *In Re: Morrison*, 216 N.J. 143 (App. Div. 1987) required an excepting party challenging material and genuine fact findings by an Administrative Law Judge (ALJ) to supply the reviewing agency with relevant portions of the hearing transcript. This proposal can be found in the July 6, 1987 New Jersey Register at 19 N.J.R. 1123(a). The rule proposal required that parties filing exceptions to factual findings "include whatever portions of the transcript or hearing tapes which are relevant and material to the contentions raised by the exceptions." The OAL believed that the option of supplying hearing tapes in lieu of transcripts would help ease the financial burden of complying with *Morrison*.

Because of the many, varied comments received in response to its proposal, the OAL has determined to withdraw the proposal and commence a year's study of *Morrison's* consequences before it undertakes further rulemaking.

Of those commenting, for example, were some agencies who urged the OAL not to permit any tape recordings in lieu of transcripts. They argued that the burden on agency heads outweighs any intended economic savings. Those lawyers who commented believed that the tape recording option was a good idea, but that an extension would be necessary in every case where a party wished to take an exception to an ALJ fact finding. One lawyer argued for the imposition of any extra cost on the losing litigant or the OAL. Others arguing for the rights of human service clients also questioned the efficacy of the tape recording process. They argued that the idea was time consuming, possibly unworkable and in the case of some indigents, even tapes were unaffordable.

Therefore, as indicated above, the OAL intends to evaluate for one year whether *Morrison* inhibits exceptions, whether the costs of administrative proceedings are increased and which types of cases are affected. Accordingly, the OAL withdraws its proposal and will repropose a rule if one is necessary after it concludes the study. This action returns all interested persons to their positions after *Morrison*, which continues to bind all litigants in contested cases under its terms and dictates.

## BANKING

### (b)

#### DIVISION OF BANKING

#### Savings Banks: Commercial Loans

#### Proposed New Rules: N.J.A.C. 3:11-12

Authorized By: Mary Little Parell, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:9A-26(7).

Proposal Number: PRN 1987-385.

Submit comments by October 21, 1987 to:

Roger F. Wagner  
Deputy Commissioner  
Division of Banking  
CN040  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Effective July 22, 1987, Governor Kean signed into law Assembly Bill No. 2042 as P.L. 1987, c.201. This omnibus savings bank bill took effect immediately; however, sections requiring the Commissioner of the De-

partment of Banking to promulgate rules and regulations do not become operative until rules relevant to those sections are adopted.

Section 34 of the Act amends N.J.S.A. 17:9A-26 (additional powers of savings banks) by granting savings banks the new power to make commercial loans to the same extent as a commercial bank may make commercial loans. However, the aggregate of all commercial loans made by a savings bank may not exceed 10 percent of the savings bank's total assets without approval of the Commissioner of the Department of Banking. The Act requires the Commissioner to issue rules providing for an application procedure for a savings bank to exceed the 10 percent commercial loan limitation and to define terms such as "total assets" and "commercial loans". These rules are being proposed to accomplish these requirements.

Historically, savings banks had concentrated on mortgage loans, residential and commercial, and consumer type loans. However, in recent years, through leeway lending and expanded powers granted through Federal laws overriding State laws, savings banks have entered the commercial lending area. The Act directly grants New Jersey State chartered savings banks limited commercial lending authority.

The Act also provides a system for expanding commercial lending authority when a savings bank determines it desires to go beyond the basic statutory limitation. However, to obtain this expanded authority, the savings bank must apply to the Commissioner, who must be satisfied, through criteria set out in the law, that the applying savings bank has the capacity to expand its investment in commercial loans.

#### Social Impact

The adoption of these proposed new rules will allow savings banks to make commercial loans within the limits set out in P.L. 1987, c.201. This should provide the public with another source of funds and, therefore, benefit the public through this alternative. The proposed new rules provide a system wherein a savings bank may request the Commissioner of the Department of Banking to expand the savings bank's commercial lending authority. Here again, if the expanded authority is granted, the public would gain through a further expansion of this alternate source of funds. The screening of requests for expanded authority by the Commissioner, provided for in the rule, gives the public the assurance that the savings bank offering these loans has the capacity to properly process such loans.

#### Economic Impact

The entry of savings banks into the commercial lending area will provide savings banks with an additional source of income. The growing economy of New Jersey has stimulated growth in savings banks and they are looking for alternate sources of investment beyond the mortgage market, which historically has been the normal investment vehicle for these institutions. The additional entry into the commercial lending market will provide commercial borrowers in the State with another alternate source of funds. While the savings banks themselves will benefit from this new source of revenue, the commercial borrowers could also benefit through reduced costs due to the increased competition for their business.

The proposed new rules provide for further expansion of commercial lending by savings banks through an application process for expanded authority. This monitored approach to expansion will assure the public of the capacity of the savings banks involved to offer increased services.

#### Regulatory Flexibility Statement

Although the proposed new rules may affect small businesses as defined in the Regulatory Flexibility Act, P.L. 1986, c.169, it is not expected that these institutions will need professional services to meet the application requirements of these rules in the event the savings bank proposes to expand its commercial lending authority. No initial costs will be incurred nor will there be any annual costs as any information required is presently generated by these institutions. Therefore, the Department finds that a regulatory flexibility analysis is not required, as provided in Section 4 of P.L. 1986, c.169.

Full text of the proposed new rules follows:

#### SUBCHAPTER 12. SAVINGS BANKS: COMMERCIAL LOANS

##### 3:11-12.1 Definitions

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

"Commercial loans" means any loan which is required to be reported in "Schedule RC-C Loans and Lease Financing Receivables", at line 7a, Commercial and Industrial Loans, of the Consolidated Report of Condition for Savings Banks filed with the Federal Deposit Insurance Corporation. In the event the specified schedule or line item is redesignated, the substituted or redesignated line item is to be used.

"Commissioner" means the Commissioner of the Department of Banking of New Jersey.

"Savings bank" means a savings bank as defined in N.J.S.A. 17:9A-1(13), a capital stock savings bank as defined in N.J.S.A. 17:9A-8.1 and a subsidiary capital stock savings bank as defined in N.J.S.A. 17:9A-382.

"Total assets" means the total asset figure reported in "Schedule RC-K-Quarterly Averages" submitted with the most recent Consolidated Report of Condition for Savings Banks filed with the Federal Deposit Insurance Corporation. In the event the specified schedule is redesignated, the total asset figure reported in the substituted schedule is to be used.

### 3:11-12.2 Commercial loan limitation

As prescribed in N.J.S.A. 17:9A-26(7), a savings bank may make commercial loans in an aggregate amount that may not exceed 10 percent of the savings bank's total assets without the Commissioner's approval.

### 3:11-12.3 Application to exceed commercial loan limitation

A savings bank may apply to the Commissioner for approval to exceed the 10 percent commercial loan limitation provided in N.J.S.A. 17:9A-26(7). The application shall be submitted on forms prescribed by the Commissioner. The application shall contain a request by the savings bank to have the Commissioner approve the savings bank granting commercial loans up to a limited amount, beyond the statutorily authorized 10 percent, or in an unlimited amount, as the board of the savings bank may by resolution specify. A certified copy of the board resolution shall be submitted with the application. The application shall contain such data as the Commissioner may require in order to make the findings called for in N.J.S.A. 17:9A-26(7) and N.J.A.C. 3:11-12.4.

### 3:11-12.4 Commissioner approval

(a) Within 30 days of receipt of a completed application, the Commissioner shall approve the application and designate the limited or unlimited amount approved, provided it is found that:

1. The savings bank is being operated in a safe and sound manner;
2. The savings bank has capital equal to that required from time to time by the Board of Governors of the Federal Reserve System for a bank chartered under the laws of a state of the United States which is a member of the Federal Reserve System and said capital shall be calculated in accordance with generally accepted accounting principles as applied to banks;
3. The savings bank is competently managed; and
4. The savings bank has demonstrated satisfactory experience and expertise in making commercial loans.

## COMMUNITY AFFAIRS

### DIVISION OF HOUSING AND DEVELOPMENT

#### (a)

#### Uniform Fire Code

#### Life Hazard Uses: Annual Registration Fees

#### Proposed Amendments: N.J.A.C. 5:18-2.4, 2.5, 2.6 and 2.8

Authorized By: Leonard S. Coleman, Jr., Commissioner,  
Department of Community Affairs.

Authority: N.J.S.A. 52:27D-198.

Proposal Number: PRN 1987-389.

Public hearings concerning this proposal will be held at 10 A.M. on:

October 6, 1987 (Tuesday)  
Meeting Room  
Municipal Building  
Township of Morris  
50 Woodland Avenue  
Convent Station, New Jersey 07961

October 13, 1987 (Tuesday)  
Auditorium  
Federal Aviation Administration Technical Center  
Tilton Road  
Egg Harbor Township, New Jersey 08240

October 20, 1987 (Tuesday)  
Council Chambers (2nd Floor)  
City Hall  
78 Bayard Street  
New Brunswick, New Jersey 08903

Submit comments by October 21, 1987 to:  
Michael L. Ticktin, Esq.  
Administrative Practice Officer  
Division of Housing and Development  
CN 804  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The proposed amendments to the Uniform Fire Code establish a new fee schedule for life hazard uses. The new fee schedule establishes fees in a manner that is more equitable because it more adequately takes into account the variations in size and function among facilities in each life hazard use category. Thus, those types and sizes of facilities which the Department and the Fire Safety Commission determined were paying fees which were excessive in light of the time and complexity of the required inspection effort will be assessed lower fees. On the other hand, fees are increased for those facilities where the Department and the Commission determined that the fees were unduly low when established. For some facilities, fees will remain the same.

As a result of changes in the definitions of life hazard uses, certain uses which were not clearly covered previously are now expressly included. These life hazard uses are children's overnight camps and fueling facilities for boats. The only type of facility formerly included and now omitted is "any windowless space with a maximum permitted occupancy of 50 or more persons, regardless of use, not complying with provisions of section 1702.15 of the BOCA/Basic National Building Code." However, since such facility is not really a "use," its inclusion as such was anomalous.

#### Social Impact

The proposed fee schedule will be socially beneficial in that it will result in a more equitable fee schedule that will allow for the continuation of necessary public education and fire prevention programs.

#### Economic Impact

The economic impact of this proposal will vary depending upon the type and size of a given life hazard use. To state the impact upon each such life hazard use would be to repeat the pertinent rule itself, and it is therefore necessary to review the pertinent rule in order to determine how any given life hazard use is affected.

#### Regulatory Flexibility Statement

It is the intention of the Department in proposing these amendments to make fees more proportionate to the size and complexity of each type of life hazard use. To the extent that small businesses are more likely to have smaller facilities, they will benefit from this change. However, it is the nature of the facility, and not the nature of the owner, which will be determinative.

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

5:18-2.4 Life hazard uses defined

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

**5:18-2.4A Type Aa through Aj life hazard uses**

[(b) The following are type A] **(a) Type Aa life hazard uses are as follows:**

1. [Service stations and other locations where flammable and/or combustible fuels are stored and dispensed to motor vehicles and all buildings or structures used for the storage (except parking garages) or service of motor vehicles] **Day nurseries with a maximum permitted occupancy of six or more but fewer than 50 persons;**

2. Daycare centers [and day nurseries] **with a maximum permitted occupancy of six or more but fewer than 50 persons;**

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3. [Hotels or motels, two stories or more, with any interior means of egress and not defined as a type B life hazard use:] **Camps where children of school age stay overnight with a maximum permitted occupancy of fewer than 50 persons.**

[4. Rooming and Boarding Houses, including halfway houses, group homes, community residences, residential child care facilities and residential health care facilities;

5. Eating and drinking establishments with maximum permitted occupancy of less than 50 in which alcoholic beverages are consumed;

6. Eating establishments with a maximum permitted occupancy of 50 or more and less than 200 in which no alcoholic beverages are consumed;

7. Eating establishments with a maximum permitted occupancy of 50 or more and less than 200 in which alcoholic beverages are consumed but which are primarily eating establishments;

8. Aboveground storage of more than 660 gallons, but less than 50,000 gallons of flammable or combustible liquids.

9. Buildings used for dry cleaning purposes in which only nonflammable cleaning solvents are used.]

[(c) The following are type B] (b) **Type Ab** life hazard uses are as follows:

1. [Any high rise structure] **Day nurseries with a maximum permitted occupancy of 50 or more but fewer than 100 persons;**

2. [Prisons and other facilities where residents, occupants or inmates are kept under restraint] **Daycare centers with a maximum permitted occupancy of 50 or more but fewer than 100 persons;**

3. [Institutional and similar facilities, including acute alcoholism treatment, outpatient surgery, renal dialysis facilities, abortion clinics, and birthing centers:] **Camps where children of school age stay overnight with a maximum permitted occupancy of 50 or more but fewer than 100 persons.**

[4. Motion picture theaters without a theatrical stage;

5. Eating and drinking establishments with a maximum permitted occupancy of 50 or more and less than 200 which are primarily drinking establishments;

6. Eating and drinking establishments with a maximum permitted occupancy of 200 or more which are primarily eating establishments;

7. Retail stores and other mercantile uses which exceed 12,000 square feet in gross floor area;

8. Hotels or motels, four stories or more or exceeding 100 rooms and which have any interior means of egress;

9. Stadiums, race tracks and similar exterior places of amusement with grandstands;

10. Any windowless space with a maximum permitted occupancy of 50 or more persons, regardless of use, not complying with provisions of section 1702.15 of the BOCA Basic/National Building Code;

11. Buildings with a maximum permitted occupancy of 100 or more in which persons assemble for entertainment or amusement not otherwise classified herein, such as art galleries, exhibition halls, museums, recreation centers, lecture halls without fixed seating, and transportation terminals;

12. Industrial and commercial uses which incorporate any of the following materials or processes:

i. Spray or dipping operations involving paint, varnish, lacquer, stain or other flammable or combustible liquids;

ii. Equipment, processes, and operations which involve dust, which, if mixed with air becomes explosive, such as grain bleachers or elevators; flour, starch or feed mills; malt houses, wood floor manufacturing plants; or plants that pulverize aluminum, coal, cocoa, magnesium, spices, or sugar;

iii. Crop ripening or coloring processes;

iv. Lumber yards and wood working plants in which more than 100,000 board feet of lumber is to be stored;

v. Tire recapping or rebuilding plants;

vi. Organic coating manufacturing operations making more than one gallon of an organic coating in a working day;

vii. Manufacturing of articles of cellulose nitrate plastics, including the use of cellulose nitrate plastics in the manufacture or assembly of other articles;

viii. Processing, handling or use of more than 100 cubic feet of loose combustible vegetable or animal fibers, including, among others readily ignitable and free burning fibers such as cotton, sisal, heneguer, ixtle, jute, hemp, tow, cocoa fiber, oakum, baled waste, shredded waste paper, kapok, hay, straw, Spanish moss, excelsior, certain synthetic fabrics, and cloth in the form of scraps and clippings;

ix. The manufacture of matches;

x. The manufacture of fireworks, explosives or blasting agents;

xi. The manufacture, processing, blending or refining of flammable or combustible liquids; or

xii. Welding or cutting operations except where covered by a type 1 permit.

13. Storage uses which involve the following materials and substances;

i. More than 2,500 cubic feet gross volume of combustible assembled and empty packing cases, boxes, barrels, pallets, or similar containers;

ii. More than 2,500 cubic feet gross volume of rubber tires, baled cotton, rubber, cork, or other similarly combustible material;

iii. More than 25 pounds of cellulose nitrate motion picture films or cellulose nitrate (pyroxylin) plastics;

iv. More than 100 cubic feet of loose combustible vegetable or animal fibers;

v. Matches exceeding 25 cases in the aggregate;

vi. Explosive or blasting agents; or

vii. Aboveground storage of more than 50,000 gallons of flammable and combustible liquids.

14. Buildings in which flammable cleaning solvents are used for dry cleaning purposes;

15. Buildings with atrium spaces three or more stories in height in buildings which exceed 12,000 square feet of gross floor area.]

[(d) The following are type C] (c) **Type Ac** life hazard uses are as follows:

1. [Theaters incorporating a raised stage, platform or thrust stage, proscenium curtain, fixed or portable scenery loft, lights, mechanical appliances or other theatrical accessories and equipment] **Hotels or motels of two or three stories and under 25 rooms, with any interior exit-ways;**

2. [Night clubs, dance halls, discotheques without a theatrical stage, and eating and drinking establishments which are primarily drinking establishments with a maximum permitted occupancy of 200 or more] **Rooming and boarding homes of one story;**

3. [Places of amusement designed to disorient, reduce vision, present barriers, or otherwise impede the free flow of traffic, such as haunted houses, fun houses, tunnels of love and similar uses:] **Eating and/or drinking establishments with a maximum permitted occupancy of fewer than 50 persons in which alcoholic beverages may be consumed.**

[4. Institutional and similar facilities, including hospitals, long-term care facilities and intermediate-care facilities, which house people suffering from physical limitation due to age, health or handicaps.]

[(e) The following are type D] (d) **Type Ad** life hazard uses are as follows:

1. [Covered mall buildings which exceed 12,000 square feet of gross floor area.] **All buildings or structures used for the service of motor vehicles including marine motor craft;**

2. **All buildings or locations where flammable and/or combustible fuels are stored and dispensed to motor vehicles, including marine motor craft;**

3. **Halfway houses, group homes, community residences, residential child care facilities and residential health care facilities, alcohol and drug treatment centers, youth hostels, homeless shelters and other similar facilities with a maximum permitted occupancy of fewer than 50 persons;**

4. **Buildings used for dry cleaning purposes using nonflammable cleaning solvents.**

(e) **Type Ae** life hazard uses are as follows:

1. **Day nurseries with a maximum permitted occupancy of 100 persons or more;**

2. **Daycare centers with a maximum permitted occupancy of 100 persons or more;**

3. **Camps where children of school age stay overnight with a maximum permitted occupancy of 100 persons or more.**

(f) **Type Af** life hazard uses are as follows:

1. **All buildings or locations where flammable and/or combustible fuels are stored and dispensed to motor vehicles, and used for the service of motor vehicles including marine motor craft;**

2. **Hotels or motels of two or three stories and 25 or more but fewer than 50 rooms, with any interior exit-ways;**

3. **Halfway houses, group homes, community residences, residential child care facilities and residential health care facilities, alcohol and drug treatment centers, youth hostels, homeless shelters and other similar facilities with a maximum permitted occupancy of 50 or more but fewer than 100 persons;**

4. **Rooming and boarding homes of two or three stories.**

(g) **Type Ag** life hazard uses are as follows:

1. **Eating and/or drinking establishments with a maximum permitted occupancy of 50 or more but fewer than 100 persons in which alcoholic beverages may be consumed but which are primarily eating establishments;**

2. Hotels or motels of two or three stories and 50 or more but fewer than 100 rooms, with any interior exit-ways;

3. Above ground aggregate storage of more than 660 gallons but less than 5,000 gallons of Class II or IIIA combustible liquids (except for heating purposes).

(h) Type Ah life hazard uses are as follows:

1. Rooming and boarding homes of four or more stories;

2. Halfway houses, group homes, community residences, residential child care facilities and residential health care facilities, alcohol and drug treatment centers, youth hostels, homeless shelters and other similar facilities with a maximum permitted occupancy of 100 persons or more.

(i) Type Ai life hazard uses are as follows:

1. Hotels or motels of two or three stories and 100 rooms or more, with any interior exit-ways;

(j) Type Aj life hazard uses are as follows:

1. Eating and/or drinking establishments with a maximum permitted occupancy of 100 or more but fewer than 200 persons in which alcoholic beverages may be consumed but which are primarily eating establishments;

2. Above ground aggregate storage of 5,000 gallons or more, but less than 50,000 gallons, of Class II or IIIA combustible liquids, or above ground aggregate storage of more than 660 gallons but less than 10,000 gallons of Class I flammable liquids.

5:18-2.4B Type Ba through Bo life hazard uses

a Type Ba life hazard uses are as follows:

1. Welding or cutting operations on a regular basis not using flammable gases in buildings or structures under 10,000 square feet.

(b) Type Bb life hazard uses are as follows:

1. Eating and/or drinking establishments with a maximum permitted occupancy of 50 or more but fewer than 100 persons which are primarily drinking establishments;

2. Recreation centers, multipurpose rooms, lecture halls without fixed seating and similar uses where persons assemble other than for religious services with a maximum permitted occupancy of 100 or more but fewer than 200 persons;

3. Welding or cutting operations on a regular basis not using flammable gases in buildings or structures of 10,000 or more but less than 50,000 square feet.

(c) Type Bc life hazard uses are as follows:

1. Recreation centers, multipurpose rooms, lecture halls without fixed seating and similar uses where persons assemble other than for religious services with a maximum permitted occupancy of 200 persons or more.

(d) Type Bd life hazard uses are as follows:

1. Motion picture theaters, or theaters incorporating a legitimate, regular or thrust stage without any scenery or prop storage areas behind a proscenium arch, with a maximum permitted occupancy of fewer than 100 persons;

2. The manufacture, processing or blending of less than 1,000 gallons of Class I flammable liquid, or less than 10,000 gallons of Class II or IIIA combustible liquids, in any one working day. Blending must be in a vessel, not in piping at or near the point of delivery;

3. Welding or cutting operations on a regular basis not using flammable gases in buildings or structures of 50,000 square feet or more;

4. Storage of fireworks, explosives or blasting agents in a type 4 magazine.

NOTE: Type 2 and 3 magazines are portable and intended only for the temporary storage of explosives and blasting agents, and as such, must be covered by a permit.

(e) Type Be life hazard uses are as follows:

1. Eating and/or drinking establishments with a maximum permitted occupancy of 100 or more but fewer than 200 persons which are primarily drinking establishments.

(f) Type Bf life hazard uses are as follows:

1. Prisons and other facilities of six or more but fewer than 50 beds where residents, occupants, or inmates are kept under restraint;

2. Motion picture theaters, or theaters incorporating a legitimate, regular or thrust stage without any scenery or prop storage area behind a proscenium arch, with a maximum permitted occupancy of 100 or more but fewer than 200 persons;

3. Retail stores and other mercantile uses of more than 12,000 square feet but less than 24,000 square feet in gross floor area;

4. Hotels or motels which exceed three stories, and have under 50 rooms, with any interior exit-ways;

5. Buildings with a maximum permitted occupancy of 100 or more but fewer than 200 persons in which persons assemble for entertainment or amusement not otherwise classified herein, such as, but not limited to, art galleries, exhibition halls and museums;

6. Spraying or dipping operations involving paint, varnish, lacquer, stain, or other flammable or combustible liquids in all approved areas of less than 250 square feet;

7. Equipment, processes, and operations involving dust which, if mixed with air, becomes explosive, including, but not limited to, grain bleachers or elevators; flour, starch or feed mills; malt houses, wood flour manufacturing plants; or plants that pulverize aluminum, coal, cocoa, magnesium, spices, or sugar in all buildings or structures under 50,000 square feet;

8. Crop ripening or coloring processes in all buildings or structures under 50,000 square feet;

9. Lumber yards and/or woodworking plants in which more than 100,000 but less than 250,000 board feet of lumber is to be stored;

10. Tire recapping or rebuilding plants in buildings or structures under 50,000 square feet;

11. Manufacturing of articles of cellulose nitrate plastics including the use of cellulose nitrate plastics in the manufacture or assembly of other articles in all buildings or structures under 50,000 square feet;

12. The manufacture of matches in all buildings or structures under 50,000 square feet;

13. The manufacture of fireworks, explosives or blasting agents in all buildings or structures under 50,000 square feet;

14. The manufacture, processing or blending of more than 1,000 but less than 10,000 gallons of Class I flammable liquids in any one working day. Blending must be in a vessel, not in piping at or near the point of delivery;

15. Welding or cutting operations using flammable gases on a regular basis in buildings or structures under 10,000 square feet;

16. Storage of more than 2,500 but less than 5,000 cubic feet gross volume of combustible empty assembled packing cases, boxes, barrels, pallets, or similar containers;

17. Storage of more than 2,500 but less than 5,000 cubic feet gross volume of rubber tires, baled cotton, rubber, cork or other similarly combustible material;

18. Storage of matches with more than 25 but fewer than 50 cases in the aggregate;

19. Storage of fireworks, explosives or blasting agents in a type UG magazine;

NOTE: Type 2 and 3 magazines are portable and intended only for the temporary storage of explosives and blasting agents, and as such, must be covered by a permit;

20. Above ground aggregate storage of more than 50,000 but less than 1,000,000 gallons of Class II or IIIA combustible liquids.

(g) Type Bg life hazard uses are as follows:

1. Any high-rise structure of seven or more but fewer than 10 stories;

2. Prisons and other facilities of 50 or more but fewer than 100 beds where residents, occupants, or inmates are kept under restraint;

3. Free-standing institutional and similar facilities including but not limited to outpatient surgery facilities, renal dialysis facilities, abortion clinics, and birthing centers, in buildings of less than 10,000 square feet;

4. Motion picture theaters, and theaters incorporating a legitimate, regular or thrust stage without any scenery or prop storage area behind a proscenium arch, with a maximum permitted occupancy of 200 or more persons;

5. Eating and/or drinking establishments with a maximum permitted occupancy of 200 or more but fewer than 300 persons in which alcoholic beverages may be consumed but which are primarily eating establishments;

6. Retail stores and other mercantile uses of 24,000 or more but less than 48,000 square feet in gross floor area;

7. Hotels or motels which exceed three stories, and which have 50 or more but fewer than 100 rooms, with any interior exit-ways;

8. Buildings with a maximum permitted occupancy of 200 persons or more in which persons assemble for entertainment or amusement not otherwise classified herein, such as, but not limited to, art galleries, exhibition halls and museums;

9. Transportation terminals with a maximum permitted occupancy of 100 or more persons;

10. Spraying or dipping operations involving paint, varnish, lacquer, stain, or other flammable or combustible liquids in all approved areas of 250 or more but less than 500 square feet;

11. Equipment, processes, and operations involving dust which, if mixed with air, becomes explosive including but not limited to grain bleachers or elevators; flour, starch or feed mills; malt houses; wood flour manufacturing plants; or plants that pulverize aluminum, coal, cocoa, magnesium, spices, or sugar in all buildings or structures of 50,000 or more but less than 100,000 square feet;

12. Crop ripening or coloring processes in all buildings or structures of 50,000 or more but less than 100,000 square feet;

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13. Lumber yards and/or woodworking plants in which 250,000 or more but less than 500,000 board feet of lumber is to be stored;

14. Tire recapping or rebuilding plants in buildings or structures of 50,000 or more but less than 100,000 square feet;

15. Organic coating manufacturing operations making one gallon or more of an organic coating in a working day;

16. Manufacturing of articles of cellulose nitrate plastics including the use of cellulose nitrate plastics in the manufacture or assembly of other articles in all buildings or structures of 50,000 or more but less than 100,000 square feet;

17. Processing, handling or use of 100 or more but less than 500 cubic feet of loose combustible vegetable or animal fibers, including, but not limited to, readily ignitable and free burning fibers such as cotton, sisal, heneguer, ixtel, jute, hemp, tow, cocoa fiber, oakum, baled waste, baled waste paper, kapok, hay, straw, Spanish moss, excelsior, certain synthetic fibers, and cloth in the form of scraps and clippings;

18. The manufacture of matches in all buildings or structures of 50,000 or more but less than 100,000 square feet;

19. The manufacture of fireworks, explosives or blasting agents in all buildings or structures of 50,000 or more but less than 100,000 square feet;

20. Welding or cutting operations using flammable gases on a regular basis in buildings or structures of 10,000 or more but less than 50,000 square feet;

21. Storage of 5,000 or more but less than 10,000 cubic feet gross volume of combustible empty assembled packing cases, boxes, barrels, pallets, or similar containers;

22. Storage of 5,000 or more but less than 10,000 cubic feet gross volume of rubber tires, baled cotton, rubber, cork or other similarly combustible material;

23. Storage of cellulose nitrate motion picture film or cellulose nitrate (pyroxlin) plastics in quantities which exceed 25 pounds;

24. Storage of 100 or more but less than 500 cubic feet of loose combustible vegetable or animal fibers;

25. Storage of matches with 50 or more cases in the aggregate;

26. Storage of fireworks, explosives or blasting agents in a type I magazine;

NOTE: Type 2 and 3 magazines are portable and intended only for the temporary storage of explosives and blasting agents, and as such, must be covered by a permit;

27. Above ground storage of 10,000 or more but less than 100,000 gallons of Class I flammable liquids;

28. Buildings used for dry cleaning purposes, using flammable cleaning solvents.

(h) Type Bh life hazard uses are as follows:

1. Prisons and other facilities of 100 or more but fewer than 200 beds where residents, occupants, or inmates are kept under restraint;

2. Hotels or motels which exceed three stories, and which have 100 rooms or more, with any interior exit-ways;

3. The manufacture, processing or blending of more than 10,000 but less than 100,000 gallons of Class II and/or IIIA combustible liquids in any one working day. Blending must be in a vessel, not in piping at or near the point of delivery.

(i) type Bi life hazard uses are as follows:

1. Prisons and other facilities of 200 beds or more where residents, occupants, or inmates are kept under restraint.

(j) Type Bj life hazard uses are as follows:

1. Any high-rise structure of 10 or more but fewer than 20 stories;

2. Free-standing institutional and similar facilities including but not limited to outpatient surgery facilities, renal dialysis facilities, abortion clinics, and birthing centers, in buildings of 10,000 square feet or more;

3. Eating and/or drinking establishments with a maximum permitted occupancy of 300 or more persons in which alcoholic beverages are consumed but which are primarily eating establishments;

4. Retail stores and other mercantile uses of 48,000 square feet or more in gross floor area;

5. Stadiums, race tracks and other similar exterior places of amusement with enclosed interior spaces, with a maximum permitted occupancy of fewer than 5,000 persons;

6. Spraying or dipping operations involving paint, varnish, lacquer, stain, or other flammable or combustible liquids in all approved areas of 500 square feet or more;

7. Equipment, processes, and operations involving dust which, if mixed with air, becomes explosive including but not limited to grain bleachers or elevators; flour, starch or feed mills; malt houses; wood flour manufacturing plants; or plants that pulverize aluminum, coal, cocoa, magnesium, spices, or sugar in all buildings or structures of 100,000 square feet or more;

8. Crop ripening or coloring processes in all buildings or structures of 100,000 square feet or more;

9. Lumber yards and/or woodworking plants in which 500,000 board feet or more of lumber is to be stored;

10. Tire recapping or rebuilding plants in buildings or structures of 100,000 square feet or more;

11. Manufacturing of articles of cellulose nitrate plastics including the use of cellulose nitrate plastics in the manufacture or assembly of other articles in all buildings or structures of 100,000 square feet or more;

12. Processing, handling or use of 500 or more but less than 2,500 cubic feet of loose combustible vegetable or animal fibers, including but not limited to readily ignitable and free burning fibers such as cotton, sisal, heneguer, ixtel, jute, hemp, tow, cocoa fiber, oakum, baled waste, baled waste paper, kapok, hay, straw, Spanish moss, excelsior, certain synthetic fibers, and cloth in the form of scraps and clippings;

13. The manufacture of matches in all buildings or structures of 100,000 square feet or more;

14. The manufacture of fireworks, explosives or blasting agents in all buildings or structures of 100,000 square feet or more;

15. The manufacture, processing or blending of more than 10,000 but less than 100,000 gallons of Class I flammable liquids in any one working day. Blending must be in a vessel, not in piping at or near the point of delivery;

16. Welding or cutting operations using flammable gases on a regular basis in buildings or structures of 50,000 square feet or more;

17. Storage of 10,000 cubic feet or more gross volume of combustible empty assembled packing cases, boxes, barrels, pallets, or similar containers;

18. Storage of 10,000 cubic feet or more gross volume of rubber tires, baled cotton, rubber, cork or other similarly combustible material;

19. Storage of 500 or more but less than 2,500 cubic feet of loose combustible vegetable or animal fibers;

20. Above ground aggregate storage of 1,000,000 or more but less than 5,000,000 gallons of Class II or IIIA combustible liquids, or above ground storage of 100,000 or more but less than 1,000,000 gallons of Class I flammable liquids;

21. Buildings with atrium spaces three or more stories in height in buildings which exceed 12,000 square feet in gross floor area.

(k) Type Bk life hazard uses are as follows:

1. Any high-rise structure of 20 or more but fewer than 30 stories;

2. Processing, handling or use of 2,500 cubic feet or more of loose combustible vegetable or animal fibers, including but not limited to, readily ignitable and fire burning fibers such as cotton, sisal, heneguer, ixtel, jute, hemp, tow, cocoa fiber, oakum, baled waste, baled waste paper, kapok, hay, straw, Spanish moss, excelsior, certain synthetic fibers, and cloth in the form of scraps and clippings;

3. Storage of 2,500 cubic feet or more of loose combustible vegetable or animal fibers;

4. Above ground aggregate storage of 5,000,000 gallons or more of Class II and/or IIIA combustible liquids.

(l) Type Bl life hazard uses are as follows:

1. Any high-rise structure of 30 stories or more;

2. The manufacture, processing or blending of more than 100,000 but less than 1,000,000 gallons of Class II and/or IIIA combustible liquids in any one working day. Blending must be in a vessel, not in piping at or near the point of delivery.

(m) Type Bm life hazard uses are as follows:

1. Stadiums, race tracks and other similar exterior places of amusement with enclosed interior spaces, with a maximum permitted occupancy of 5,000 or more but fewer than 10,000 persons;

2. The manufacture, processing or blending of more than 100,000 but less than 1,000,000 gallons of Class I flammable liquids in any one working day. Blending must be in a vessel, not in piping at or near the point of delivery;

3. Above ground aggregate storage of 1,000,000 gallons or more but less than 5,000,000 gallons of Class I flammable liquids.

(n) Type Bn life hazard uses are as follows:

1. The manufacture, processing or blending of 1,000,000 gallons or more of Class I, II and/or IIIA flammable or combustible liquids in any one working day. Blending must be in a vessel, not in piping at or near the point of delivery;

2. Above ground aggregate storage of 5,000,000 gallons or more of Class I flammable liquids;

(o) Type Bo life hazard uses are as follows:

1. Stadiums, race tracks and other similar exterior places of amusement with enclosed interior spaces, with a maximum permitted occupancy of 10,000 or more persons;

**2. Refining of flammable and combustible liquids.****5:18-2.4C Type Ca through Cg life hazard uses****(a) Type Ca life hazard uses are as follows:**

1. Theaters incorporating a legitimate, regular or thrust stage having any scenery or prop storage area behind a proscenium arch and having a maximum permitted occupancy of fewer than 100 persons;

2. Eating and/or drinking establishments which are primarily drinking establishments, with a maximum permitted occupancy of 200 or more but fewer than 300 persons.

**(b) Type Cb life hazard uses are as follows:**

1. Theaters incorporating a legitimate, regular or thrust stage having any scenery or prop storage area behind a proscenium arch and having a maximum permitted occupancy of 100 or more but fewer than 200 persons.

**(c) Type Cc life hazard uses are as follows:**

1. Night clubs, dance halls or discotheques with a maximum permitted occupancy of fewer than 200 persons;

2. Institutional and similar facilities including but not limited to hospitals and long term care facilities which house people suffering from physical limitation due to age, health, or handicaps which have fewer than 100 beds.

**(d) Type Cd life hazard uses are as follows:**

1. Theaters incorporating a legitimate, regular or thrust stage having any scenery or prop storage area behind a proscenium arch and having a maximum permitted occupancy of 200 or more but fewer than 300 persons;

2. Institutional and similar facilities including but not limited to hospitals and long term care facilities which house people suffering from physical limitation due to age, health, or handicaps which have 100 or more but fewer than 200 beds.

**(e) Type Ce life hazard uses are as follows:**

1. Theaters incorporating a legitimate, regular or thrust stage having any scenery or prop storage area behind a proscenium arch with a maximum permitted occupancy of 300 or more persons;

2. Eating and/or drinking establishments which are primarily drinking establishments, with a maximum permitted occupancy of 300 or more persons;

3. Institutional and similar facilities including but not limited to hospitals and long term care facilities which house people suffering from physical limitation due to age, health, or handicaps which have 200 beds or more;

4. Night clubs, dance halls or discotheques with a maximum permitted occupancy of 200 or more but fewer than 300 persons.

**(f) Type Cf life hazard uses are as follows:**

1. Places of amusement with a maximum permitted occupancy of fewer than 200 persons which are designed to disorient the occupant, reduce vision, present barriers or otherwise impede the free flow of traffic such as haunted houses, fun houses, tunnels of love and similar uses.

**(g) Type Cg life hazard uses are as follows:**

1. Night clubs, dance halls or discotheques with a maximum permitted occupancy of 300 or more persons;

2. Places of amusement with a maximum permitted occupancy of 200 or more persons which are designed to disorient the occupant, reduce vision, present barriers or otherwise impede the free flow of traffic such as haunted houses, fun houses, tunnels of love and similar uses.

**5:18-2.4D Type Da life hazard uses****(a) Type Da life hazard uses:**

1. Covered mall buildings which exceed 12,000 square feet of gross floor area.

**5:18-2.5 Required inspections**

(a) All life hazard uses shall be inspected for compliance with the provisions of this Code periodically but not any less often than specified herein:

1. Type [A] Aa through Aj life hazard uses: once every 12 months, except day nurseries and daycare centers with a maximum permitted occupancy of 100 or more which shall be inspected once every six months.

2. Type [B] Ba through Bo life hazard uses: once every 12 months.

3. Type [C] Ca through Cg life hazard uses: once every three months.

4. Type [D] Da life hazard uses: once every three months.

(b) Where a life hazard use is operated on a seasonal basis, the number of required annual inspections shall not be reduced. Inspections of type [C] Ca through Cg and type [D] Da life hazard uses which are in operation for only a portion of the year shall be conducted immediately prior to opening and closing and twice during operation of the use.

1. (No change.)

(c) (No change.)

**5:18-2.6 Registration of buildings and uses**

(a) Whenever the Commissioner or any local enforcing agency shall have cause to believe a building or use is a life hazard use, then the

Commissioner or the agency shall submit a registration survey to the owner of the building or use. It shall be a violation of the Code for an owner to fail to complete and return such a survey within 30 days.

1. Whenever the use of a building or any portion thereof is conducted on a seasonal basis, the Commissioner may require the owner of the building to comply with this registration requirement for any use conducted therein.

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

(d) Where more than one life hazard use exists at a given building or premises or where one or more life hazard uses occur within a high rise building or other life hazard use, such as a night club within a hotel, then each such life hazard use shall be separate and distinct and shall be registered separately. [However, where more than one life hazard use exists as part of the same storage or manufacturing operation, only the most hazardous storage or manufacturing life hazard use is required to be registered.]

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

**5:18-2.8 Fees, registration and permit**

(a) The annual registration fee for life hazard uses shall be as follows:

1. Type [A] Aa—[\$75.00] **\$50.00** per year;

2. Type [B] Ab—[\$400.00] **\$75.00** per year;

3. Type [C] Ac—[\$700.00] **\$80.00** per year;

4. Type [D] Ad—[\$1,200] **\$90.00** per year;

5. Type Ae—\$100.00 per year;

6. Type Af—\$120.00 per year;

7. Type Ag—\$150.00 per year;

8. Type Ah—\$180.00 per year;

9. Type Ai—\$240.00 per year;

10. Type Aj—\$300.00 per year;

11. Type Ba—\$80.00 per year;

12. Type Bb—\$150.00 per year;

13. Type Bc—\$240.00 per year;

14. Type Bd—\$300.00 per year;

15. Type Be—\$350.00 per year;

16. Type Bf—\$450.00 per year;

17. Type Bg—\$480.00 per year;

18. Type Bh—\$600.00 per year;

19. Type Bi—\$720.00 per year;

20. Type Bj—\$750.00 per year;

21. Type Bk—\$900.00 per year;

22. Type Bl—\$1,050.00 per year;

23. Type Bm—\$1,200.00 per year;

24. Type Bn—\$1,500.00 per year;

25. Type Bo—\$1,800.00 per year;

26. Type Ca—\$600.00 per year;

27. Type Cb—\$720.00 per year;

28. Type Cc—\$780.00 per year;

29. Type Cd—\$840.00 per year;

30. Type Ce—\$960.00 per year;

31. Type Cf—\$1,050.00 per year;

32. Type Cg—\$1,200.00 per year;

33. Type Da—\$1,800.00 per year.

(b) [Except as otherwise specified for storage or manufacturing operations in N.J.A.C. 5:18-26(d), where] **Where** more than one life hazard use exists under one ownership at a given location, the highest life hazard use shall be registered at full fee and subsequent life hazard uses at one-half the scheduled fee.

1. Each life hazard use that is separately owned shall be registered at full fee.

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

(a)

**Uniform Construction Code  
Planned Real Estate Development  
Department Fees**

**Proposed Amendments: N.J.A.C. 5:23-4.20 and 8.17;  
5:26-2.3 and 2.4**

Authorized By: Leonard S. Coleman, Jr., Commissioner,  
Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124 and 45:22A-27e.

Proposal Number: PRN 1987-386.

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 21, 1987

Submit comments by October 21, 1987 to:

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

The agency proposal follows:

**Summary**

The Department of Community Affairs considers it necessary and in the public interest to provide services under the State Uniform Construction Code Act and the Planned Real Estate Development Full Disclosure Act in an expeditious manner, since delay is invariably a source of frustration and expense to all involved in the construction process. In order to accomplish this, the Department must increase its staff. Inasmuch as the law requires the Department to charge fees that cover the cost of the services it provides, and inasmuch as most of its fees have not been raised since 1982, it is necessary that Departmental fees for plan review, inspection and asbestos hazard abatement authorization be increased by an average of about 25 percent and that Planned Real Estate Development fees be increased by 55 percent. A 30 percent plan review surcharge is also added to cover the cost of temporary staff that must be hired to eliminate the current plan review backlog. Once the backlog is eliminated, the surcharge and the planned real estate development increases in excess of 25 percent will also be eliminated.

**Social Impact**

It is not anticipated that the effect of this fee increase will be so significant as to have any discernible adverse social impact. It is unlikely that anyone who is otherwise in a position to undertake construction, apply for licensing or undertake planned real estate development will be prevented from doing so by these fee increases. On the other hand, adequate funding of the plan review, inspection, asbestos hazard abatement and planned real estate development programs will enable the Bureau of Construction Code Enforcement to have adequate staff to deal with its extensive workload in a timely manner and thereby avoid the delays that are a major cause of great inconvenience and expense to persons engaged in construction and planned real estate development activity. Since increases in Department fees automatically apply to private inspection agencies as well, the additional revenue they will receive will also enable them to hire additional staff and better serve the municipalities in which they provide inspection services.

**Economic Impact**

In any municipality in which the Bureau of Construction Code Enforcement serves as construction official, or in which it is responsible for plan review, the cost of the Bureau's services will increase by about 55 percent when these amendments become effective. The portion of this increase not attributable to plan review will also apply to inspections by private inspection agencies authorized to enforce the Code since their fees are required by statute to be the same as those of the Department. Similar increases will affect asbestos hazard abatement authorization and reauthorization applications and applications for planned real estate development exemption and registration. However, the increased cost of these services should be more than offset by savings resulting from increased staffing and the resulting elimination of excessive delays. The plan review surcharge and the planned real estate development increases in excess of 25 percent are intended as temporary measures to cover the cost of reducing a substantial current backlog which will be eliminated once the additional temporary staff is no longer needed.

**Regulatory Flexibility Statement**

Small businesses will be subject to the same increases as any other persons or firms requiring the Bureau's services. Fee schedules are set on the basis of the services provided, not the nature or identity of the persons to whom the services are provided. Private inspection agencies which are small businesses will receive additional revenue for inspections that they perform as a result of these amendments. Asbestos hazard abatement firms that are small businesses will have additional fees which they will presumably pass on to their clients, which, at present, are not small businesses.

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

5:23-4.20 Department fees

(a) (No change.)  
(b) Departmental plan review fee: **The fees listed in (c) below shall be in addition to a departmental plan review surcharge in the amount of 30 percent of each listed fee. Where the department performs plan review only, the [The] plan review fee shall be in the amount of 20 percent of the new construction permit fee which would be charged by the department pursuant to these regulations. The minimum fee shall be [\$5.00] \$25.00.**  
(c) Departmental (enforcing agency) fees:

1. (No change.)  
2. **The [B]basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the mechanical systems and equipment, the number of plumbing fixtures and stacks, the number of electrical fixtures and devices and the number of sprinklers and stand-pipes at the unit rates provided herein plus any special fees. In each case, the minimum fee for basic construction work shall be [\$20.00] \$25.00.**

i. Volume or cost: The fees for new construction or alteration are as follows:

(1) Fees for new construction shall be based upon the volume of the structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of [\$0.0116] **\$0.0145** per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in articles 3 and 4 of the building subcode; except that the fee shall be [\$0.0063] **\$0.008** per cubic foot of volume for use groups A-1, A-2, A-3, A-4, [F] **F-1, F-2, S-1 and S-2, and the fee shall be [\$0.003] \$0.004** per cubic foot for structures on farms used exclusively for the storage of food or grain, or the sheltering of livestock, with the maximum fee for such structures on farms not to exceed [\$500.00] **\$625.00**.

(2) Fees for renovations, alterations and repairs shall be based upon the estimated cost of the work. The fee shall be in the amount of [\$10.00] **\$13.00** per \$1,000. From \$50,001 to and including \$100,000, the additional fee shall be in the amount of [\$8.00] **\$10.00** per \$1,000 of estimated cost above \$50,000. Above \$100,000, the additional fee shall be in the amount of [\$6.00] **\$8.00** per \$1,000 of estimated cost above \$100,000. For the purpose of determining estimated cost, the applicant shall submit to the department, if available, cost data produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The department will make the final decision regarding estimated cost.

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

(5) Fees for minor construction work shall be based upon the estimated cost of the work. The fee shall be in the amount of [\$10.00] **\$13.00** per \$1,000 of estimated cost or fraction thereof.

ii. Plumbing fixtures and stacks: The fees shall be as follows:

(1) The fee shall be in the amount of [\$4.00] **\$5.00** per fixture or stack for all fixtures except as listed in (2) below.

(2) The fee shall be in the amount of [\$25.000] **\$35.00** per special device for grease traps, oil separators, water-cooled air conditioning units, utility service connections, boilers and furnaces.

(3) (No change.)

iii. Electrical fixtures and devices: The fees shall be as follows:

(1) For from one to 50 receptacles or fixtures the fee shall be in the amount of [\$20.00] **\$25.00**; for each 25 receptacles or fixtures in addition to this, the fee shall be in the amount of [\$3.00] **\$4.00**; for the purpose of computing this fee, receptacles or fixtures shall include lighting outlets, wall switches, fluorescent fixtures, convenience receptacles or similar fixture, and motors or devices of less than one horsepower or one kilowatt.

(2) For each motor or electric device of more than one horsepower or one kilowatt the fees shall be in the amount of [\$4.00] **\$5.00**.

(3) (No change.)

(4) For each service panel of 100 amperes capacity or less, the fee shall be in the amount of [\$10.00] **\$13.00**; for each service panel of greater than 100 amperes capacity, the fee shall be increased [\$5.00] **\$7.00** for each 100 ampere increment.

(5) (No change.)

3. The fee for a demolition permit shall be [\$25.00] **\$35.00** for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one or two-family residences (use group R-3 of the building subcode), and structures on farms used exclusively for storage of food or grain, or sheltering of livestock, and [\$50.000] **\$65.00** for all other use groups.

4. The fee for a permit for removal of one building from one lot to another or to another location on the same lot shall be in the amount

of [\$5.00] **\$7.00** per \$1,000 of the estimated cost of moving, plus the estimated cost of new foundation and all work necessary to place the building in its completed condition in the new location.

5. The fee for a permit to construct a sign shall be in the amount of [\$0.50] **\$0.65** per square foot surface area of the sign, computed on one side only for double-faced signs. The minimum fee shall be [\$20.00] **\$25.00**.

6. The fee for a certificate of occupancy shall be in the amount of 10 percent of the new construction permit fee which would be charged by the department pursuant to these regulations. The minimum fee shall be [\$50.00] **\$65.00**, except for one or two-family (use group R-3 of the building subcode) structures of less than 5,000 square feet in area and less than 30 feet in height, and structures on farms used exclusively for storage of food or grain, or sheltering of livestock, for which the minimum fee shall be [\$25.00] **\$35.00**.

i. The fee for a certificate of occupancy granted pursuant to a change of use group shall be [\$75.00] **\$95.00**.

ii. The fee for certificate of continued occupancy shall be [\$50.00] **\$65.00**.

iii-iv. (No change.)

v. Sprinklers and standpipes: The fee shall be as follows:

(1) For one to 20 heads, the fee shall be [\$25.00] **\$35.00**; for 21 to 100 heads, the fee shall be [\$50.00] **\$65.00**; for 101 to 200 heads, the fee shall be [\$100.00] **\$125.00**; for 201 to 400 heads, the fee shall be [\$250.00] **\$325.00**; for 401 to 1,000 heads, the fee shall be [\$350.00] **\$450.00**; for over 1,000 heads, the fee shall be [\$450.00] **\$575.00**.

(2) The fee for standpipes shall be [\$100.00] **\$125.00** each.

7. The fee for a permit to install an elevator shall be [\$150.00] **\$200.00**.

8. The fee for plan review of a building for compliance under the alternated systems and non-depletable energy source provisions of the energy subcode is as follows: [\$100.00] **\$150.00** for one and two-family homes and light commercial structures having the indoor temperature controlled from a single point, and [\$500.00] **\$750.00** for all other structures.

9. The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be [\$250.00] **\$325.00** for class I structures and [\$50.00] **\$65.00** for class II and class III structures. The fee for resubmission of an application for a variation shall be [\$100.00] **\$125.00** for class I structures and [\$25.00] **\$35.00** for class II and class III structures.

10. Fees for the periodic departmental reinspection of equipment and facilities granted a certificate of approval for a specified duration in accordance with N.J.A.C. 5:23-2.23 shall be as follows:

i. For elevators, escalators and moving walks requiring reinspection every six months, the fee shall be [\$37.50] **\$50.00** except for each five-year inspection and witnessing of tests on elevators, for which the fee shall be [\$125.00] **\$160.00**.

ii. For dumbwaiters requiring reinspection every 12 months, the fee shall be [\$15.00] **\$20.00**.

iii. [For hazardous uses and places of assembly requiring reinspection every three months, the fee shall be \$10.00 for occupancies of up to 12,000 square feet and \$5.00 for each additional 10,000 square feet.

iv.] For cross connections and backflow preventers that are subject to testing, requiring reinspection every three months, the fee shall be [\$20.00] **\$25.00** for each device when they are tested (thrice annually) and [\$50.00] **\$65.00** for each device when they are broken down and tested (once annually).

[v.] iv. For sprinklers requiring reinspection every 12 months, the fee shall be [\$100.00] **\$125.00** for systems of up to 100 sprinkler heads and [\$5.00] **\$6.50** each 150 additional sprinkler heads.

11. The fee to be charged for an annual construction permit shall be charged annually. The fee shall be a flat fee based upon the number of maintenance workers employed by the facility and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purpose of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing. Fees shall be as follows:

1-25 workers (including foreman) [\$250] **\$325.00**/worker  
each additional worker over 25 [\$100] **\$125.00**/worker  
12. (No change.)

5:23-8.17 Asbestos Safety Control Monitor

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

(f) Authorization and reauthorization fees are as follows:

1. Authorization fee: Any asbestos safety control monitor submitting an application to the department under this subcode, for approval as an asbestos safety control monitor shall pay a fee of [\$2,000] **\$2,500** for the

authorization which is sought, plus an amount equal to [five] **six** percent of the gross revenue earned from asbestos safety control monitor activities, payable quarterly.

2. Reauthorization fee: Any asbestos safety control monitor submitting an application to the department under this subcode for reapproval as an asbestos safety control monitor shall pay a fee of [\$1,000] **\$1,250** plus an amount equal to [five] **six** percent of the gross revenue of four consecutive quarters starting with the previous year's last quarter. The fee shall be payable quarterly with the first quarter due with application.

5:26-2.3 Request for exemptions

(a) Any person who believes that a planned real estate development or retirement community may be exempt from the provisions of the Act, or who is contemplating a planned real estate development or retirement community which he believes may be exempt, may apply to the Director for a Letter of Exemption. Such application shall be in writing and shall list the reasons why such planned real estate development or retirement community or proposed planned real estate development or proposed retirement community may be exempt from the Act. An application for exemption pursuant to N.J.A.C. 5:26-2.2(a) shall be accompanied by a fee of [\$50.00] **\$80.00**.

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

5:26-2.4 Application for registration; submission and fees

(a) An application for registration shall consist of a statement containing the items set forth in N.J.A.C. 5:26-3 and shall be submitted in the manner and form as provided therein together with the filing fee in the amount of [\$500.00] **\$775.00** plus [\$45.00] **\$75.00** per lot, parcel, unit or interest, made payable to the Treasurer, State of New Jersey. In the event lots, parcels, units or interests are added during registration, an additional fee of [\$45.00] **\$75.00** per lot, parcel, unit or interest shall be paid. There will be no refund for deletions.

(b) (No change.)

[(c) The fees established in (a) and (b) above shall be in effect for Fiscal Year 1982, but shall continue in effect thereafter only in the event that further legislation is enacted empowering the Agency to establish fees by regulation. In the event that such legislation is not enacted, the filing fee, beginning in Fiscal Year 1983, shall be as set forth in N.J.S.A. 45:22A-27(e).]

(a)

## OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

### Penalty for Failure to Report Suspected Abuse or exploitation; Reporting of Penalties; Penalty for Willful Hindrance or Refusal to Comply Proposed Amendment: N.J.A.C. 5:100-2.5

Authorized By: Jack R. D'Ambrosio, Jr., Ombudsman.

Authority: N.J.S.A. 52:27G-5(d) and P.L. 1987, c.104.

Proposal Number: PRN 1987-382.

Submit comments by October 21, 1987 to:

Louis G. Karagias, Staff Attorney  
Office of the Ombudsman for the Institutionalized Elderly  
28 West State Street, Room 305  
CN 808  
Trenton, New Jersey 08625-0808.

The agency proposal follows:

#### Summary

The proposed amendment modifies N.J.A.C. 5:100-2.5 relating to penalties that may be enforced against certain individuals pursuant to law. The proposed amendment updates and provides guidelines for the imposition of penalties by the Office of the Ombudsman for the Institutionalized Elderly.

#### Social Impact

The proposed amendment will have no new or additional social impact because the amended rule reflects existing law relating to the imposition of penalties against certain individuals. Persons penalized pursuant to the proposed amendment will be impacted upon if they fail to abide by applicable law and become subject to the sanction represented by the proposed penalty provision.

**Economic Impact**

The proposed amendment will have no economic impact because no additional costs are necessary to implement or maintain this rule. Persons penalized pursuant to the proposed amendment will be impacted upon economically to the extent that they are fined in legal proceedings pursuant to the proposed amendment.

**Regulatory Flexibility Statement**

The proposed amendment does not affect nor impose any reporting or compliance requirements upon small businesses. A regulatory flexibility analysis of this proposed amendment is therefore not required.

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

**5:100-2.5 Penalties**

(a) Any person required to report suspected abuse or exploitation pursuant to P.L. 1983, c. 43, N.J.S.A. 52:27G-7.1, who fails to make such report, shall be fined not more than [\$500.00] **\$5,000**. Such penalty shall be collected and enforced by summary proceedings pursuant to "the penalty enforcement law" (N.J.S.A. 2A:58-1, et seq.) as provided in P.L. 1983, c. 43, N.J.S.A. 52:27G-7.1(f). **Each violation of the act shall constitute a separate offense. When a person has been penalized under this subsection, a letter making note of the penalty shall immediately be sent by the court to the licensing authority or the professional board, if any, having jurisdiction over the person who has been penalized.**

(b) **Any person who willfully hinders the lawful actions of the office or willfully refuses to comply with its lawful demands, including the demand of immediate entry into and inspection of a facility or government agency or the demand of immediate access to a patient, resident or client thereof, or who offers any compensation, gratuity, or promise thereof to the office in an effort to affect the outcome of any matter which is being investigated, or is likely to be investigated, shall be subject to a penalty of not more than \$5,000. Such penalty shall be collected and enforced by summary proceedings pursuant to "the penalty enforcement law" (N.J.S.A. 2A:58-1, et seq.) upon complaint of the office or any other person. Each violation of the act shall constitute a separate offense. When a person has been penalized under this subsection, a letter making note of the penalty shall immediately be sent by the court to the licensing authority or the professional board, if any, having jurisdiction over the person who has been penalized.**

**ENVIRONMENTAL PROTECTION****(a)****DIVISION OF ENVIRONMENTAL QUALITY****Toxic Catastrophe Prevention Act****Proposed New Rules: N.J.A.C. 7:31-1, 2, 3 and 4**

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq., and 26:2C-1 et seq., specifically 26:2C-8.

DEP Docket Number: 042-87-08.

Proposal Number: PRN 1987-387.

**Public hearings** concerning this proposal will be held on:

October 27, 1987 at 10:30 A.M.

Hackensack Environmental Center

2 Dekorte Park Plaza

Lyndhurst, New Jersey

October 28, 1987 at 10:00 A.M.

Cherry Hill Township Municipal Building

820 Mercer Avenue

Cherry Hill, New Jersey

October 29, 1987 at 6:30 P.M.

War Memorial Building

West Lafayette Street

Trenton, New Jersey

**Submit comments** by November 6, 1987 to:

Roger S. Haase, Esq.

Office of Regulatory Services

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The Department has prepared a *Basis and Background* document for the proposal which is available for public inspection at the Office of Administrative Law, Quakerbridge Plaza, Building No. 9, Quakerbridge Road, Hamilton, New Jersey. Requests for copies of the Basis and Background document should be addressed to:

Neil P. Mulvey, Assistant Director

Division of Environmental Quality

New Jersey Department of Environmental Protection

CN 027

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The New Jersey Department of Environmental Protection ("Department") is proposing N.J.A.C. 7:31 to implement the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq., ("TCPA" or the "Act") which became effective January 8, 1986. The proposed new rules will establish the TCPA program and fulfill certain requirements mandated by the Act.

The Act was adopted by the Legislature during a period of special concern for public safety created by the releases of hazardous substances in New Jersey during the fall of 1984 and early 1985, the same time frame during which methyl isocyanate was released with catastrophic results in Bhopal, India when 2,500 people were killed. All the incidents represented cases of industrial facilities releasing toxic substances to the atmosphere principally because key elements of risk management programs did not exist or, where existing, were not implemented. During its investigation of facilities responsible for the releases, the Department gathered important information on deficiencies of risk management programs. As a result of the investigations, the Department and the Legislature identified the need to define more fully the elements of risk management programs which, when implemented, would require more thorough analysis techniques and preventive measures by owners or operators of facilities handling extraordinarily hazardous substances (EHSs) in the State.

The proposed new rules establish a program which, when implemented, will help to reduce the incidence of releases of extraordinarily hazardous substances to the environment. In order to achieve the goals of the Act, the proposed new rules mandate that owners or operators of facilities which handle these substances institute and implement risk management programs to prevent the release of EHSs. The TCPA program combines recommendations made as the result of Departmental investigations of incidents with information on the state of the art analysis techniques and preventive methods documented in the world's technical literature and summarized by such professional, service and trade organizations as the: American Institute of Chemical Engineers; Institution of Chemical Engineers, (United Kingdom); World Bank Office of Environmental and Scientific Affairs and CONCAWE (the oil companies study group for conservation of Clean Air and Water, Europe).

The proposed new rules contain four subchapters. Subchapter 1 establishes the framework of the TCPA program and the definitions that are used throughout the rules. Subchapter 2 establishes the practices and procedures for the TCPA program including the facility registration procedures. Subchapter 3 establishes the Department's minimum requirements for a risk management program. Subchapter 4 establishes a generic extraordinarily hazardous substance risk reduction work plan (work plan) to be used by those facilities which do not have a risk management program and thus must complete an extraordinarily hazardous substance accident risk assessment (EHSARA) which will lead to a risk reduction plan and ultimately a risk management program. Some of the provisions are described in more detail, below.

N.J.A.C. 7:31-1.5 presents definitions, including the nine in the Act, which clarify the meaning of the terms used in the rules and thereby facilitate the implementation of the Act.

Table I of N.J.A.C. 7:31-2.3 contains a list of extraordinarily hazardous substances which includes the initial 11 substances set forth in N.J.S.A. 13:1K-22a and an expansion of the extraordinarily hazardous substance list mandated by N.J.S.A. 13:1K-22c. Part I of the list consists of the initial 11 substances named in the Act. Part II of the list represents the atmospheric dispersive phase of the list expansion and contains 93 substances selected from candidates on six existing lists of hazardous substances developed by other state, Federal and European governmental agencies. All substances selected in Part II of the list are atmospheric dispersive hazards, gases or volatile substances at ambient conditions with combined volatility and acute toxicity equal to or greater than those of hydrogen chloride (36 percent aqueous), a substance on the initial statutory list. In the future, the Department may add additional chemicals or substances to the list consistent with the statutory definition of ex-

traordinarily hazardous substance and intends to develop criteria for the selection of chemicals for the list that are highly reactive, used at elevated temperature or pressure, or are dispersed through water or soil contamination. Additionally, new chemicals that meet the selection criteria of this expansion may be added based on new information or scientific data that becomes available to the Department.

N.J.A.C. 7:31-2.4 prohibits owners or operators of sites from handling, using, manufacturing, storing, or generating EHSs unless registered with the Department. It prohibits owners or operators from installing or placing into service new EHS equipment before obtaining approval from the Department. It also prohibits owners or operators, or registrants, from operating EHS facilities except in accordance with the TCPA program.

N.J.A.C. 7:31-2.5 establishes the registration procedures to be followed by owners or operators of facilities required to register with the Department and the content of the registration information that must be submitted.

N.J.A.C. 7:31-2.6 establishes the procedures, including time frames, for the submittal, review and approval of risk management programs.

N.J.A.C. 7:31-2.7 sets forth the standard by which a risk management program submitted by a registrant to the Department will be evaluated. The risk management programs which meet the standard will be accepted by the Department for further review to bring them into compliance with Subchapter 3. Those registrants whose risk management programs do not meet the standard will be required to implement a work plan and retain an independent consultant chosen by the Department to perform an EHSARA.

N.J.A.C. 7:31-2.9 establishes the procedures, including time frames, for the development of the extraordinarily hazardous substance risk reduction work plan, the performance of the EHSARA and the development of the risk reduction plan, including the risk management program.

N.J.A.C. 7:31-2.10 establishes the approval procedure to be followed by an owner or operator planning to construct a new EHS facility. N.J.A.C. 7:31-2.11 establishes the procedure to be followed by a registrant modifying its facility's equipment or procedures.

N.J.A.C. 7:31-2.12 describes the Department's rights to inspect and the registrant's responsibilities during inspections of sites in the State of New Jersey to determine compliance with the Act and these rules.

N.J.A.C. 7:31-2.13 sets forth some of the types of actions the Department may take to prevent catastrophic accidents from a potential release of an EHS.

N.J.A.C. 7:31-2.15 establishes the administrative procedure that will be followed to obtain information concerning risks at EHS facilities from insurance carriers which underwrite any part of the environmental liability or worker's compensation insurance for a registrant's site.

N.J.A.C. 7:31-2.16 establishes the fee schedule for the TCPA program. The fee schedule is set forth in Table II. The fee schedule will generate sufficient funds to cover the cost of administering the TCPA program. Except for fiscal year 1987/1988, where fees for registrants with at least one of the 11 initial substances or chemicals will be collected in the Spring of 1988, the fees will be collected on an annual basis in August of each year. A registrant will be required to pay a fee reflecting risk management activities and the EHSs it has at a site.

N.J.A.C. 7:31-2.17 establishes the signatory and certification requirements to be used by owners or operators or registrants submitting registration forms, risk management program descriptions, risk management program checklists and other reports to the Department.

N.J.A.C. 7:31-2.18 establishes the minimum criteria to be used for selecting an independent consultant to implement the work plan. The criteria reflect the planned application of a systematic method to evaluate the qualifications of consulting firms or consortia of consulting firms and the personnel the consulting firms propose to use to implement the work plan.

N.J.A.C. 7:31-2.19 establishes the procedures by which a registrant may request an adjudicatory hearing to contest certain decisions by the Department in connection with this program.

N.J.A.C. 7:31-2.20 establishes the civil administrative penalties that will be imposed on the violators of the Act, these rules or any order or consent agreement issued pursuant thereto. The penalty schedule is designed to discourage noncompliance by owners and operators of facilities with the requirements of the TCPA program.

N.J.A.C. 7:31-2.21 establishes the criteria for exempting certain EHS equipment from the requirements of N.J.A.C. 7:31-3.

Subchapter 3 establishes the minimum requirements for each of the eight elements of a risk management program mandated by the Act. These requirements are based upon the Department's experience resulting from

its investigations of facilities which had releases. These investigations uncovered deficiencies in the facilities' established risk management programs. The Department also took advantage of the prior and extensive non-governmental experience that the TCPA program's engineering and technical staff had with manufacturing, engineering and construction contracting firms. Additionally, the Department reviewed technical literature and established and consulted with a technical advisory committee composed of representatives of government agencies, universities, manufacturing firms and consulting firms.

N.J.A.C. 7:31-3.3 defines a risk management program and introduces the eight elements that comprise it. This section also establishes the documentation required to support the risk management program.

N.J.A.C. 7:31-3.4 establishes the minimum requirements for safety reviews of new and existing EHS facilities. For new EHS facilities, this includes comparison of design to state of the art and criteria for design and operation, documentation of the findings of this comparison, and the preparation of a report of the results. For existing EHS facilities, the safety reviews include an annual visual inspection of the EHS facility and review of pertinent inspection reports, documentation of the findings and preparation of a report of the results.

N.J.A.C. 7:31-3.5 establishes the minimum requirements for the standard operating procedures (SOP) which shall be readily available and understandable by EHS equipment operators. The contents shall include a simplified process description, procedures for normal and emergency operation, start-up and shut down procedures, sampling and all pertinent safety procedures. This section requires the registrant to establish minimum manpower requirements for each EHS operation.

N.J.A.C. 7:31-3.6 establishes the minimum requirements for the preventive maintenance program, including the identification of all EHS equipment and the schedules for the internal and external inspection and testing thereof. This section also includes requirements for procedures for commissioning and decommissioning EHS equipment, requirements for training in maintenance practices, procedures to insure the compliance of outside contractors with the requirements of the preventive maintenance program and for a tabulation of EHS equipment inspected and tested versus EHS equipment scheduled to be inspected and tested during the previous year.

N.J.A.C. 7:31-3.7 establishes the minimum written requirements for the EHS operator training program, including job descriptions and qualifications for each EHS operator position, and specific EHS training, on the job training and annual refresher training for each EHS operator position. All pertinent details of the standard operating procedures and safety training for each specific EHS shall be incorporated into the training program. The training program must also contain qualifications for the personnel responsible for training EHS operators. This section also requires that documentation of all training, evaluations and qualifying activities shall be kept at the site.

N.J.A.C. 7:31-3.8 establishes the minimum requirements for an accident investigation program, including written procedures, reports and records retention. The accident investigation program procedures must include an analysis of the accident with identification and implementation of recommendations for risk reduction and procedures to ensure implementation.

N.J.A.C. 7:31-3.9 establishes the minimum requirements for the risk assessment program for specific pieces of equipment or operating alternatives, including the requirements and procedures for conducting hazard analyses. It sets forth the requirements that a hazard analysis team must follow to identify potential points of EHS release for which the hazard analysis team must recommend either remedial measures or further quantitative risk assessment study.

In cases where the hazard analysis team identifies a potential for an EHS release which within one hour will be greater than or equal to five times the reportable quantity for the specific EHS, a risk assessment is required. A risk assessment is a quantitative estimate of potential release quantity, dispersion analysis, consequence analysis and potential release probability. A risk reduction plan is required which consists of recommendations for remedial actions and a schedule for their implementation.

N.J.A.C. 7:31-3.10 establishes the minimum requirements for the emergency response program which includes creation of an emergency response program committee and the requirements for the planning, preparation and implementation of the site's emergency response plan. This section also establishes notification requirements for potential and actual EHS releases.

N.J.A.C. 7:31-3.11 establishes the minimum annual audit requirements for risk management programs. The purpose of these requirements is to

ensure that all elements of the program are being planned, scheduled, updated and executed in compliance with the Act.

N.J.A.C. 7:31-3.12 sets forth the requirements for the summary risk management program statement. This statement contains a description of the registrant's risk management program, reports of safety reviews and hazard analysis, a copy of the site's emergency response plan and a completed risk management program checklist. The summary risk management program statement submitted will be used by the Department to evaluate each registrant's risk management program.

N.J.A.C. 7:31-3.13 sets forth the contents of the annual report to be submitted to the Department.

N.J.A.C. 7:31-3.14 establishes the contents of, and requirements for, completing and submitting the risk management program checklist. The actual checklist is set forth in Appendix I of the rules.

Subchapter 4 establishes a generic extraordinarily hazardous substance risk reduction work plan to be followed by registrants without a risk management program for the development of a risk reduction plan which will include the development of a risk management program and other remedial actions to reduce risk. Such registrants will be required to engage an independent consultant which will follow the detailed scope of work in the work plan developed to address the areas of concern mandated by the Act. N.J.A.C. 7:31-4.4 sets forth the requirements for documents and lists of documents that the registrant will be required to submit to the Department to facilitate preparation of the work plan. N.J.A.C. 7:31-4.5 sets forth the generic scope of work which all consultants performing an EHSARA will be required to implement. This will ensure that consultants who bid on the work will be evaluated on a uniform basis for a defined amount of work. N.J.A.C. 7:31-4.6 establishes the requirements for the EHSARA. This report will contain recommended remedial actions which will be incorporated in the risk reduction plan, including the development of a risk management program which the registrant will implement at the facility.

#### Social Impact

The TCPA program will have a positive social impact across the State. Implementation of the TCPA program is designed to prevent releases of EHSs and to reduce the number of emergency incidents associated with releases of EHSs. It will significantly reduce the potential for injury and death and the need to evacuate or hospitalize people.

New Jersey is not only the most densely populated state in the country, but also the second leading producer of chemicals in the country. Many of the State's residential communities abut industrial zones and are frequently intermingled with industrial facilities. As New Jersey's economy continues to expand, residential and commercial areas will continue to encroach upon industrial areas using EHSs.

Registered facilities which will be regulated by the TCPA program are widespread over the 21 counties at urban, suburban and rural sites. The 741 TCPA facilities which have already registered with the Department pursuant to N.J.S.A. 13:1K-22 are located in 385 of the state's 567 municipalities. The proposed 93 substances to be added to the EHS list are projected to add approximately 200 additional sites in at least 43 additional municipalities.

The TCPA program's benefit is expected to be greatest among those people whose place of work or residence is near EHS facilities. This community is expected to experience fewer accidents and the accidents they do experience are expected to have reduced consequences resulting in fewer injuries, deaths, hospitalizations and evacuations.

For the period of January, 1980 through May, 1986, the Department recorded some 671 emergency incidents impacting over 7,500 people. Incidents occurred in all 21 counties. Emergency incidents caused 6,500 people to be evacuated, 448 injured, 400 sheltered, 312 hospitalized and 19 fatalities. It should be noted that the foregoing represents only part of the people significantly affected in New Jersey as assistance from the Department was not always requested during the period.

More recently, in the eight month period ending June 15, 1987, 159 incidents of accidental releases of air contaminants from industrial facilities were reported to the Department under its new air pollution release notification program established pursuant to N.J.S.A. 26:2C-19. Of these incidents, 124 were reported to involve exposure of the public outside of the site to the release, nine included evacuation of people in the surrounding area, and six included injuries. Extraordinarily hazardous substances as proposed in these rules were released during 54 of these incidents. An EHS was involved in five of the six incidents for which injuries were reported.

The implementation of the TCPA program and its resultant risk assessments and EHSARAs will identify the potential points of release within a facility that are potential sources for causing catastrophic inci-

dents. The undertaking of risk reduction measures including the installation of state of the art equipment, improved operating and maintenance procedures and improved training of the facility's operators are designed to reduce the potential for, and the severity of, a release of an EHS that may impact the surrounding community. The creation and implementation of a facility's emergency response program will enable the facility and the community's local emergency planning committee to respond to and quickly mitigate the effects of an incident should one occur. The TCPA program will result in a regime of management practices dedicated to the prevention of catastrophic incidents.

#### Economic Impact

The TCPA program is expected to increase the costs of doing business for the registrants involved with EHSs. The increased costs will include the cost of preparing the initial risk management program, the taking of remedial measures to reduce risks, the retention of consultants, if needed, to perform an EHSARA, the continued implementation of the risk management program including, as examples, more frequent safety reviews, hazard analyses and increased maintenance, and the TCPA fees.

Registrants with ongoing risk management programs will have encountered some of these costs already as part of implementing their risk management programs developed prior to the TCPA program. The increase in cost to these registrants will be moderate as expenses for compliance may be relatively minor. For the others, the cost of TCPA may substantially be higher as implementing risk reduction plans will be completely new.

Many registrants may be required to allocate a greater portion of their facility operating budgets to safety related expense than heretofore. Without TCPA requirements, some registrants may tend to limit expenses on safety items to reduce their total operating costs. Compliance with the requirements of these rules will require registrants to make available funds for all necessary safety related expenditures.

Some of the increased costs are expected to be offset by savings in some areas. Certain activities of the risk management program itself may reduce the cost of particular products. For example, fewer and shorter periods of unexpected equipment breakdowns that result from preventive maintenance and operator training programs may provide savings in excess of the costs of these programs. Hazard analysis and risk assessments also find ways to avoid material losses in general, which would reflect a considerable cost saving. The reduced number of incidents and the reduced severity of incidents expected as a result of the program may reduce the liability insurance rates of registrants. The reduced number of incidents will translate to lower costs of post-incident cleanup and of interrupted production. Finally, the program may result in registrants being exposed to fewer and smaller legal claims.

#### Environmental Impact

The implementation of the TCPA program will result in a positive environmental impact because it will reduce the probability of releases of EHSs into the environment. Once an EHS is released into the environment, it generally cannot be retrieved and will penetrate air, water and land resources.

In the event of a release to the atmosphere, damage may occur directly to the environment in the path of the EHS released. Plant and animal life would be exposed and may be killed due to the toxic properties as a result of ingestion, inhalation or absorption. In addition to the human fatalities, the accident in Bhopal, India, killed over 1800 animals and caused visible damage to the ecology. Furthermore, there would be indirect damage to the environment when a released EHS impacts plants, soil and wildlife and enters surface and ground water during rainfall. The EHS may then contaminate drinking water supplies.

In the event of a spill, damage would be the same as described for a release to the atmosphere, since liquid EHS would evaporate into the atmosphere. Liquid spills may contaminate surface and ground water and drinking water supplies. In addition, the soil which is exposed to the spill may remain contaminated indefinitely or have to be excavated or otherwise remediated.

In addition to the effect on the environment due to the toxic nature of the EHSs, the reaction products of these substances, due to contact with moisture or fire after release, can have environmental significance. Many of the EHSs have such reaction products which include chlorine and fluorine compounds and nitrogen oxides, some of which have recognized negative environmental effects. For example, phosphorous trichloride vapor will react with water vapor to form hydrogen chloride which will make surface waters acidic and detrimental to fish and other

fauna. Similarly, toluene diisocyanate vapors will form nitrogen dioxide when in contact with a fire; nitrogen dioxide also makes surface waters acidic and dangerous to fish.

Once the TCPA program is implemented, the risk of environmental damage will be reduced because existing facilities will be operated and new facilities designed under a regime of management practices dedicated to reducing the probability of a release plus the rate or quantity of EHSs released.

#### Regulatory Flexibility Statement

These rules would apply to all facilities which handle, use, manufacture, store, or generate extraordinarily hazardous substances in or above the reportable quantities established for the EHS in N.J.A.C. 7:31-2.3. It is estimated that of the 741 facilities already impacted by the Act, 68 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169, and will be impacted by these rules.

In order to comply with the proposed new rules, the small businesses will have to prepare or present to the Department for review a copy of their facilities' risk management program which meets the requirements for the safe handling, use, manufacturing, storage, or generation of EHSs in order to prevent the accidental release of the EHS into the environment. In doing so, it is likely that small businesses will need to hire professional safety and environmental consultants, to appoint a contact person for environmental affairs, to implement changes in their facilities' operations or to design to prevent or mitigate the consequences of an accidental release, and to pay fees for registration and yearly review of their risk management program.

It is expected that the initial capital costs for each small business could range from approximately \$5,000 to \$1,000,000 with annual costs of compliance ranging between \$5,000 to \$250,000.

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

Full text of the proposed new rules follows:

### CHAPTER 31

#### TOXIC CATASTROPHE PREVENTION ACT PROGRAM

##### SUBCHAPTER 1. GENERAL PROVISIONS

###### 7:31-1.1 Scope and applicability

(a) This chapter shall constitute the rules for the Department's Toxic Catastrophe Prevention Act Program.

(b) All owners or operators of facilities required to register with the Department because they handle, use, manufacture, store or have the capability to generate an extraordinarily hazardous substance in at least the reportable quantity established for such substance or chemical compound on the Extraordinarily Hazardous Substance List set forth in Table I of N.J.A.C. 7:31-2.3, are subject to, and shall comply with, the provisions of this chapter and the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

###### 7:31-1.2 Construction

(a) These rules shall be liberally construed to permit the Department to discharge its statutory functions.

(b) The Commissioner may amend or repeal this chapter in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30-1 et seq.

###### 7:31-1.3 Purpose

(a) The general purpose of this chapter is to protect the public from catastrophic accidents from chemical releases of extraordinarily hazardous substances to the environment by anticipating the circumstances that could result in such releases and requiring precautionary and preemptive actions to prevent such releases.

(b) In order to achieve this general purpose, this chapter establishes:

1. The extraordinarily hazardous substance list which, among other things, is used to determine the facilities subject to the Toxic Catastrophe Prevention Act program;
2. The procedures to be followed by owners or operators subject to the program;
3. The minimum requirements for an acceptable risk management program;
4. The requirements for an extraordinarily hazardous substance risk reduction work plan and accident risk assessment;
5. The criteria for selecting an independent consultant to perform an extraordinarily hazardous substance accident risk assessment;

6. Fees for the administration of the TCPA Program;

7. The requirements for emergency response plans;

8. The reporting requirements for owners and operators subject to the Toxic Catastrophe Prevention Act Program; and

9. Administrative penalties for those facilities which violate the Act, this chapter or any order or consent agreement issued pursuant thereto.

###### 7:31-1.4 Program information

Unless otherwise specified, any questions concerning the TCPA Program should be directed to:

Assistant Director  
Release Prevention and Emergency Response Element  
Division of Environmental Quality  
New Jersey Department of Environmental Protection  
CN 027  
Trenton, New Jersey 08625

###### 7:31-1.5 Definitions

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

"Abnormal condition" means any deviation in the operation of an EHS facility from that prescribed in the standard operating procedure for normal operation, which, if not corrected, could result in an EHS accident.

"Act" means the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

"ANSI" means the American National Standards Institute.

"Audit" means an annual review of the registrant's risk management program conducted by an audit team to assess the overall implementation and effectiveness of the risk management program to insure that all risk management program elements are in place, up-to-date, and being executed as planned.

"Audit team" means those persons who perform the audits of the registrant's risk management program.

"CAS #" means a number assigned by the Chemical Abstracts Service Division of the American Chemical Society to identify a specific compound.

"Commissioner" means the Commissioner of the Department of Environmental Protection or the person delegated to act on his behalf.

"Consequence analysis" means the determination of the potential consequence of an EHS release on the surrounding population by comparison of the concentration of extraordinarily hazardous substances, determined by dispersion analysis, to a toxicological base criteria.

"Criteria for design and operation" means any code, consensus or governmentally mandated standard applicable to the particular EHS facility's design and operation. It also includes documented guidelines, practices or procedures adopted by the registrant when codes and standards are nonexistent or need supplementation. These guidelines, practices or procedures shall be based on sound engineering practices supported by documentation demonstrating their successful application to the particular EHS service.

"Department" means the New Jersey Department of Environmental Protection.

"Dispersion analysis" means the calculation, by means of a model acceptable to the Department, of the ambient concentrations of an EHS after its release, taking into account the physical and chemical states and properties of the EHS and the geographical, topographical, geological and meteorological characteristics of the environment, which will influence the migration, movement, dispersion, or degradation of the EHS in the environment.

"EHS accident" means an unplanned, unforeseen or unintended incident, situation, condition, or set of circumstances which results in a direct or indirect EHS release.

"EHS equipment" means that equipment systematically integrated within an EHS facility whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident, including, but not limited to, vessels, piping, compressors, pumps, instrumentation and electrical equipment.

"EHS facility" means a facility which handles, uses, manufactures or stores an EHS, or has the capacity to generate an EHS within one hour, in a quantity equal to or greater than the minimum reportable quantity for that EHS in Table I of N.J.A.C. 7:31-2.3.

"EHS operator" means an employee or employees at an EHS facility who is directly involved with an EHS and qualified and trained in, or being trained in, the operations of an EHS facility.

"EHS release" means a discharge or emission of an EHS into the environment, excluding discharges or emissions occurring pursuant to

and in compliance with the conditions of any State permit or a regulation promulgated pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.

"EHS service" means the handling, use, manufacture, storage or generation of a specific EHS.

"Electrical one-line diagram" means a diagram including legend of the electrical power distribution system that could contribute to an EHS release showing such items as power consumers, the chain of supply back through starters, distribution centers, substations to the main feeder, emergency power supply, and connections to various components. For complex systems, the one-line diagram may be a group of drawings.

"Emergency condition" means any situation at a facility during which an EHS release is in progress or will occur because no preventive measures would be effective.

"Emergency response team" means those employees at the site appointed by the emergency response program committee who are responsible for implementing the site's emergency response plan in the event of an EHS accident.

"Equipment failure" means any event associated with EHS equipment which results in an EHS accident even though the equipment is being maintained and operated in accordance with the approved risk management program.

"EHS equipment" means that equipment systematically integrated within an EHS facility whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident, including, but not limited to, vessels, piping, compressors, pumps, instrumentation and electrical equipment.

"External forces and events" means forces of nature or sabotage or such events as neighboring fires or explosions, neighboring EHS releases, electric power failures, and intrusions of external transportation vehicles such as aircraft, ships, trucks or automobiles.

"Extraordinarily hazardous accident risk" means a potential for an EHS release which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in death or permanent disability.

"Extraordinarily hazardous substance accident risk assessment" or "EHSARA" means a review and safety evaluation of those operations at a facility which involve the generation, storage, or handling of an extraordinarily hazardous substance.

"Extraordinarily hazardous substance" or "EHS" means any substance or chemical compound used, manufactured, stored, or capable of being produced from onsite components in this State in sufficient quantities at a single site, such that its release into the environment would produce a significant likelihood that persons exposed will suffer acute health effects resulting in death or permanent disability. Any substance or chemical on the extraordinarily hazardous substance list in Table I in N.J.A.C. 7:31-2.3 is an extraordinarily hazardous substance.

"Extraordinarily Hazardous Substance List" means the list of substances and chemical compounds set forth in Table I of N.J.A.C. 7:31-2.3.

"Extraordinarily Hazardous Substance Risk Reduction Work Plan" or "work plan" means the document developed by the Department for each facility at which is generated, stored, or handled an extraordinarily hazardous substance, setting forth the scope and detail of the EHSARA to which the facility will be submitted.

"Facility" means a building, equipment, and contiguous area. Facility shall not include a research and development laboratory, which means a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which extraordinarily hazardous substances are used by or under the supervision of a technically qualified person.

"Fact sheet" means a document which describes, at a minimum, the chemical and physical properties and the physical and health hazards of a substance, prepared by the New Jersey Department of Health pursuant to N.J.S.A. 34:5A-1 et seq.

"Failure Mode and Effects Analysis" or "FMEA" means a specifically designed method to identify the conceivable ways that EHS equipment or its components can fail and the effect of the failure on the system with respect to an EHS release. The failure and effects are determined by a study of updated process chemistry, standard operating procedures, maintenance procedures, operator job descriptions, process flow diagrams, EHS inventory tabulations, piping and instrument diagrams and other design documents that describe the EHS facility. The resulting qualitative analysis is translated into a quantitative FMEA when probabilities of the failure of components are assigned from which the probability of an EHS release would be estimated. The results of the FMEA are reported for

a unit or system of an EHS facility on an FMEA table. The results entered on a FMEA table for each equipment item or component studied are as follows: the identification number of the item, the name of the item, entries of failure modes of the item and for each entry of failure mode, the other equipment potentially affected with the equipment identification number and the effect of the failure on that equipment, a classification of the criticality ranking of the failure based on quantity or rate of the potential EHS release, the probability of the failure and the suggested action in terms of equipment or procedure to prevent the failure or to mitigate the results of the failure.

"Fault tree analysis" or "FTA" means the logic diagram constructed from a study of the updated process chemistry, standard operating procedures, maintenance procedures, operator job descriptions, process flow diagrams, EHS inventory tabulations, piping and instrument diagrams and other design documents that describe the EHS facility. The logic diagram will contain the conceivable human or mechanical event sequences that could result in an EHS accident. The logic diagram is called a fault tree and represents a qualitative analysis of the hazards. Results of the FTA are reported for a unit or system on a table. Entered on the table are the descriptions of the various combinations of equipment or procedural failures that can lead to an EHS release and a criticality ranking based on the quantity or rate of the potential EHS release, a probability for the respective failures and the suggested action in terms of equipment or procedure to prevent the failure or to mitigate the results of the failure. When probabilities are assigned to each element of the event sequence, a quantitative fault tree is obtained which gives the probability of the EHS release.

"Hazard analysis" means a systematic identification of the potential conditions that may result in an EHS accident using singly or in combination a Hazard and Operability Study, Failure Mode and Effect Analysis, qualitative Fault Tree Analysis or What If Check List.

"Hazard and Operability Study" or "HAZOP" means a systematic study of updated process chemistry, standard operating procedures, maintenance procedures, EHS operator job descriptions, process flow diagrams, EHS inventory tabulations, piping and instrument diagrams and other design documents that describe the facility. The study is performed by a multidisciplinary team to identify hazard or operability problems that would result in an EHS accident. Deviations from the design value of key parameters (flow, temperature, composition, time, quantity, etc.) of each segment of the EHS facility and its procedures are studied using guide words (such as, more of, less of, none of, part of, more than and other) to control the examination and evaluation. The study team shall consist of trained personnel knowledgeable in the technology and operations, such as the process chemistry, the design of the system, the procedures of its operation and maintenance, and the related codes, standards and practices. In addition, the study team shall have technical expertise to answer most questions of the review without resorting to further expertise. The study team shall include a study leader specifically qualified for his leadership role by training or previous experience in HAZOP studies and a team secretary who shall record the results of the study. Persons who occupy these study team positions shall be technically trained and be available for the duration of the study. Results of the HAZOP study shall be reported by tabulation for a unit by key equipment, such as vessels or pipelines, and process parameter. The results are entered on the table as follows: guide word, causes of the deviation, consequences of the deviation in terms of a potential EHS release, the criticality based on the quantity or rate of potential release and the suggested action in terms of equipment or procedure to mitigate the deviation.

"Hazard unit" means a quantity of EHS held in inventory at a site or a quantity of EHS capable of being generated in one hour equal to the minimum reportable quantity of an EHS as listed in Table I of N.J.A.C. 7:31-2.3.

"Human error" means human action or omission deviating from any established procedures of the registrant which results or could result in an EHS accident.

"Material safety data sheet" or "MSDS" means a document which describes, at a minimum, the chemical and physical properties and the physical and health hazards of a substance, prepared pursuant to 29 CFR 1910.1200(g).

"Modification" means any change in existing EHS equipment or procedures which are directly involved with an EHS, including additions or deletions. Modification does not include routine maintenance or replacement in kind.

"Material deficiency" means the failure of a registrant's risk management program to meet each of the requirements of N.J.A.C. 7:31-3, or the failure of a registrant to use a state of the art risk reduction measure commensurate with the site's environment.

"NFPA" means National Fire Protection Association.

"New EHS equipment" means any equipment to be placed into EHS service or any EHS equipment to be placed into new EHS service after the operative date of this chapter. New EHS equipment remains new EHS equipment until all reviews and approvals required by this chapter for the particular piece of new EHS equipment have been completed and the equipment has been placed into EHS service.

"Operating alternative" means an alternative procedure, schedule or process chemistry or a combination thereof.

"Piping and instrument diagram" or "P&ID" means detailed documents properly cross-referenced including legends showing: every item of EHS equipment and its identification number (including installed spare equipment); every pipe including size, flow direction, identification number and indication of piping specification change; every instrument including instrument function to show trips and interlocks represented in accordance with Instrument Society of America standards; every valve; the failsafe position of control valves or non-hand operated valves in the case of instrument air or power failure; steam traps; representation of insulation or heat tracing of piping, EHS equipment and instruments; sizes of all important equipment nozzles with location shown schematically to reflect function and elevation, such as, drains, vents, flushing connections and steam connections; references to inter-facing with other diagrams describing process, service, treatment, disposal, or utility systems; data on materials of construction and pressure rating per ANSI code for every pipe (such as, pipe line list); data on type, size, and set pressures of every relief valve and relieving device; instruments to monitor early detection of abnormal conditions or an EHS release; critical relative elevations between equipment and of key piping; notes or symbols on such items as slope of piping to avoid pockets, or symmetrical piping; notes on each item of EHS equipment, such as, material of construction, design temperature, design pressure, design thermal duty of heat exchangers, design capacity and dynamic head of rotating equipment, etc.; data on insulation and steam tracing of piping, equipment and instruments.

"Process chemistry" means the chemical reactions involving EHSs that occur or could occur at the site under normal, abnormal, and emergency conditions, including information on raw materials, intermediates, products, and waste products.

"Process flow diagram" means a diagram including a legend of any EHS facility which depicts the use, generation, storage or handling of an EHS showing items of equipment (groups of duplicate equipment may be represented by one symbol, if desired) showing flow of material from item to item and including details of operating conditions, material balance, flows, temperatures and pressures, raw materials, products, basic control loops or major control schemes, points of discharge to the environment, and operating cycles and batch sizes where applicable.

"Registrant" means an owner or operator of a site who has registered one or more EHS facilities at that site with the Department pursuant to the Act or this chapter.

"Reliability study" means the determination of the probability of a piece of EHS equipment performing its required function in the desired manner under all relevant conditions and on the occasion or during the time intervals when it is required to so perform. It includes the analysis of the failure of EHS equipment to perform its normal required function.

"Responsible manager" means the member of the registrant's management who is responsible for the management of the registrant's risk management program at the site and who shall possess sufficient corporate authority and technical background to adjudicate issues relating to the execution of the risk management program based on information provided by manufacturing, engineering, maintenance, safety and environmental representatives.

"Risk assessment" means the evaluation of the results of quantitative analyses to facilitate development of an effective risk reduction plan. The quantitative analyses shall consist of an estimate of the quantity of EHS released, a dispersion analysis, a consequence analysis, and an estimate of the probability or frequency of the undesired event.

"Risk management program" or "RMP" means the sum total of programs for the purpose of minimizing extraordinarily hazardous accident risks, including, but not limited to, requirements for safety review of design for new and existing equipment, requirements for standard operating procedures, requirements for preventive maintenance programs, requirements for operator training and accident investigation

procedures, requirements for risk assessment for specific pieces of equipment or operating alternatives, requirements for emergency response planning, and internal or external audit procedures to ensure programs are being executed as planned.

"Risk reduction plan" means the plan developed as a result of the EHSARA based on review of process chemistry, safety and hazard analyses, maintenance, operator training, accident investigation, emergency response, and audit procedures, which identifies the deficiencies in the program, recommends corrective actions, and provides for scheduling and implementation of remedial actions.

"Safety procedures" means the rules of conduct to safeguard personnel at a site from injury or ill effect on health.

"Site" means the entire plot of contiguous land upon which the registrant operates or locates one or more facilities.

"Site plan" means a diagram of the site showing exact locations to scale of all units or areas, warehouses, buildings, roads, access ways, walkways, parking areas, fences, gates and property lines plus the EHS facility and area handling an EHS.

"Standard Operating Procedures" or "SOP" means the document setting forth the operating procedures covering all details of operation involving an EHS that are currently in effect at the facility.

"State of the art" means up-to-date technology reflected in equipment or procedures that, when applied at a registrant's EHS facility, will result in a significant reduction of risk. The technology may have been demonstrated at a similar referenced facility to be reliable in commercial operation or in a pilot operation on a scale large enough to be translated into commercial operation. The technology may be in the public domain or otherwise available at reasonable cost.

"Wastewater treatment system" means any structure or structures by means of which domestic, or combined domestic and industrial liquid wastes or sewage are subjected to any process in order to remove or so alter constituents as to render the wastes less offensive or dangerous to public health, safety, welfare, comfort, property or environment of the State or any inhabitants of the State before discharge of the resulting effluent either directly or indirectly into any waters of the State. Such term includes: any collection, treatment, storage and discharge facilities under control of the operator of such system and used primarily in connection with such system.

"Water treatment system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system.

"What If Checklist" means a method of hazard analysis based on a systematic study of updated process chemistry, standard operating procedures, maintenance procedures, EHS operator job descriptions, process flow diagrams, EHS inventory tabulations, piping and instrument diagrams and other design documents that describe the EHS facility. The study is performed by a multidisciplinary team to identify hazards or operability problems that could result in an EHS accident. The study is composed of a comprehensive list of questions prepared in advance from study of the documents by team members either in conference or independently usually corresponding to their individual background. The study team shall consist of trained personnel knowledgeable in the technology and operations, such as the process chemistry, the design of the equipment, the procedures of operation and maintenance and the related criteria for design and operation. In addition, they shall have technical expertise to answer most of the questions of the review without recourse to further expertise. The team shall include a person assigned to lead the study and a person to record the results who are technically trained and will be available for the duration of the study. Results of the study shall be reported for a unit on a table. The results are entered on the table as follows: the "what if" question and its corresponding consequence/hazard, the criticality based on the quantity or rate of the potential release and the recommended action in terms of equipment or procedure to mitigate the consequence/hazard.

#### 7:31-1.6 Severability

If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby and shall remain in full force and effect.

**SUBCHAPTER 2. GENERAL REQUIREMENTS, PROHIBITIONS AND PROCEDURES**

**7:31-2.1 Scope and applicability**

(a) This subchapter establishes programmatic requirements, prohibitions and procedures applicable to all facilities subject to the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

(b) This subchapter is applicable to all owners or operators of facilities required by the Act or this chapter to register with the Department because they handle, use, manufacture, store or have the capability to generate one or more of the substances or chemical compounds listed in N.J.A.C. 7:31-2.3.

**7:31-2.2 Purpose**

(a) This subchapter is promulgated for the following purposes:

1. To establish an extraordinarily hazardous substance list;
2. To establish the procedures and time schedules each owner or operator, or registrant shall follow to comply with the Act and this chapter;
3. To establish the fee schedule;
4. To establish the penalty schedule;
5. To establish the standard for initial evaluation of risk management programs by the Department;
6. To establish the procedures and standards for reviewing proposed new EHS facilities and modifications to existing EHS facilities;
7. To establish the requirements for the registrant's annual report to the Department; and
8. To establish the criteria for selecting an independent consultant to perform an extraordinarily hazardous substance accident risk assessment.

**7:31-2.3 Extraordinarily hazardous substance list**

(a) The substances and chemical compounds listed in Table I below shall constitute the Department's extraordinarily hazardous substance list:

**TABLE I**

Name of Extraordinarily Hazardous Substance	CAS #	Minimum Reportable Quantity in Pounds
<b>PART I</b>		
Hydrogen chloride (HCl)	7647-01-0	2,000
Hydrochloric acid		
36 percent by weight or more HCl	7647-01-0	5,600
Allyl chloride	107-05-1	2,000
Hydrogen cyanide	74-90-8	500
Hydrogen fluoride (HF)	7664-84-1	500
Hydrofluoric acid		
70 percent by weight or more HF	7664-84-1	700
Chlorine	7782-50-5	500
Phosphorous trichloride	7719-12-2	500
Hydrogen sulfide	7783-06-4	500
Phosgene	75-44-5	100
Bromine	7726-95-6	100
Methyl isocyanate	624-83-9	100
Toluene-2, 4-diisocyanate	584-84-9	100
<b>PART II</b>		
Acetaldehyde	75-07-0	4,900
Acrolein	107-02-8	200
Acrylonitrile	107-13-1	2,300
Allylamine	107-11-9	1,200
Ammonia (NH <sub>3</sub> )	7664-41-7	5,200
Ammonium hydroxide		
28 percent by weight or more NH <sub>3</sub>	1336-21-6	19,000
Arsine	7784-42-1	60
bis (Chloromethyl) ether	542-88-1	80
Boron tribromide	10294-33-4	10,000
Boron trichloride	10294-34-5	1,700
Boron trifluoride	7637-07-2	200
Bromine chloride	13863-41-7	800
Bromine pentafluoride	7789-30-2	1,300
Carbon monoxide (CO)		
10 percent by volume or more CO	630-080-0	12,000

Carbonyl fluoride	353-50-4	1,700
Chlorine dioxide	10049-04-4	500
Chlorine pentafluoride	13637-63-3	500
Chlorine trifluoride	7790-91-2	600
Chloromethyl methyl ether	107-30-2	300
Chloropicrin	76-06-2	900
Chloroprene	126-99-8	12,000
Crotonaldehyde	123-73-9	450
Cyanogen	460-19-5	1,300
Cyanogen chloride	506-77-4	200
Diazomethane	334-88-3	300
Diborane	19287-45-7	60
Dichloroacetylene	7572-29-4	125
Dichlorosilane	4109-96-0	2,000
Diethylamine	109-89-7	9,600
Dimethylamine	124-40-3	6,600
1,1-Dimethylhydrazine	57-14-7	800
Epoxypropane	75-56-9	7,700
Ethylamine	75-04-7	7,500
Ethylene oxide	75-21-8	2,700
Ethylenimine	151-56-4	800
Ethyl mercaptan	75-08-1	13,000
Fluorine	7782-41-4	450
Formaldehyde (gas)	50-00-0	175
Furan	110-00-9	200
Hexafluoroacetone	684-16-2	3,300
Hydrogen bromide (HBr)	10035-10-6	2,900
Hydrobromic acid		
62 percent by weight or more HBr	10035-10-6	4,800
Hydrogen selenide	7783-07-5	125
Isopropylamine	75-31-0	3,300
Ketene	463-51-4	50
Methacrylaldehyde	78-85-3	1,300
Methyl acrylonitrile	126-98-7	175
Methylamine	74-89-5	2,300
Methyl bromide	74-83-9	1,800
Methyl chloride	74-87-3	12,000
Methyl chloroformate	75-22-1	350
Methyl dichlorosilane	75-54-7	27,000
Methyl fluoroacetate	453-18-9	90
Methyl fluorosulfate	421-20-5	50
Methylhydrazine	60-34-4	125
Methyl iodide	74-88-4	2,900
Methyl mercaptan	74-93-1	2,400
Methyl vinyl ketone	78-94-4	10
Nickel carbonyl	13463-39-3	125
Nitric acid (HNO <sub>3</sub> )		
94.5 percent by weight or more HNO <sub>3</sub>	7697-37-2	450
Nitrogen Oxides		
Nitrogen dioxide (NO <sub>2</sub> )		
10 percent by volume or more as NO <sub>2</sub>	10102-44-0	200 as NO <sub>2</sub>
Nitric oxide		
10 percent by volume or more as NO <sub>2</sub>	10102-43-9	200 as NO <sub>2</sub>
Nitrogen tetroxide		
10 percent by volume or more as NO <sub>2</sub>	10544-72-6	200 as NO <sub>2</sub>
Nitrogen trioxide		
10 percent by volume or more as NO <sub>2</sub>	10544-73-7	200 as NO <sub>2</sub>
Nitrogen trifluoride	7783-54-2	10,000
Oleum 65 percent by weight or more free sulfur trioxide (SO <sub>3</sub> )	8014-95-7	800
Osmium tetroxide	20816-12-0	4,500
Oxygen difluoride	7783-41-7	10
Ozone	10028-15-6	15
Pentaborane	19624-22-7	15
Perchloromethyl mercaptan	594-42-3	125
Perchloryl fluoride	7616-94-6	2,900
Phosphine	7803-51-2	30
Phosphorous trifluoride	7783-55-3	34,000
Phosphoryl chloride	10025-87-3	800
Propylamine	107-10-8	11,000
Selenium hexafluoride	7783-79-1	700
Stibine	7803-52-3	250
Sulfur dioxide (SO <sub>2</sub> )		
10 percent by volume or more SO <sub>2</sub>	7446-09-5	4,600

Sulfur monochloride	10025-67-9	2,800
Sulfur pentafluoride	5714-22-7	175
Sulfur tetrafluoride	7783-60-0	150
Sulfur trioxide	7446-11-9	500
Sulfuryl fluoride	2699-79-8	22,000
Tellurium hexafluoride	7783-80-4	175
Tetrafluorohydrazine	10086-47-2	3,800
Tetramethyl lead	75-74-1	800
Tetranitromethane	509-14-8	900
Thionyl chloride	7719-09-7	250
Titanium tetrachloride	7550-45-0	600
Trichlorosilane	10025-78-2	2,700
Trifluorochloroethylene	79-38-9	7,300
Trimethoxysilane	2487-90-3	1,100
Trimethylamine	75-50-3	11,000
Trimethylchlorosilane	75-77-4	1,400
Vinyl trichlorosilane	75-94-5	7,700

#### 7:31-2.4 Prohibitions

(a) No owner or operator of a facility shall handle, use, manufacture or store a substance or chemical compound in amounts greater than or equal to the reportable quantity or have the capability to generate, within one hour, at least the reportable quantity or greater of an EHS listed in Part I of Table I in N.J.A.C. 7:31-2.3 unless registered pursuant to the Act with the Department.

(b) No owner or operator of a facility shall handle, use, manufacture or store a substance or chemical compound in amounts greater than or equal to the reportable quantity or have the capability to generate, within one hour, at least the reportable quantity of an EHS listed in Part II of Table I in N.J.A.C. 7:31-2.3, unless registered pursuant to this chapter with the Department within 90 days after the operative date of this subchapter or within 90 days after an EHS has been added to Table I of N.J.A.C. 7:31-2.3.

(c) No owner or operator shall construct a new EHS facility unless the owner or operator has:

1. Registered with the Department pursuant to N.J.A.C. 7:31-2.5;
2. Complied with the requirements of N.J.A.C. 7:31-2.10; and
3. Received written Departmental approval to construct the new EHS facility.

(d) No registrant of a new EHS facility shall begin operating that facility until the Department and the registrant have executed an administrative consent agreement containing an approved risk management program.

(e) No registrant with an approved risk management program shall operate a new EHS facility or utilize an existing facility for a new EHS service:

1. Before submitting to the Department:
  - i. An amendment to the RMP description prepared in accordance with N.J.A.C. 7:31-3.12;
  - ii. An update of Section D of the registrant's registration form;
  - iii. The documentation required by N.J.A.C. 7:31-2.10(b); and
  - iv. The fee required by N.J.A.C. 7:31-2.16(e).
2. Before receiving written Departmental approval to operate the EHS facility.

(f) No registrant with an approved site risk management program shall implement a modification to an existing EHS facility at its site without completing the requirements of its risk management program and performing a safety review and a hazard analysis in accordance with N.J.A.C. 7:31-3.4 and 3.9.

(g) No registrant shall handle, use, manufacture, generate or store an EHS, except in a manner which complies with the Act and this chapter.

(h) No registrant with an approved risk management program shall handle, use, manufacture, store or generate an EHS except in a manner which complies with the approved risk management program.

#### 7:31-2.5 Registration

(a) Each owner or operator of a site handling, using, manufacturing or storing at least the reportable quantity of an EHS, or who has the capability to generate, within one hour, at least the reportable quantity of an EHS on the EHS list in Part II of Table I in N.J.A.C. 7:31-2.3, shall register with the Department on forms provided by the Department within 90 days after the substance or chemical compound has been added to the EHS list.

(b) Each owner or operator of a site which has handled, used, manufactured, stored or generated at least the reportable quantity of one or more of the EHSs included in Table I of N.J.A.C. 7:31-2.3 at the same site and plans to handle, use, manufacture, store or generate such substances

in the future, may register all the substances with the Department on the forms provided by the Department within 90 days after the substances are added to Table I of N.J.A.C. 7:31-2.3.

(c) Each owner or operator of a site planning to construct a new EHS facility which will handle, use, manufacture or store an EHS in at least the reportable quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3, or which will have the capability of generating an EHS within one hour in at least the reportable quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3 shall register with the Department at least 90 days prior to construction and comply with the requirements of N.J.A.C. 7:31-2.10(a).

(d) Each registrant with an RMP previously approved by the Department planning to construct a new EHS facility at its site, or to utilize an existing EHS facility for a new EHS service, shall submit an updated registration form at least 90 days prior to the scheduled placing of the equipment into EHS service and comply with the requirements of N.J.A.C. 7:31-2.10(b).

(e) Each registrant shall submit an updated registration form to the Department within 30 days after a change occurs which makes the EHS facility's registration form incorrect or incomplete.

(f) Each registrant shall indicate on its registration form whether or not it has a risk management program.

1. A registrant which indicates that it has an RMP shall submit the RMP to the Department for review in accordance with N.J.A.C. 7:31-2.6.

2. A registrant which indicates that it does not have an RMP shall assist the Department in the preparation of the required work plan in accordance with N.J.A.C. 7:31-2.9.

(g) Each registrant shall provide the following information in the appropriate section of the registration form:

1. Section A of the registration form shall contain:

- i. Legal name of owner or operator of the EHS site;
- ii. The nature of the registrant's business;

iii. The identification number assigned by the Department's Air Pollution Enforcement Data System (APEDS) for the facility or the Employer Identification Number issued by the New Jersey Department of Labor if APEDS is not available;

iv. The site's geographic address;

v. The site's mailing address; and

vi. The name, title and telephone number of the responsible manager.

2. Section B of the registration form shall contain responses to the following questions:

i. Does the site handle, use, manufacture, store or generate at any time any of the EHSs listed in Table I of N.J.A.C. 7:31-2.3; and

ii. For those sites with an EHS, does the site handle, use, manufacture, or store at least the minimum reportable quantity established for that EHS, or does it generate within one hour at least the minimum reportable quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3.

3. Section C of the registration form shall contain the names, titles, certifications and signatures of the signatories as required by N.J.A.C. 7:31-2.17.

4. Section D of the registration form shall contain the inventory of EHSs or the quantity of EHS capable of being generated in one hour for each facility on the site.

5. Section E of the registration form shall contain the process description of, and principal equipment used with, each EHS at the site by facility, and the Standard Industrial Classification Code for that type facility published by the United States Department of Commerce.

6. Section F of the registration form shall contain:

i. Answers to the questions regarding the registrant's risk management program, safety reviews and hazard analyses;

ii. An identification of the major elements included in the registrant's RMP;

iii. An identification of any risk reduction efforts and safety measures undertaken by the registrant to minimize the risks of an accidental release at the site;

iv. An identification of the position titles, expertise and affiliation of the persons involved with the development of the risk management program; and

v. A description and profile of the area surrounding the site, including the population and proximity to water supplies.

7. Section G of the registration form shall identify the insurance carriers underwriting the site's environmental liability and workers compensation insurance policies including the address of the carrier, the type of policy, the amount of insurance and limitations or exclusions to the policy.

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 21, 1987

## 7:31-2.6 Risk management program procedures

(a) No risk management program of a registrant shall be approved by the Department until it meets, to the satisfaction of the Department, all the requirements of N.J.A.C. 7:31-3.

(b) Each registrant with an EHS listed in Part I of Table I in N.J.A.C. 7:31-2.3, who has indicated on its registration form that it has a risk management program, shall submit a summary risk management program statement containing the information required by N.J.A.C. 7:31-3.12 to the Department within 60 days after the operative date of this chapter.

(c) Each registrant with an EHS listed in Part II of Table I in N.J.A.C. 7:31-2.3, who indicates on its registration form that it has a risk management program, shall submit a summary risk management program statement containing the information required by N.J.A.C. 7:31-3.12 to the Department between October 1 and October 31, 1988.

(d) Each submitted summary risk management program statement will be initially reviewed to determine if the registrant has a risk management program that meets the standard established in N.J.A.C. 7:31-2.7(b).

(e) Each risk management program accepted for further review shall be reviewed for its compliance with N.J.A.C. 7:31-3. The review shall consist of a review of documents and a site inspection. Any documents to be reviewed may be reviewed at the site or at the Department at the discretion of the Department.

(f) Upon completion of its review of a registrant's risk management program, the Department will develop, and send to the registrant, a draft consent agreement which will contain:

1. The portions of the registrant's risk management program which are approvable;
2. The portions of the registrant's risk management program that are materially deficient;
3. The proposed actions that must be taken to correct the material deficiencies; and
4. The proposed time schedule for taking the actions to correct the deficiencies.

(g) Within 60 days after the registrant receives the draft consent agreement, the registrant shall submit its proposals to correct the deficiencies.

(h) If the Department and registrant reach agreement on the risk management program, the registrant shall enter into a consent agreement with the Department and shall comply with the consent agreement.

(i) If the Department and registrant cannot reach agreement on the measures necessary to correct the deficiencies or omissions in the risk management program, the Department shall:

1. Prepare and send to the registrant an administrative order incorporating the approvable portions of the risk management program, the actions required to bring the risk management program into compliance with N.J.A.C. 7:31-3, and the time schedule to implement the required actions; and

2. Advise the registrant of its rights to an adjudicatory hearing pursuant to N.J.A.C. 7:31-2.19.

## 7:31-2.7 Initial evaluation of the risk management program

(a) In order to determine if a registrant has a risk management program, the Department shall review the RMP description, and the reports of safety reviews, hazard analyses and risk assessments of existing EHS facilities included in the summary risk management program statement (see N.J.A.C. 7:31-3.12) submitted by the registrant for compliance with the requirements of N.J.A.C. 7:31-3.4 and 3.9.

(b) Each registrant whose summary risk management program statement contains at least one safety review prepared in the past two years on each EHS facility at the site which the Department determines meets the requirements of N.J.A.C. 7:31-3.4, and at least one hazard analysis and, where required, risk assessment prepared in the past four years on each EHS facility at the site which the Department determines meets the requirements of N.J.A.C. 7:31-3.9, shall be notified that its RMP is accepted for further review in accordance with the procedure beginning at N.J.A.C. 7:31-2.6(e).

(c) Each registrant whose summary risk management program statement does not meet the standard established in (b) above shall be notified in writing that its risk management program is unacceptable and that it shall follow the procedures in N.J.A.C. 7:31-2.9 for developing and implementing an extraordinarily hazardous substance risk reduction work plan, accident risk assessment and risk reduction plan.

## 7:31-2.8 (Reserved)

## 7:31-2.9 Extraordinarily hazardous substance risk reduction work plan, accident risk assessment and risk reduction plan

(a) Each registrant who indicated on the registration forms that it did not have a risk management program, or whose risk management program was determined to be unacceptable by the Department pursuant to N.J.A.C. 7:31-2.7, shall assist the Department in developing a work plan.

(b) A registrant assisting the Department in the development of the required work plan shall compile the site data required by N.J.A.C. 7:31-4.4 and submit them to the Department:

1. Within 30 days after receipt of a request for the data from the Department for registrants who indicated on their registration form that they did not have a risk management program; or

2. Within 30 days after a receipt of notice of the determination of the unacceptability of its risk management program for registrants whose risk management program is determined to be unacceptable by the Department.

(c) Upon review of the documents submitted by the registrant, the Department will schedule a meeting with the registrant for the purpose of:

1. Reviewing any other documents the registrant is required to bring to the meeting with the Department;
2. Identifying any other documents the registrant must submit to the Department;
3. Discussing and adapting the work plan developed in accordance with the requirements of N.J.A.C. 7:31-4 to the registrant's EHS facility;
4. Explaining the consultant selection process as described in (e) below to the registrant;
5. Determining any limits on the scope or details of the work plan;
6. Identifying the members of the registrant's staff who will assist in the work of the EHSARA under the direction of the independent consultant or the Department;
7. Setting an end-date of the EHSARA that will be included in the registrant's request for proposal to independent consultants; and
8. Reviewing the instructions to bidders to be included in the registrant's request for proposal document to which the work plan will be attached.

(d) The Department will authorize one of the following types of personnel to perform the extraordinarily hazardous substance accident risk assessment on a registrant's EHS facility:

1. Department personnel;
2. A consultant hired by the Department and paid by the registrant; or
3. An independent consultant nominated by the registrant, chosen by the Department and hired and paid by the registrant.

(e) Each registrant authorized to nominate three consultants as candidates to perform the EHSARA shall submit the names and proposals of three consultants, who meet the requirements set forth in N.J.A.C. 7:31-2.18 and are willing and able to perform the EHSARA in accordance with the schedule set forth in the work plan, to the Department within 60 days after receipt of the finalized work plan from the Department pursuant to (c) above;

(f) The Department, within 15 days after receipt of the names and proposals from the registrant, shall:

1. Select one of the consultants to perform the Extraordinarily Hazardous Substance Accident Risk Assessment on the Registrant's EHS facility; or

2. After determining that none of the consultants' proposals submitted by the registrant meet the requirements in N.J.A.C. 7:31-2.18, direct the registrant to submit, within 60 days, the names and proposals of an additional three consultants to the Department for its selection of one of the consultants to perform the extraordinarily hazardous substance accident risk assessment on the registrant's EHS facility.

(g) The registrant shall execute a contract with the consultant chosen by the Department within 30 days after receipt of the name of the consultant from the Department.

(h) The consultant or Department shall perform the extraordinarily hazardous substance accident risk assessment of the registrant's EHS facility and develop a recommended risk reduction plan which will include the identification of those activities necessary to create a risk management program. These shall be performed in conformity with the work plan developed and explained at the meeting held pursuant to (c) above. Members of the registrant's staff may participate in the work preparatory to the EHSARA.

(i) Upon completion of the extraordinarily hazardous substance accident risk assessment, the consultant or the Department shall prepare an

EHSARA report in accordance with N.J.A.C. 7:31-4.6, including its recommendations to reduce risks at the EHS facility.

(j) The original EHSARA report shall be submitted to the Department and a copy of the EHSARA report shall be submitted to the registrant.

(k) The Department shall review the EHSARA report and prepare a risk reduction plan which will be incorporated into an administrative order which will be issued to the registrant. The administrative order shall direct the registrant to implement the risk reduction plan which shall include:

1. A list of risks at the EHS facility that must be reduced; and
2. The actions the registrant is to take to reduce the risks including those necessary to complete a risk management program meeting the requirements of N.J.A.C. 7:31-3 and the schedule within which the registrant shall take the actions.

(l) Any registrant aggrieved by the administrative order issued pursuant to (k) above may request an adjudicatory hearing by following the procedures set forth at N.J.A.C. 7:31-2.19.

#### 7:31-2.10 New EHS facilities

(a) Each owner or operator of a site planning to construct a new EHS facility shall:

1. Register with the Department in accordance with N.J.A.C. 7:31-2.5(c);
2. Submit a safety review of the new EHS facility prepared in accordance with N.J.A.C. 7:31-3.4 and a hazard analysis and risk assessment report on the new EHS facility prepared in accordance with N.J.A.C. 7:31-3.9 to the Department at least 90 days prior to construction of the EHS facility;
3. Submit a summary risk management program statement for the new EHS facility prepared in accordance with N.J.A.C. 7:31-3.12 at least 90 days prior to the date the equipment is scheduled to be placed into EHS service; and
4. Submit to the Department the fees required by N.J.A.C. 7:31-2.16(d).

(b) Each registrant with an RMP previously approved by the Department planning to construct a new EHS facility at its site, or to utilize an existing facility for a new EHS service shall:

1. Register with the Department in accordance with N.J.A.C. 7:31-2.5(d);
2. Submit a revised RMP description meeting the requirements of N.J.A.C. 7:31-3.12(a)1, a safety review of the new EHS facility or service prepared in accordance with N.J.A.C. 7:31-3.4, and a hazard analysis and risk assessment of the new EHS facility or service prepared in accordance with N.J.A.C. 7:31-3.9 at least 90 days prior to the scheduled placing of the equipment into EHS service. The equipment placed into EHS service shall be placed into service as represented in the reports of safety review, hazard analysis and risk assessment submitted to the Department; and
3. Submit to the Department the fees required by N.J.A.C. 7:31-2.16(e).

#### 7:1-2.11 Modification to an EHS facility

(a) A registrant with an approved site risk management program planning to implement a modification to an existing EHS facility at its site shall comply with the requirements of its risk management program and perform a safety review and a hazard analysis in accordance with the requirements of N.J.A.C. 7:31-3.4 and 3.9.

(b) The registrant shall submit the safety review, the hazard analysis and the risk assessment on the modification to the Department at least 60 days prior to the date of placing the equipment or procedure in EHS service if the hazard analysis on the modification identifies an increase in the potential for a release in an amount which within one hour either will be equal to or greater than five times the minimum reportable quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3 or will be equal to twice the potential release that existed before the modification, whichever is smaller. The equipment placed into EHS service shall be placed into service as represented in the reports of safety review, hazard analysis and risk assessment submitted to the Department.

#### 7:31-2.12 Inspections

(a) The Department shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the act, this chapter, or any order or consent order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the site, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance,

and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute, and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested. Owners, operators or registrants, and any employees or representatives thereof, shall not hinder or delay, and shall assist, the Department and its representatives in the performance of all aspects of any inspection.

(b) The Department plans to inspect a site at least annually to verify the registrant's compliance with the Act, this chapter and the risk management program or risk reduction plan.

(c) Within a reasonable time after an inspection, the registrant or owner or operator shall be furnished with an inspection report which will list any deficiencies found.

#### 7:31-2.13 Prevention of catastrophic accidents

(a) The Department may take such actions as it deems necessary in order to protect human health from an EHS release. Such actions may include, but shall not be limited to, issuing such orders as may be necessary to protect the health of persons who may be subject to such a release.

(b) The Department may include in the orders, at its discretion, the following:

1. A requirement that the owner or operator or registrant immediately submit a facility's risk management program to the Department for review;
2. A requirement that the owner or operator or registrant perform a safety review, hazard analysis or risk assessment;
3. A requirement that the owner or operator or registrant immediately take risk reduction actions or implement a risk reduction plan;
4. A requirement that the owner or operator or registrant cease operating until the identified risk or risks have been abated; or
5. Any other requirement the Department determines is necessary to carry out the purposes of the Act or this chapter.

(c) When the Department issues an order or takes other appropriate action pursuant to this section, such order or action shall not be deemed to affect the availability of, or preclude the use of, any other enforcement provision.

#### 7:31-2.14 Annual report

Each registrant with an approved risk management program shall submit on or before each anniversary of the initial approval of its risk management program an annual report meeting the requirements of N.J.A.C. 7:31-3.13.

#### 7:31-2.15 Release of information by insurance carriers

(a) After a review of documents and an EHS facility inspection, the Department may determine that a registrant shall authorize the facility's environmental liability or workers compensation insurance carrier to supply certain information to the Department.

(b) The determination will be based on a finding that the insurance information is necessary for the Department to evaluate effectively the facility's EHS management practices.

(c) The information to be supplied to the Department by the insurance carrier shall include, but not be limited to:

1. Reports of inspections for compliance with mandated codes or standards;
2. Reports of safety and environmental inspections or audits;
3. Reports of inspections of fire protection equipment;
4. Reports of any additional studies conducted which evaluated the adequacy of the registrant's management of EHSs; and
5. The reports requested in (c)1 through 4 above shall include a summary of any deficiencies found and any recommended remedial actions.

(d) Upon written request from the Department, the registrant shall, within 30 days, authorize the insurance carrier to release the information requested to the Department. The insurance company shall forward to the Department the requested information within 30 days of the receipt of the authorization to do so from the registrant.

#### 7:31-2.16 Fees

(a) Each registrant shall pay an annual fee to the Department.

(b) Each registrant with an EHS on Part I of Table I of N.J.A.C. 7:31-2.3 shall submit its annual fee for fiscal year July 1, 1987 to June 30, 1988, computed in accordance with (i) through (m) below, 60 days after the operative date of this chapter.

(c) Each registrant with an EHS on Part II of Table I of N.J.A.C. 7:31-2.3 shall begin paying annual fees in the fiscal year July 1, 1988 to June 30, 1989. The fees shall be computed in accordance with (i) through (m) below, and billed and remitted in accordance with (f) through (h) below.

(d) Each owner or operator of a new EHS facility at a site with no EHSs registered who registers an extraordinarily hazardous substance with the Department subsequent to the dates specified in (b) and (c) above, shall submit the annual fee for that fiscal year computed in accordance with (i) through (m) below with the registration forms.

(e) Each registrant registering a new EHS facility at a site with previously registered EHSs shall submit the inventory derived fee for the incremental EHS inventory, computed in accordance with (i), (l) and (m) below, with the amended registration forms.

(f) The annual fees are assessed on the basis of the State's fiscal year and shall not be prorated or refunded.

(g) Except for the fees due for fiscal year 1987/1988 which shall be submitted in accordance with (b) above and the fees submitted pursuant to (d) and (e) above, the Department, during the month of July, will send each registrant a bill stating the fee for that fiscal year.

(h) Each registrant shall pay its fee by check or money order, payable to "Treasurer, State of New Jersey" prior to August 31 of the year in which it is billed. The check or money order shall be submitted to:

New Jersey Department of Environmental Protection  
Bureau of Revenue  
Division of Financial Management, Planning and General Services  
CN 402

Trenton, New Jersey 08625

(i) For the purpose of calculating fees, "inventory" as used in (j), (k), (l) and (m) below means the maximum quantity for each EHS reported by the registrant on Section D of the registration form it submitted to the Department as part of its initial registration and its subsequent annual report in compliance with N.J.A.C. 7:31-2.5 and 2.14.

(j) Each registrant of a water treatment system and wastewater treatment system shall pay a base fee of \$4,000 annually plus an EHS inventory derived fee.

(k) All other registrants not included in (j) above shall pay a base fee of \$4,000 per site annually plus an EHS inventory derived fee.

(l) The inventory derived fee at each site, water treatment system and wastewater treatment system is determined in the following manner:

1. The inventory of each EHS is divided by the minimum reportable quantity for that EHS as set forth in Table I in N.J.A.C. 7:31-2.3;
2. The number resulting from the division required by (l)1 above is the number of hazard units for that EHS;
3. The number of hazard units for each EHS is multiplied by \$5.75 per hazard unit to determine the fee for each EHS.

(m) The annual fee for each registrant shall be the sum of the base fee and the sum of each EHS inventory derived fee.

#### 7:31-2.17 Required signatories and certifications

(a) All registration forms, risk management program descriptions and risk management program checklists shall contain the following signatures and two-part certification which provides the following:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by (a)1 above shall be signed by the highest ranking corporate, partnership or governmental officer or official at the site to which the information pertains.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false information, including the possibility of fine and/or imprisonment."

i. The certification required by (a)2 above shall be signed as follows:

- (1) For a corporation, by a principal executive officer of at least the level of vice president;
- (2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- (3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

(b) All other reports required by this chapter, the risk management program and other information requested by the Department shall be signed by a person described in (a)1i above or the responsible manager, and the person who signs the report shall make the certification set forth in (a)1 above.

#### 7:31-2.18 Criteria for selecting independent consultants

(a) A registrant required to nominate consultants capable of performing an EHSARA on its facility and submit their names to the Department shall initially obtain proposals from at least three consultants.

(b) The registrant shall not submit the name of any consultant who:

1. Is owned or controlled by the registrant or by a firm which owns or controls both the registrant and the consultant or owns or controls the registrant;

2. Was the designer of any EHS facility at the site; or
3. Is debarred or suspended pursuant to N.J.A.C. 7:1-5 or on the New Jersey Department of Treasury's list of firms debarred or suspended from engaging in work with the State.

(c) The registrant in its contract with the consultant chosen by the Department shall prohibit the subcontracting of any of the work involved in the EHSARA unless approved in writing by the Department.

(d) Each proposal shall explain in a clear and concise manner how the consultant is going to address each task in the registrant's workplan.

(e) Each proposal shall demonstrate the consultant's ability to perform the EHSARA set forth in N.J.A.C. 7:31-4 and shall include:

1. The consultant's qualifications in:
  - i. Process engineering;
  - ii. Safety engineering;
  - iii. Preparation of operating procedures;
  - iv. Preparation or review of maintenance procedures;
  - v. Preparation or review of safety procedures;
  - vi. Preparation or review of operator training programs;
  - vii. Performance or review of accident investigations;
  - viii. Performance of hazard analyses;
  - ix. Performance of risk assessments;
  - x. Preparation or review of emergency response plans;
  - xi. Performance of audits of risk management programs;
  - xii. Knowledge of state of the art; and
  - xiii. With respect to each of the above qualifications, the following:
    - (1) Name of consultant's client;
    - (2) Name of client's contact person;
    - (3) Date and duration of work;
    - (4) Names of consultant's employees who performed the work;
    - (5) Schedule of the work; and
    - (6) Brief description of the work.

2. The qualifications and experience of additional staff who may be assigned on an as needed basis; and

3. The level of effort to be dedicated and schedule for performing each workplan task item including:

- i. Names of staff assigned;
- ii. Expected starting and completion dates;
- iii. Estimated personhours; and
- iv. Scope and extent of usage of collateral items such as computer use, outside consultants, etc.

(f) The resumes of members of the consultant's staff who are to be committed to the work plan agreed to by the registrant and the Department shall be submitted to the Department and shall demonstrate that collectively the consultant's staff implementing the workplan has the following qualifications, at a minimum:

1. At least one previous project in each of the 12 areas of experience listed in (e)1 above;

2. Key staff members each having at least five years of professional experience and one key staff member who is a licensed professional engineer;

3. A task force leader with at least 36 months of accumulated experience as a project manager of multidisciplinary technical teams;

4. A technical leader of the hazard analysis and risk assessment portions of the work who has at least 12 months aggregate experience at such work; and

5. Assisting staff with at least three years of professional work experience and at least six months accumulated experience on the type of work involved in the portion of the EHSARA to which they will contribute.

#### 7:31-2.19 Adjudicatory hearings; general

(a) Within 20 calendar days from receipt of an executed administrative order, except those issued pursuant to N.J.A.C. 7:31-2.20, or a letter from the Department withholding approval of a new EHS facility or rejecting a modification, the registrant may submit a written request to the Department for an adjudicatory hearing to contest such action.

1. Any request for an adjudicatory hearing shall be based on specific relevant issues raised by the registrant.

2. The registrant shall include the following information in a request for an adjudicatory hearing:

- i. The name, address and telephone number of the registrant or its authorized representative;
- ii. The Department's identification number for the EHS facility, as specified in Section A of the registrant's registration form;
- iii. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- iv. A reference to the particular sections of the statutes and rules involved;
- v. A short and plain statement of the matters of law and fact asserted;
- vi. The registrant's factual position on each question alleged to be at issue, its relevance to the Department's decision, specific reference to contested conditions as well as suggested revised or alternative conditions and an estimate of the amount of hearing time necessary to adjudicate each factual issue;
- vii. Information supporting the registrant's factual position and proposed conditions and copies of other written documents relied upon to support the request for a hearing; and
- viii. (Reserved).

(b) If the registrant fails to include all the information required by (a)2 above, the Department shall deny the request for a hearing and the administrative order or the letter withholding approval of a new EHS facility or the letter rejecting a modification shall be the Department's final decision on the matter.

(c) If it grants the request, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(d) During the pendency of the review and hearing on an administrative order issued pursuant to N.J.A.C. 7:31-2.9, the timetable for compliance with these conditions being appealed in the order shall be suspended.

7:31-2.20 Adjudicatory hearings; enforcement

(a) The Department, prior to assessing a civil administrative penalty, shall, by means of an administrative order or notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. This notice shall:

1. Identify the provisions of the Act, this chapter, consent agreement, administrative order or administrative consent order that have been violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of civil administrative penalties to be imposed; and

4. Advise the violator of the right to request an adjudicatory hearing.

(b) If the violator wishes to request an adjudicatory hearing to contest the assessment of the penalty and the findings of fact, the violator, within 20 days following receipt of the Department's administrative order or notice of civil administrative penalty assessment, shall submit a written request to the Department which meets the requirements of (c) below.

(c) The violator shall include the following information in a request for an adjudicatory hearing:

1. The name, address and telephone number of the violator or its authorized representative;
2. The Department's identification number for the EHS facility, as specified in Section A of the registrant's registration form;
3. The violator's defenses to each of the findings of fact stated in short and plain terms;
4. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. Any denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings;
5. A statement of the legal authority and jurisdiction under which the hearing is to be held;
6. A reference to the particular sections of the statutes and rules involved;
7. A short and plain statement of the matters of law and fact asserted;

8. (Reserved.)

9. Information supporting the request and copies of other written documents relied upon to support the request for a hearing.

(d) If the violator fails to include all the information required by (c) above, the Department shall deny the request for a hearing and the administrative order or notice of civil administrative penalty assessment shall become a final order.

(e) If it grants the request, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(f) The Department, after the hearing and upon a finding that a violation has occurred, shall issue a final order specifying the amount of the penalty to be assessed.

(g) If no hearing is requested, the administrative order or notice of civil administrative penalty assessment shall become a final order on the twenty-first day following receipt of the administrative order or notice of civil administrative penalty assessment by the violator.

(h) Payment of the civil administrative penalty is due upon issuance by the Department of a Final Order or, where no adjudicatory hearing is requested, after expiration of the 20 day period following receipt of the notice of civil administrative penalty assessment.

(i) Any person who violates the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq., this chapter, a consent agreement, administrative consent order or an administrative order issued by the Department shall be subject to the civil administrative penalties set forth in Table II:

TABLE II

Categories of Offense	Penalty in U.S. Dollars By Offense Category		
	First Offense	Second Offense	Third Offense
A. Failure to register a new or existing EHS facility as set by the total hazard units at the site:			
1. Less than 10 hazard units	\$ 2,000	\$ 4,000	\$25,000
2. 10 through 49 hazard units	5,000	10,000	25,000
3. 50 and more hazard units	10,000	20,000	50,000
B. Failure to pay annual fee:	25 percent of fee up to 10,000	50 percent of fee up to 20,000	75 percent of fee up to 50,000
C. Failure to submit summary risk management program statement on time:	2,000	5,000	10,000
D. Failure to execute contract with consultant within 30 days of receipt of notification:	5,000	10,000	25,000
E. Failure to initiate an EHSARA according to the schedule in the work plan:	5,000	10,000	25,000
F. EHSARA not performed according to the schedule in the work plan:	2,000	5,000	10,000
G. Failure to implement a risk reduction plan:	10,000	20,000	50,000
H. Failure to comply with the requirements of an approved RMP, each requirement:	up to 5,000	up to 10,000	up to 20,000
I. Failure to comply with conditions of a consent agreement or administrative order, see condition:	up to 5,000	up to 10,000	up to 20,000
J. Failure to provide information requested by the Department:	2,000	5,000	10,000
K. Failure to grant access to Departmental employees or agents for inspections:	5,000	10,000	25,000
L. Failure to provide information or grant access to Departmental employees or agents during an emergency condition:	10,000	20,000	50,000
M. Falsification of information submitted to the Department:	10,000	20,000	50,000
N. Failure to submit an annual report:	5,000	10,000	25,000
O. Construction of a new EHS facility without Departmental approval:	10,000	20,000	50,000

P. Startup of a new EHS facility without an approved risk management program:	10,000	20,000	50,000
Q. For a site with an approved RMP, placing a new EHS facility into service or placing an existing facility in different EHS service without Departmental approval:	5,000	10,000	25,000

(j) The penalty for each offense set forth in Table II in (i) above subsequent to the third offense shall be \$50,000 per offense.

(k) If no subsequent offense occurs within a three year period of an offense, the next penalty will be assessed at the level of the last offense.

(l) If the violation is of a continuing nature, each day during which it continues constitutes an additional, separate and distinct offense.

(m) The Department may compromise and settle any claim for a penalty imposed pursuant to the Act or this chapter in such amount in the discretion of the Department as may appear appropriate and equitable under all the circumstances including the posting of a performance bond by the violator.

(n) Neither the assessment of a civil administrative penalty nor the payment of any such assessment shall be deemed to affect the availability of any other enforcement provision provided for by this Act or any other statute, in connection with the violation for which the assessment is levied.

(o) Each violator shall pay its penalty by check or money order, payable to "Treasurer, State of New Jersey." The check or money order shall be submitted to: New Jersey Department of Environmental Protection, Environmental Enforcement Element, CN-027, Trenton, New Jersey 08625.

7:31-2.21 Exemptions for non-contiguous EHS equipment

(a) A registrant may request that non-contiguous EHS equipment be exempted from the requirements of N.J.A.C. 7:31-3 provided that the following conditions are met:

1. The equipment has only the capability to contain or generate in one hour less than the minimum reportable quantity of the EHS as listed in Table I, N.J.A.C. 7:31-2.3;

2. The equipment is located a minimum of 100 meters from the property line and other EHS equipment; and

3. The registrant demonstrates to the satisfaction of the Department by dispersion and consequence analyses that a release of the contained or generated quantity of the EHS will not result in acute health effects to persons exposed at the site boundary, which is the boundary closest to the point of release.

(b) The request for exemption shall include the results of the dispersion and consequence analyses and may be submitted as appropriate, either with:

1. The initial summary risk management program statement;
2. The revised summary risk management program statement; or
3. The annual report.

(c) The Department shall grant the exemption only if the registrant demonstrates to the satisfaction of the Department that the requirements of (a) above are met.

SUBCHAPTER 3. MINIMUM REQUIREMENTS FOR A RISK MANAGEMENT PROGRAM

7:31-3.1 Scope and applicability

(a) This subchapter establishes the Department's minimum requirements for an approvable risk management program.

(b) All risk management programs shall meet the requirements of this subchapter before being approved by the Department.

(c) Risk management programs that do not comply with the requirements of this subchapter shall not be approved by the Department.

7:31-3.2 Purpose

This subchapter is promulgated for the purpose of reducing the risk of catastrophic releases of extraordinarily hazardous substances by establishing minimum requirements for risk management programs.

7:31-3.3 Risk management program

(a) Each registrant's risk management program shall, at a minimum, include:

1. Safety review of design for new and existing EHS facilities;
2. Standard operating procedures;
3. Preventive maintenance program;
4. Operator training;
5. Accident investigation procedures;
6. Risk assessments for specific pieces of EHS equipment or operating alternatives;

7. Emergency response planning; and
8. Internal or external risk management program audit procedures.

(b) Each registrant with a risk management program shall appoint a responsible manager for each site who shall be responsible for the following activities regarding EHS facilities for each site:

1. Approval of all safety reviews;
2. Approval of all standard operating procedures;
3. Approval of preventive maintenance procedures;
4. Approval of operator training procedures;
5. Approval of accident investigation procedures;
6. Approval of all hazard analyses and risk assessments;
7. Approval of all modifications;
8. Approval of all new EHS construction;
9. Approval of emergency response plans;
10. Approval of internal and external audit procedures; and
11. Submission of all reports to the Department.

(c) Each registrant shall maintain and make available for Department review, either at the site or at the Department's offices in the discretion of the Department, the following updated documentation including revision dates covering process information involving EHSs in support of the risk management program and a catalog list of all such documents showing title, identification number and date of issue:

1. Process chemistry and process design criteria;
2. Facility inventory of each extraordinarily hazardous substance;
3. Reports of hazard analyses, risk assessments, safety reviews and audits performed during the previous six years;
4. Accident investigation reports covering accidents at EHS facilities for the past six years;
5. Updated process flow and piping and instrumentation diagrams;
6. Standard operating procedures;
7. Site-wide safety procedures; and
8. Site-wide emergency response plan.

(d) Each registrant shall maintain and make available for Department review, either at the site or at the Department's offices in the discretion of the Department, the following updated EHS operating training documentation in support of the risk management program and a catalog list of all such documents showing title, identification number and date of issue:

1. Job classifications and job descriptions for EHS operators;
2. Description of the EHS operator training program and its records; and
3. Annual tabulation of EHS operator training conducted.

(e) Each registrant shall maintain and make available for Departmental review, either at the site or at the Department's offices in the discretion of the Department, the following updated engineering and maintenance documentation in support of the risk management program and a catalog list of all such documents showing title, identification number and date of issue:

1. Topographic maps;
2. Site plan;
3. EHS equipment specifications including instrument and piping specifications;
4. National Electrical Code area classification diagrams for the site;
5. EHS electrical one line diagrams;
6. Fire water system piping diagrams for the site;
7. Sewer system piping diagrams for the site;
8. List of criteria for design and operation used at the site;
9. Preventive maintenance program procedures and records covering EHS equipment; and
10. Annual tabulations of EHS equipment inspected and tested versus EHS equipment scheduled to be inspected and tested.

7:31-3.4 Safety review of new and existing facilities

(a) All new EHS facilities or modifications shall be designed, installed and operated in accordance with the state of the art and criteria for design and operation.

(b) The requirements for safety review of design of new EHS facilities or modifications shall include:

1. Comparison of the following information describing the EHS equipment and operations with state of the art and criteria for design and operation:
  - i. Process description and process chemistry;
  - ii. Process flow sheets;
  - iii. Piping and instrumentation diagrams;
  - iv. Facility location map, site plans and equipment layout;
  - v. Electrical one-line diagrams;
  - vi. Electrical area classification drawing;

- vii. Specifications of safety relief devices and interlocks and controls;
  - viii. Specifications for materials of construction;
  - ix. EHS inventories;
  - x. EHS equipment specifications; and
  - xi. External forces and events data;
2. Documentation of the safety review and its findings; and
  3. A report of the safety review of design of new EHS facilities or modifications. The report may be prepared by the designers and shall:
    - i. Contain a list of the criteria for design and operation upon which the design is based;
    - ii. Identify the new EHS facility or modification, the EHS equipment items reviewed, the drawings and documents reviewed, and the name, position and affiliation of the persons who performed the review; and
    - iii. Explain where the design of the new EHS facility or modification deviates from the listed consensus standards of the criteria for design and operation and the reasoning for such a deviation.

(c) There shall be an annual safety review performed on each existing EHS facility.

(d) The requirements for the annual safety review of existing EHS facility shall include:

1. A visual inspection of the EHS facility or review of up-to-date inspection records against process flow diagrams, piping and instrument diagrams, and electrical one line diagrams to determine whether the diagrams reflect actual conditions with respect to EHS equipment, runs and sizes of pipe, location and function of instruments, and location, function and size of valves. Deviations found shall constitute an unauthorized modification and shall be immediately discontinued from service until the requirements of this chapter for a modification are satisfied;

2. A visual inspection of the facility or review of up-to-date inspection records against design documents to determine whether safety relief devices and emergency systems such as deluges, interlocks, controls, back-up systems and alarms are functioning or capable of functioning as designed. EHS safety systems or devices found to be inoperable shall be returned to operational status immediately;

3. A review of actual operating conditions of flow, temperature and pressure, process chemistry and raw material feeds and specifications against design documents to determine whether the actual conditions are within the limits of the design criteria of individual equipment items. Deviations found shall be immediately discontinued;

4. An inspection of the EHS facility and procedures and interviews of site personnel to determine whether actual conditions reflect standard operating procedures. Deviations found to be unauthorized shall be immediately discontinued;

5. Documentation of the deviations of procedure or equipment found by (d)1 through 5 above;

6. A report of the results of the safety review by the registrant shall be written and shall:

- i. Identify the EHS facility;
  - ii. Identify the EHS equipment, procedures, drawings and documents reviewed;
  - iii. Describe the deviations found and the corresponding actions taken pursuant to (d) above; and
  - iv. Identify the name, position and affiliation of the persons who performed the review; and
7. Distribution of the report to the responsible manager.

#### 7:31-3.5 Standard operating procedures

- (a) The standard operating procedures shall be written in English in a manner understandable by EHS operators and shall also be written in the language of fluency of EHS operators not fluent in English.

- (b) A copy of the standard operating procedures shall be readily available to EHS operators.

- (c) The standard operating procedures shall include, but not be limited to:

1. Simplified process flow sheets and a process description defining the operation and showing flows, temperatures and pressures;
2. Procedures and conditions for normal operations;
3. A description of abnormal conditions, including the control and mitigating procedures to be followed to return to normal conditions;
4. A description of emergency conditions which could occur including the control and mitigating procedures to be followed to reduce the impact of the emergency conditions;
5. Pre-startup procedures covering, at a minimum, testing for leak tightness prior to placing into EHS service;
6. Startup procedures including conditions to be maintained during startup;

7. Shutdown procedures including provisions for normal and emergency shutdown and details on the condition of equipment to be maintained after shutdown;

8. A description of the type, location and purpose of safety relief devices, interlocks and alarms with their respective activation points indicated;

9. Sampling procedures addressing apparatus and specific steps involved in the taking of samples;

10. Safety procedures related to each specific operation in the standard operating procedures;

11. Procedures to prepare EHS equipment for maintenance and inspection of maintenance work upon completion and prior to placement of equipment in EHS service;

12. Material safety data sheets or fact sheets for each EHS used in the operation;

13. Logsheets and checklists where appropriate to the operation;

14. A statement as to the number of EHS operators required to meet safety needs for each operation with requirements for shift coverage; and

15. A requirement that an EHS operator be in attendance at the EHS facility, be able to acknowledge alarms and take corrective action to prevent an accident at all times during EHS handling use, manufacturing, storage, or generation except:
  - i. That the requirement that an EHS operator be in attendance during chlorination of water using chlorine vapor out of a supply vessel does not apply if the Department determines that chlorine monitoring equipment is provided with alarms reporting to a station continuously attended by the registrant's employees who are trained to take action to prevent an EHS accident and the online supply vessel capacity is less than 2,100 pounds;
  - ii. That the requirement that an EHS operator be in attendance on the site during EHS storage requiring refrigeration, circulation, agitation or inert gas blanketing does not apply if the Department determines that EHS monitoring equipment is provided with alarms reporting to a continuously attended station whose personnel are trained to take action to prevent an accident, and a risk assessment demonstrates that an EHS operator is not necessary onsite during the specified activity; or
  - iii. That the requirement that an EHS operator be in attendance on site during storage not requiring refrigeration, circulation, agitation or inert gas blanketing does not apply if the Department determines that EHS monitoring equipment contains alarms reporting to a continuously attended station.

- (d) Modifications to the standard operating procedures shall be made in accordance with N.J.A.C. 7:31-2.11.

- (e) Modifications to the standard operating procedures shall be incorporated into the standard operating procedure prior to their implementation.

- (f) A current index of the EHS standard operating procedures with corresponding latest dates of issue shall be maintained, filed and distributed to the responsible manager.

- 7:31-3.6 Preventive maintenance program

- (a) The preventive maintenance program shall be written, be kept at the site and include all preventive maintenance program documents. Requirements of the preventive maintenance program shall include, but not be limited to, the following:

1. Identification of all EHS equipment to be included in the preventive maintenance program;

2. A procedure insuring that only modifications approved and authorized by the responsible manager are made and that communications are maintained between the maintenance, production, safety and engineering departments;

3. Schedules for internal and external inspections of EHS equipment at intervals necessary to prevent the failure of the equipment. Schedules for inspections shall be based on equipment histories, suppliers recommendations, standards of the industry as available or corrosion rates of the construction materials;

4. Inspection or testing of all pressure safety devices in EHS service at least as frequently as the frequency set forth in the criteria for design and operation applicable to the particular EHS involved. In the absence of frequencies in the criteria for design and operation, inspections or tests shall be performed, at a minimum, annually;

5. Checks for proper operation of all safety instrumentation in EHS service such as interlocks, pressure, temperature and flow alarms and shut down devices at least as frequently as recommended in the criteria for design and operation for the particular EHS involved. In the absence of

frequencies in the criteria for design and operation, checks for proper operation shall be performed annually and after extended shutdowns, or more frequently as conditions require;

6. Procedures for commissioning new or modified EHS equipment and decommissioning existing EHS equipment;

7. Testing of standby emergency equipment such as power generators, fire pumps and lighting as frequently as specified in the criteria for design and operation. In the absence of frequencies in the criteria for design and operation, testing shall be done weekly;

8. Training on codes and practices pertinent to the particular extraordinarily hazardous substance including materials of construction, material safety data sheets and EHS accident reports for employees assigned to perform maintenance work on equipment in extraordinarily hazardous substance service. This is in addition to the standard maintenance training existing at the site;

9. Procedures to insure that work performed by outside contractors will be done in accordance with the requirements of the preventive maintenance program;

10. Use of permits and check lists for all EHS equipment entries, lockouts, welding and burning operations.

11. Documentation and centralized filing at the site of all inspection, maintenance and testing reports, and training information; and

12. A system for maintaining accurate records of all inspections, breakdowns, repairs and replacements of EHS equipment with the means of data retrieval and analysis to perform equipment reliability studies.

(b) A tabulation of EHS equipment inspected and tested versus EHS equipment scheduled to be inspected and tested during the previous calendar year shall be prepared by the registrant, filed at the site and submitted to the responsible manager.

#### 7:31-3.7 EHS operator training

(a) The training program for EHS operators shall be written and, at a minimum, including the following:

1. A written job description which includes the duties and responsibilities for each position and the education, experience and training necessary to qualify for the position;

2. Procedures to determine whether an EHS operator has demonstrated the ability to carry out the duties and responsibilities of a specific position; and

3. Specified time periods of in-house training for each position covering orientation, specific EHS training and on-the-job training, trainee evaluation, final qualification and periodic refresher training. A procedure shall be established for tracking the progress of each EHS operator at regular intervals. In addition, the maximum period of time for each training program shall be established within which the EHS operator must achieve qualified status.

(b) The training which EHS operators will receive shall, at a minimum, include:

1. General orientation and initial training of new employees before assignment to EHS equipment and EHS procedures which shall include instruction on the general site rules and practices, safety procedures and equipment, and emergency procedures;

2. Classroom training for newly assigned EHS operators on specific EHS activities. This training shall cover the details of standard operating procedures and safety training specific to an EHS including a detailed review of the EHS material safety data sheets or fact sheets, the safe handling practices for the EHS, the hazards of the operations involving the EHS, and emergency procedures regarding fires, explosions and leaks;

3. On-the-job training for newly assigned EHS operators at the specific EHS facility shall include, but not be limited to, the following:

i. Equipment familiarization;

ii. Operating data collection and entry;

iii. Actual equipment startup and shutdown;

iv. Control and adjustment of operating conditions; and

v. The application of the standard operating procedure to actual conditions; and

4. Refresher training at least once a year which shall present an overview and updated information on the standard operating procedures, EHS material safety data sheets, safe handling of the EHS, EHS emergency procedures and review of EHS accident reports.

(c) The EHS operator's performance will be evaluated by a supervisor having operational and technical knowledge of the facility. The evaluation will be based on both oral and written tests on the standard operating procedures and a demonstration by the trainees of their ability to perform the job. The employee must qualify within the established maximum period established for training in each EHS position.

(d) The training program shall specify the qualifications required for the personnel responsible for training EHS operators.

(e) Documentation of all training, evaluations and qualifying activities for each employee shall be kept at the site.

(f) A tabulation of EHS operator training performed during the previous year shall be prepared by the registrant, filed and submitted to the responsible manager. The tabulation shall include identification of EHS operators trained, their job titles and facility designation, subjects covered and training dates.

#### 7:31-3.8 EHS accident investigation procedures

(a) There shall be written procedures for investigating all EHS accidents which shall include the following:

1. The identification by title or position of personnel responsible for investigating the accident and reporting the findings of the EHS accident investigation;

2. The schedule for initiating EHS accident investigations, key milestones and projected completion dates;

3. The preparation of a written report on all EHS accidents;

4. The record keeping requirements including a requirement to retain EHS accident reports for a minimum of six years;

5. The methods of implementing recommendations for risk reduction resulting from analysis of EHS accident investigations including:

i. Procedures for management review of EHS accident reports;

ii. Decision procedures for implementing EHS accident investigation recommendations;

iii. Procedures for establishing a timetable for implementing recommendations for risk reduction;

iv. Procedures to ensure that recommendations are implemented such as the use of status reports; and

v. Procedures for evaluating the need for employee retraining or re-assignment based on the record of employee errors; and

6. Review of EHS accident reports as part of the EHS operator training refresher course and maintenance training course.

(b) All EHS accident reports shall be written and shall include, at a minimum, the following:

1. The date, time, and location of the EHS accident;

2. The identity, amount and duration of the EHS release or potential EHS release;

3. The equipment, materials, procedures or personnel involved;

4. A detailed description of the EHS accident in chronological order providing all the facts related to the EHS accident;

5. The consequences of the EHS accident including the number of evacuees, injured and fatalities, and the impact on the community;

6. An identification of basic and contributory causes, either direct or indirect, of the EHS accident and a determination of whether it was caused by either human error or equipment failure;

7. Recommended actions to be implemented to prevent a recurrence which shall include the following, as appropriate:

i. Employee retraining and human error analysis where the accident cause was determined to be due to human error; and

ii. Equipment redesign based on considerations of state of the art or revisions of preventive maintenance procedures when the cause of the EHS accident was determined to be due to equipment failure;

8. Schedule for implementation of recommended actions; and

9. Signatures and position titles of the investigators.

(c) EHS accident investigation records shall include:

1. A separate file of all EHS accident reports for the Toxic Catastrophe Prevention Act Program;

2. A monthly list updating the implementation status of all active recommendations for corrective action;

3. An updated record of employee errors including a list of each employee by EHS facility involved in an EHS accident caused by human error; and

4. An end of year summary report which shall be prepared, filed on site, distributed to the responsible manager, and shall consist of:

i. A list containing a brief description of each EHS accident;

ii. A categorization of EHS accidents as being caused by human error or equipment failure;

iii. A schedule for implementation of corrective actions; and

iv. A statement of progress on corrective action to date.

#### 7:31-3.9 Risk assessment program for specific pieces of EHS equipment or operating alternatives

(a) A hazard analysis shall be conducted on each new EHS facility, new operating alternative and modification.

(b) A hazard analysis shall be conducted on existing EHS facilities at least once every three years.

(c) The procedure for a hazard analysis shall be a What If Checklist, HAZOP, FMEA, or FTA performed in accordance with the following:

1. The hazard analysis shall be conducted either by a team trained to perform the hazard analysis and comprised of members of the registrant's staff, an outside qualified consulting firm chosen by the registrant or by a combination thereof;

2. The hazard analysis team shall:

i. Identify possible EHS releases, the points of possible EHS releases, the corresponding approximate quantity or rate of EHS release and corresponding cause of the EHS release;

ii. Consider EHS equipment failure data and EHS accident reports of the EHS facility that have been prepared since the last hazard analysis in its identification of possible EHS releases;

iii. Determine the instances of possible EHS release on which further study by risk assessment will be performed based on the criteria set forth in (d) below:

iv. For the instances where the criteria in (d) below does not require a risk assessment, conduct a state of the art technology search from which it will recommend risk reduction measures; and

v. Recommend risk reduction measures as a result of any other findings of the hazard analysis team;

3. The hazard analysis team shall document its findings of possible EHS releases, estimates of quantity or rate of EHS releases, findings of the state of the art technology search and risk reduction recommendations. Documentation of the recommended risk reduction measures shall include an explanation of the onsite control, secondary containment or other state of the art equipment or procedures to be implemented with a schedule and the date of implementation. When state of the art technology is not used, an explanation of its exclusion shall be documented;

4. The team shall prepare a report of each hazard analysis performed on each existing EHS facility. The report shall:

i. Identify the EHS facility that is subject to hazard analysis, the procedure followed and the names, positions and affiliations of the persons who performed the hazard analysis;

ii. Identify the points of potential EHS release, and the potential cause, rate and quantity of EHS release;

iii. Include the findings of the state of the art technology search;

iv. Identify the EHS accident risks, present the risk reduction plan and the dates of implementation; and

v. Explain why an EHS accident risk is not addressed in the risk reduction plan; and

5. The team shall prepare a report of the hazard analysis performed on each new EHS facility, new operating alternative or modification. The report shall:

i. Identify the EHS facility that is subject to hazard analysis, the procedure followed and the names, positions and affiliations of the persons who performed the hazard analysis;

ii. Identify the points of potential EHS release, and the potential cause, rate and quantity of EHS release;

iii. Include the findings of the state of the art technology searches;

iv. Identify the EHS accident risks, present the risk reduction measures incorporated in the design; and

v. Explain why an EHS accident risk is not addressed by the risk reduction measures.

(d) The registrant shall perform a risk assessment on:

1. EHS equipment or operating alternatives identified by a hazard analysis as having a potential for EHS release in an amount within one hour which is equal to or greater than five times the minimum reportable quantity for the particular EHS listed in Table I of N.J.A.C. 7:31-2.3; and

2. A modification identified by a hazard analysis as having an increase in the potential for an EHS release in an amount which within one hour will be equal to or greater than five times the minimum reportable quantity established for that EHS listed in Table I of N.J.A.C. 7:31-2.3 or will be twice the potential release that existed before the modification, whichever is smaller.

(e) The registrant shall maintain at the site a written statement designating the site's procedures for risk assessment which will include the records and documentation used in risk assessment.

(f) The risk assessment shall include, but not be limited to:

1. An estimate of potential EHS release quantity;

2. A dispersion analysis;

3. A consequence analysis involving surrounding populations;

4. An estimate of the probability of EHS release occurrence or the assumption that the probability of the EHS release occurrence is 100 percent;

5. An evaluation of state of the art, including alternate processes, procedures or equipment which would reduce probability or consequences of an EHS release or control the discharge of an EHS within the facility. The evaluation of the alternatives shall be based on estimates of their respective EHS release quantity and probability of occurrence along with corresponding dispersion and consequence analyses that should be precise enough to arrive at a selection decision; and

6. Preparation of a risk reduction plan including the recommendations for remedial actions and a schedule for their implementation in each instance.

(g) The registrant shall document all estimates and analysis performed as part of the risk assessment.

(h) The registrant shall prepare a report of the risk assessment for each new EHS facility or modification. The report shall:

1. Identify the facility that is the subject of the risk assessment and the name, position and affiliation of persons who performed it;

2. Present the EHS accident risks identified, the features incorporated in the constructed facility that reflect current state of the art and the lowered possible risk commensurate with the neighboring environment;

3. Evaluate each incorporated feature of the risk reduction plan; and

4. Explain why an EHS accident risk is not addressed in the risk reduction plan.

(i) The registrant shall prepare a report of the risk assessment of each existing EHS facility which shall be kept at the site.

1. The report shall:

i. Identify the EHS facility whose equipment or procedure is the subject of the risk assessment and the name, position and affiliation of the persons who performed it;

ii. Present the EHS accident risks identified, the recommended risk reduction plan that reflects consideration of state of the art and the lowered possible risk commensurate with the environment of the site, a proposed schedule of implementation, a summary of the evaluation of each recommended item of the risk reduction plan; and

iii. Explain why an EHS accident risk is not addressed in the risk reduction plan.

(j) Each report of hazard analysis and report of risk assessment shall be submitted to the responsible manager.

(k) The responsible manager shall implement the risk reduction plan.

#### 7:31-3.10 Emergency response program

(a) Each registrant shall have an emergency response committee consisting of representatives from management, production supervision, safety and emergency services, environmental and industrial hygiene services, plant maintenance and public relations. This committee shall develop and implement the emergency response program prepared in accordance with (b) below. The program shall include an emergency response plan prepared in accordance with (c) below:

(b) Each registrant shall have a written emergency response program which shall include, at a minimum, requirements and procedures for:

1. Distribution of copies of the emergency response plan;

2. Procurement and distribution of plot plans and maps of the surrounding community;

3. Preparation and distribution of EHS material safety data sheets or fact sheets and process flow diagrams;

4. Determining the need for and arrangement of equipment capable of sensing the imminence or existence of an EHS release and of a continuously attended station where such equipment would be monitored;

5. Determining the need for and distribution of two way radio equipment;

6. Determining the need for and location of emergency lighting equipment;

7. Recording the sequence of events for each incident for which the emergency response plan is implemented and the emergency response drill involving the emergency response team by using log books or tape recorders;

8. Determining the quantity needed and distribution of:

i. Self contained breathing apparatus;

ii. Fire fighting equipment;

iii. Portable EHS gas monitors and detectors, including calibration and maintenance schedules;

iv. Emergency medical supplies; and

v. Protective clothing;

9. Emergency response training for all site employees including schedules for initial and annual refresher training in:

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- i. Alarm identification and response;
  - ii. Response to EHS release;
  - iii. Use of emergency response protective equipment; and
  - iv. Evacuation procedures;
10. Emergency response training for the site's emergency response team including a schedule for initial and annual refresher training in:
- i. Alarm identification and response;
  - ii. Response to EHS release;
  - iii. Use of emergency protective equipment;
  - iv. Rescue procedures;
  - v. Evacuation procedures;
  - vi. Medical assistance;
  - vii. Action plans for dealing with specific scenarios; and
  - viii. Specifically assigned emergency response duties;
11. Emergency response drills including, but not limited to:
- i. A schedule with a minimum of two drills per year; and
  - ii. The establishment of preplanned EHS release criteria for the drill;
12. A written assessment of the emergency response plan after each implementation or emergency response drill, including, but not limited to:
- i. The adequacy of the emergency response plan;
  - ii. The implementation of the emergency response plan;
  - iii. The performance of the site personnel and the site emergency response team;
  - iv. The adequacy of treatment of exposed personnel at the site and at offsite facilities;
  - v. The adequacy of onsite and offsite emergency response communication systems; and
  - vi. The adequacy of emergency power and lighting systems;
13. The installation, within 180 days of the operative date of this chapter, of an onsite meteorological station capable of providing, at a minimum, a continuous record of wind speed and direction;
14. The procurement, within 180 days of the operative date of this chapter, of onsite hand held or mobile EHS detection equipment where commercially available; and
15. The establishment of a program to coordinate the site's emergency response plan with the emergency response plan of the local emergency planning committee.
- (c) Each registrant shall have a written emergency response plan that includes, but is not limited to, the following:
- 1. A description and location of the extraordinarily hazardous substances at the site;
  - 2. A list, updated every six months, of the emergency response equipment and supplies and their location at the site;
  - 3. The names and titles of the site emergency coordinator and alternates selected by the registrant, who shall be responsible for emergency response coordination with State and local agencies on a 24 hour basis;
  - 4. An organization chart showing key site individuals making up the site's emergency response team with their titles, emergency positions and primary and backup telephone numbers;
  - 5. An organization chart showing offsite contract or mutual aid responders to an emergency at the site identifying their emergency roles, the respective organization, telephone numbers, the expected time it will take each responder to arrive at the site after notification and the name and title of the site person to whom each shall report;
  - 6. An organization chart showing governmental responders to an emergency at the site, identifying their emergency roles, the respective organization and the name and title of the site person to whom each shall report;
  - 7. A description of the site's emergency notification system which shall include the following requirements for reporting an emergency:
    - i. Designation of emergency operators, on a 24 hour basis, at the site or central control station, by name and title to be notified in case of an EHS release or imminent EHS release at the site, and the internal procedures to be followed in making that notification;
    - ii. Immediate notification of the Department's emergency communications center at 609-292-7172 by the emergency operator of an EHS release or imminent EHS release at the site. The notification shall include the following information:
      - (1) Name and address of site where the EHS release will or has occurred;
      - (2) Name, position, and telephone number of caller;
      - (3) The time of, or anticipated time, of EHS release and the projected duration;
      - (4) The chemical name of the EHS released;

(5) The actual quantity or, if not known, the estimated quantity and whether it will have an off-site impact; and

(6) Weather conditions, including wind direction and speed and expected off-site effects, if any;

iii. In addition to the information required by (c)7ii above, the emergency operator shall state that the notification is:

(1) An ALERT which means an EHS release is imminent and will probably occur;

(2) A SITE EMERGENCY which means an EHS release has occurred which will probably not have an off-site impact; or

(3) A GENERAL EMERGENCY which means an EHS release has occurred which will probably have an off-site impact; and

iv. The site emergency coordinator shall place a second call to the Department within 15 minutes of the first notification and provide the Department's emergency communications center with an update which shall include the following information:

(1) Name and address of site where the EHS release will or has occurred;

(2) Name, position and telephone number of caller;

(3) Location of the point of EHS release, a description of the source, cause and type of EHS release, quantity and concentration of the EHS released, and whether the EHS release is of a continuing nature;

(4) Measures taken to terminate the EHS release or to mitigate its effect, and the effectiveness of such measures; and

(5) Update on weather conditions;

8. A description of the onsite hand held or mobile EHS monitoring equipment including the procedures for their use during an emergency;

9. A description of potential EHS accidents which would have offsite impacts, and the specific procedures to be followed by the response team to mitigate the effects of the accident;

10. Procedures for timely and appropriate notification of and coordination with the emergency coordinator for local emergency planning committee;

11. Procedures for treatment of exposed personnel including first aid at the site and medical treatment at offsite medical facilities;

12. A detailed plan of evacuation of on site personnel, including but not limited to, the following:

i. On site notification procedure capable of identifying areas to be evacuated;

ii. Map exhibits of primary and alternate routes of evacuation;

iii. Designation of primary and alternate assembly areas after evacuation; and

iv. Provisions for sufficient transport vehicles; and

13. A detailed plan for reentry and site recovery including, but not limited to, procedures and equipment for the safe cleanup and decontamination of the site and removal of waste materials.

7:31-3.11 Audit requirements for risk management programs

(a) The registrant shall conduct an annual audit of its risk management program for each site to insure that all elements of the program are being planned, scheduled, updated and executed in compliance with the Act, this chapter and the approved risk management program;

(b) The registrant shall prepare written requirements for auditing which shall include, at a minimum:

1. Audit scope and procedures including:

i. Completion of risk management program checklist established in N.J.A.C. 7:31-3.14;

ii. A list of deficiencies found in completing the check list;

iii. Recommendations for remedial actions;

iv. Submission of audit report to the responsible manager; and

v. Requirements for review and implementation of remedial actions, including schedule, by the facility; and

2. The audit team shall be employees of the registrant or an independent consultant. Only a minority of the members of the audit team may be involved in the day-to-day operation or management of the EHS facility being audited.

7:31-3.12 Summary risk management program statement

(a) The summary risk management program statement shall contain:

1. An RMP description which describes each of the eight program elements of the risk management program defined in N.J.A.C. 7:31-3.3(a), which demonstrates how each program element of the registrant's RMP meets the requirements of N.J.A.C. 7:31-3.4 through 3.11. The description of each program element shall include the registrant's policies, standards and procedures for that program element and the persons or positions responsible for ensuring their implementation. The description of any

program element may reference other submittals included in the summary risk management program statement which are applicable to the particular element.

2. The reports of all safety reviews of design of new and existing EHS equipment for each EHS facility meeting the requirements of N.J.A.C. 7:31-3.4 conducted on each EHS facility during the previous two years.

3. Reports of all hazard analyses and risk assessments meeting the requirements of N.J.A.C. 7:31-3.9 performed on each existing EHS facility within the past four years;

4. A copy of the site's emergency response plan prepared in accordance with N.J.A.C. 7:31-3.10(c);

5. A catalog listing the documents required by N.J.A.C. 7:31-3.3(c), (d) and (e), and their location at the site; and

6. A completed risk management program checklist for the site prepared in accordance with N.J.A.C. 7:31-3.14.

#### 7:31-3.13 Annual reports

(a) The annual report shall contain:

1. An update of the RMP description prepared in conformance with N.J.A.C. 7:31-3.12(a) showing by additions or deletions any revisions to the risk management program;

2. A complete update of Section D of the registration form;

3. A risk management program checklist for the site, prepared in accordance with N.J.A.C. 7:31-3.14, and completed during the previous 12 months;

4. A list of all safety reviews conducted in accordance with N.J.A.C. 7:31-3.4 during the previous 12 months;

5. Reports of hazard analyses and risk assessments required by N.J.A.C. 7:31-3.9(b), conducted during the previous 12 months which have not been previously submitted to the Department;

6. A list of all hazard analyses required by N.J.A.C. 7:31-3.9(a) conducted during the previous 12 months, the report of which has not been previously submitted to the Department;

7. A copy of the changes to the site's emergency response plan implemented during the previous 12 months;

8. A copy of the end of year summary report regarding EHS accidents required by N.J.A.C. 7:31-3.8(c)4; and

9. Updated catalogs or updated pages for the catalogs prepared pursuant to N.J.A.C. 7:31-3.3(c), (d) and (e).

#### 7:31-3.14 Risk management program checklist

(a) Each registrant shall answer the questions on the Risk Management Program Checklist, DEQ-092, as set forth in Appendix I and made a part of these rules. The Risk Management Program Checklist shall be submitted:

1. As part of the registrant's initial submittal of its risk management program as required by N.J.A.C. 7:31-3.12; and

2. As part of the registrant's annual report required by N.J.A.C. 7:31-3.13.

(b) The questions shall be answered in the affirmative or the negative, and when the answer is negative the registrant shall provide an explanation using separate pages, if necessary.

### SUBCHAPTER 4. WORK PLAN REQUIREMENTS

#### 7:31-4.1 Scope and applicability

(a) This subchapter establishes the Department's minimum requirements for an extraordinarily hazardous substance risk reduction work plan.

(b) All work plans developed by the Department in conjunction with the registrant shall meet the minimum requirements of this subchapter.

#### 7:31-4.2 Purpose

This subchapter is promulgated for the purpose of reducing the risk of catastrophic releases of extraordinarily hazardous substances by establishing the minimum requirements for an extraordinarily hazardous substance risk reduction work plan.

#### 7:31-4.3 Extraordinarily Hazardous Substance Risk Reduction Work Plan

(a) Each work plan shall consist of the site data required by N.J.A.C. 7:31-4.4 and the detailed scope of work necessary to perform an extraordinarily hazardous substance accident risk assessment. The EHSARA will result in a recommended risk reduction plan that will include the deficiencies that when corrected will result in a risk management program;

(b) Each registrant's work plan shall at a minimum address each of the following:

1. Site data;

2. Scope of work with implementation schedule; and

3. Report of EHSARA including identification of findings, recommended risk reduction plan and implementation schedule.

#### 7:31-4.4 Site data

The Registrant shall submit to the Department the EHS facility documents and lists of site documents set forth in N.J.A.C. 7:31-4.7.

#### 7:31-4.5 Generic scope of work

(a) The scope of work in the work plan for each registrant required to have an EHSARA performed by a consultant or the Department shall include the following:

1. A general description of how the registrant uses EHSs at the site;

2. A requirement for the verification of the quantities and methods of handling all EHSs at the site against the registration submitted by the registrant;

3. A requirement for the following reviews and, where necessary, the completion or creation of the documents necessary to perform the reviews:

i. A process chemistry review to define all the possible chemical reactions involving EHSs at the site; and

ii. A review of EHS process flow diagrams, piping and instrument diagrams including those of process, utility or service units at the site that are interactive with the EHS piping and instrument diagrams, electrical one-line diagrams and site and plot plans for:

(1) Completeness as defined in N.J.A.C. 7:31-1.5 for each document referred to in (a)3ii above;

(2) Legibility;

(3) Uniformity of symbols;

(4) Drawing title; and

(5) Revision number and date;

4. A requirement for a safety review which shall meet the requirements of N.J.A.C. 7:31-3.4(b) and (d). In addition, the safety review shall include at a minimum the following:

i. Annotation or preparation of process flow diagrams, piping and instrument diagrams, electrical one-line diagrams and electrical area classification drawings as necessary to reflect actual conditions. The annotation of the piping and instrument diagrams shall be limited to EHS equipment, run and size of piping, location and function of instruments and location, function and size of valves;

ii. Completion or creation of the standard operating procedures necessary to comply with the requirements of N.J.A.C. 7:31-3.5;

iii. A site plan review to determine at a minimum the following:

(1) Conformance of location of the EHS equipment with the criteria for design and operation relative to parameters of flammability, reactivity and toxicity;

(2) Accessibility for operations, maintenance and emergency response including corridors, roadways and walkways; and

(3) The measures and precautions designed for the purpose of protecting the EHS facility from external forces and events and for the purpose of controlling EHS releases within the site;

iv. An electrical area classification review to determine conformance with the most current edition of the National Electrical Code, ANSI/NFPA 70-1987;

v. A review of fire water and sewer system drawings to determine if these systems as built conform with current design practices;

vi. A mechanical design review comparing the specifications of installed EHS equipment and instrumentation against current state of the art and criteria for design and operation including but not limited to:

(1) Pressure and temperature ratings;

(2) Materials of construction;

(3) Corrosion allowance;

(4) Safety relief devices;

(5) Leak tightness and pressure testing; and

(6) Potential points of EHS releases due to failure of EHS equipment, such as, seal systems, packings, sight glasses, expansion joints and rotameters;

vii. A review and detailed analysis of any EHS accidents that occurred in the past six years for the purpose of identifying problem areas;

viii. A determination of the nature and age of EHS equipment and an examination of their physical integrity by visual inspection for evidence of deterioration or distortion by processes such as corrosion, erosion, vibration and fluid leaks; and

ix. An examination of the EHS facility for evidence of inadequate equipment and piping supports;

5. A requirement for a hazard analysis meeting the requirements of N.J.A.C. 7:31-3.9 on each EHS facility using the method of analysis

specified in the work plan by the Department. The hazard analysis will determine, at a minimum, the circumstances that would have to occur in order for there to be an EHS release;

6. A requirement for risk assessments meeting the requirements of N.J.A.C. 7:31-3.9 on specific pieces of EHS equipment or operating procedures identified by the hazard analysis as having the potential to have an EHS release at least five times the reportable quantity for that particular EHS established in Table I of N.J.A.C. 7:31-2.3;

7. A requirement for a review of the registrant's preventive maintenance program by inspection of internal documents, correspondence and standard forms and by interviews with the registrant's staff, and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-3.6;

8. A requirement for review of the registrant's operator training program by inspection of internal documents, correspondence and standard forms and by interviews with the registrant's staff, and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-3.7;

9. A requirement for review of the registrant's EHS accident investigation procedures by inspection of internal documents, correspondence and standard forms and by interviews with the registrant's staff and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-3.8;

10. A requirement for review of the registrant's emergency response program by inspection of internal documents, correspondence and standard forms and by interviews with the registrant's staff and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-3.10;

11. A requirement for review of the registrant's audit program by comparing the registrant's internal documents, correspondence and standard forms with the risk management program checklist required by N.J.A.C. 7:31-3.11; and

12. A requirement for preparation and submittal of progress reports to the Department detailing the status of implementation of the scope of work at intervals to be established by the Department and included in the work plan.

7:31-4.6 EHSARA report

(a) The consultant or the Department shall, upon completion of the requirements of the scope of work, prepare an EHSARA report.

(b) The EHSARA report shall contain, but not be limited to, the following:

1. The findings of the verification required by N.J.A.C. 7:31-4.5(a)2;
2. The findings of the review required by N.J.A.C. 7:31-4.5(a)3;
3. The findings of the safety reviews required by N.J.A.C. 7:31-4.5(a)4 including any deficiencies that are identified by the reviews performed pursuant to N.J.A.C. 7:31-4.5(a)4iii through ix;

4. The reports of the hazard analyses and risk assessments required by N.J.A.C. 7:31-4.5(a)5 and 6;

5. The findings of the reviews required by N.J.A.C. 7:31-4.5(a)7 through 11; and

6. The recommended risk reduction plan including the listing of all of the deficiencies identified in (b)1 through 5 above, the remedial actions recommended to correct the deficiencies and the schedule for implementation.

(c) The report required by (a) above shall be submitted to the Department and the registrant at the same time.

7:31-4.7 Site documentation

(a) The following lists of site documents, if existing, shall be submitted by the registrant prior to the registrant's meeting with the Department to establish the work plan. Lists of documents shall be grouped by operating or utility unit or area at the EHS facility giving their document number, name, the EHS involved, most recent revision number and date, file location at the site, and code of sheet size according to ANSI Y14.1-1980 (A, B, C, D, or E) or Deutsche Institut Fuer Normung (DIN) 823-1965 (A4, A3, A2, A1, or A0):

1. Equipment list;
2. Instrument list;
3. Pipe line list;
4. List of process flow diagrams;
5. List of process chemistry documents;
6. List of piping and instrument diagrams;
7. List of site plans and topographic maps;
8. List of equipment specifications or fabrication drawings;
9. List of piping material specifications;
10. List of instrument specifications;
11. List of trip and interlock logic sheets;
12. List of electrical one-line diagrams;

13. List of electrical area classification drawings;
14. List of fire water system diagrams;
15. List of sewer system diagrams;
16. List of criteria for design and operation used at the facility;
17. List of hazard analysis reports;
18. List of emergency response program documents;
19. List of equipment testing schedules;
20. List of preventive maintenance procedure documents;
21. List of standard operating procedures;
22. List of descriptions of relief and control systems and secondary containments;
23. List of audit procedures documents;
24. List of equipment and instrumentation maintenance records including the data necessary for reliability studies;
25. List of operator training procedures;
26. List of EHS accident investigation procedures; and
27. List of safety procedures.

APPENDIX I  
NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
Division of Environmental Quality  
CN 027, Trenton, N.J. 08625  
"TOXIC CATASTROPHE PREVENTION ACT"  
RISK MANAGEMENT PROGRAM CHECKLIST

Facility Name (Full Business Name) \_\_\_\_\_

Nature of Business \_\_\_\_\_

SIC Code \_\_\_\_\_ Plant I.D. No. \_\_\_\_\_

Facility Location \_\_\_\_\_

No.		Street	
City	County	State	Zip
Lot No.		Block No.	

Facility Mailing Address \_\_\_\_\_

No.		Street	
City	County	State	Zip

Name of Responsible Manager \_\_\_\_\_

Title \_\_\_\_\_ Telephone No. (\_\_\_\_\_) \_\_\_\_\_

CERTIFICATIONS

Highest Ranking Official on Site:

I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name (Print) \_\_\_\_\_ Title \_\_\_\_\_

Principal Executive Officer, General Partner or Proprietor, Ranking Elected Official:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false information, including the possibility of fine and/or imprisonment.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name (Print) \_\_\_\_\_ Title \_\_\_\_\_

- Check One:  Initial Submittal  
 Annual Submittal—Covering Period  
from \_\_\_\_\_ to \_\_\_\_\_

RISK MANAGEMENT CHECKLIST

Questions shall be answered in the affirmative or the negative, and when the answer is negative the registrant shall provide an explanation. Use separate pages.

DOCUMENTATION

The following are the questions on supporting documentation (see N.J.A.C. 7:31-3.3):

	Yes	No	Comments
1. Is the following updated documentation including appropriate revision dates covering process information maintained at the site and available for inspection by the Department:			
i. Process chemistry and process design criteria?	_____	_____	_____
ii. Facility inventory of each extraordinarily hazardous substance?	_____	_____	_____
iii. Reports of hazards analyses, risk assessments, safety reviews and audits performed during the previous five years?	_____	_____	_____
iv. Accident investigation reports covering accidents at EHS facilities for the past five years?	_____	_____	_____
v. Process flow and piping instrumentation diagrams, with appropriate dates indicated?	_____	_____	_____
vi. Standard operating procedures?	_____	_____	_____
vii. Site wide safety procedures?	_____	_____	_____
viii. Site wide emergency response plan?	_____	_____	_____
2. Is the following updated EHS operator training documentation maintained at the site and available for inspection by the Department:			
i. Job classifications and job descriptions for EHS operators?	_____	_____	_____
ii. Description of the EHS operator training program and its records?	_____	_____	_____
iii. Annual tabulation of EHS operator training conducted?	_____	_____	_____
3. Is the following updated engineering and maintenance documentation maintained at the site and available for inspection by the Department:			
i. Topographic maps?	_____	_____	_____
ii. Site plan?	_____	_____	_____
iii. EHS equipment specifications including instrument and piping specifications?	_____	_____	_____
iv. National Electrical Code area classification diagrams for the site?	_____	_____	_____
v. EHS electrical one-line diagrams?	_____	_____	_____
vi. Fire water system piping diagrams for the site?	_____	_____	_____
vii. Sewer system piping diagrams for the site?	_____	_____	_____
viii. List of criteria for design and operation used at the site?	_____	_____	_____
ix. Preventive maintenance program, procedures and records covering EHS equipment?	_____	_____	_____
x. Annual tabulations of EHS equipment inspected and tested versus scheduled?	_____	_____	_____

SAFETY REVIEW

The following are the questions on safety review of new EHS facilities and modifications (see N.J.A.C. 7:31-3.4):

1. Are all new EHS facilities or modifications designed, installed and operated in accordance with the state of the art and criteria for design and operation?	_____	_____	_____
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2. Have the state of the art and criteria for design and operation been identified for each new EHS facility and modification, and have they been compared with the following information describing the EHS equipment and operations:			
i. Process description and process chemistry?	_____	_____	_____
ii. Process flow sheet?	_____	_____	_____
iii. Piping and instrumentation diagrams?	_____	_____	_____
iv. EHS facility location maps, site plans and equipment layout?	_____	_____	_____
v. Electrical one-line diagrams?	_____	_____	_____
vi. Electrical area classification drawing?	_____	_____	_____
vii. Specifications of safety relief devices and interlocks and controls?	_____	_____	_____
viii. Specifications for materials of construction?	_____	_____	_____
ix. EHS inventories?	_____	_____	_____
x. EHS equipment specifications?	_____	_____	_____
xi. External forces and events data?	_____	_____	_____
3. Has the identification and comparison required in 2 above been documented?	_____	_____	_____
4. Has a report of the results of each safety review of design of each new EHS facility or modification been prepared?			
i. Has each report been distributed in accordance with N.J.A.C. 7:31-2.5, 2.10 or 2.11 as appropriate?	_____	_____	_____
ii. Does each report contain a list of the criteria for design and operation upon which the design is based?	_____	_____	_____
iii. Does each report explain where the design of the new EHS facility or modification deviates from the state of the art or listed consensus standards of the criteria for design and operation?	_____	_____	_____
iv. Does each report explain the reasoning upon which an intended deviation from the state of the art or listed consensus standard is based?	_____	_____	_____
v. Does each report identify the new EHS facility or modification, the EHS equipment items reviewed, the drawings and documents reviewed, and the name, position and affiliation of the persons who performed the review?	_____	_____	_____

The following are the questions on safety review of existing EHS equipment (see N.J.A.C. 7:31-3.4):

1. Has a safety review of each existing EHS facility been performed during the past 12 months?	_____	_____	_____
2. Has each safety review included:			
i. A visual inspection of the EHS facility or review of up-to-date inspection records to determine if process flow diagrams, piping and instrument diagrams, and electrical one-line diagrams reflect actual conditions with respect to EHS equipment, runs and sizes of pipe, location and function of instruments; and location, function and size of valves?	_____	_____	_____

- ii. An inspection of the facility or review of up-to-date inspection records to determine if safety relief devices and emergency systems such as deluges, interlocks, controls, back-up systems and alarms are functioning as designed? \_\_\_\_\_
- iii. A review to determine if actual operating conditions of flow, temperature and pressure, process chemistry and raw material feeds and specifications are within the limits of the current design criteria of individual equipment items? \_\_\_\_\_
- iv. Inspections and interviews of EHS facility personnel to determine if standard operating procedures reflect actual conditions? \_\_\_\_\_
- 3. Have the deviations of procedure or EHS equipment found by each safety review been documented? \_\_\_\_\_
- 4. Have deviations found as a result of the visual inspections or reviews specified in 2i, iii and iv above been immediately discontinued? \_\_\_\_\_
- 5. Have the safety systems found to be inoperable during the inspection specified in 2ii above been immediately returned to operational status? \_\_\_\_\_
- 6. Has a report of the results of each safety review of an existing EHS facility been prepared? \_\_\_\_\_
  - i. Does each report identify the existing EHS facility, the equipment items and procedures reviewed, the drawings and documents, and the name, position and affiliation of the persons who performed the review? \_\_\_\_\_
  - ii. Has each report been distributed to the responsible manager? \_\_\_\_\_
  - iii. Does each report identify the deviations found and corresponding actions taken as the result of a safety review? \_\_\_\_\_

**STANDARD OPERATING PROCEDURES**

The following are the questions on Standard Operating Procedures (see N.J.A.C. 7:31-3.5):

- 1. Are the standard operating procedures written in plain English? \_\_\_\_\_
- 2. Are there versions of each of the standard operating procedures written in the language of fluency of EHS operators not fluent in English? \_\_\_\_\_
- 3. Is each standard operating procedure readily available to EHS operators? \_\_\_\_\_
- 4. Does each standard operating procedure include:
  - i. Simplified process flow sheets and a process description defining the operation and showing flows, temperatures and pressures? \_\_\_\_\_
  - ii. Procedures and conditions for normal operations? \_\_\_\_\_
  - iii. A description of abnormal conditions, including the control and mitigating procedures to be followed to return to normal conditions? \_\_\_\_\_

- iv. A description of emergency conditions which could occur including the control and mitigating procedures to be followed to reduce the impact of the emergency conditions? \_\_\_\_\_
- v. Pre-start procedures covering testing for leak tightness prior to charging the EHS? \_\_\_\_\_
- vi. Startup procedures including conditions to be maintained during startup? \_\_\_\_\_
- vii. Shutdown procedures including provisions for normal and emergency shutdown and details on the condition of EHS equipment to be maintained after shutdown? \_\_\_\_\_
- viii. A description of the type, location and purpose of safety relief devices, interlocks and alarms with their respective activation points indicated? \_\_\_\_\_
- ix. Sampling procedures addressing apparatus and specific steps involved in the taking of samples? \_\_\_\_\_
- x. Safety procedures related to each specific operation in the standard operating procedure? \_\_\_\_\_
- xi. Procedures to prepare EHS equipment for maintenance? \_\_\_\_\_
- xii. Material safety data sheets for each EHS used in the operation? \_\_\_\_\_
- xiii. Logsheets and checklists where appropriate to the operation? \_\_\_\_\_
- xiv. A statement as to the number of EHS operators required to meet safety need for each operation with requirements for shift coverage? \_\_\_\_\_
- xv. A requirement that an EHS operator be in attendance at the facility and be able to acknowledge alarms and take corrective action at all times during specified activities of EHS handling, use, manufacture, storage or generation? \_\_\_\_\_

- 5. Have modifications to the standard operating procedures been made in accordance with N.J.A.C. 7:31-2.11? \_\_\_\_\_
- 6. Have modifications been incorporated in the standard operating procedure before being implemented? \_\_\_\_\_
- 7. Has a current index of the standard operating procedures with corresponding latest dates of issue been maintained and filed in accordance with N.J.A.C. 7:31-3.3? \_\_\_\_\_

**PREVENTIVE MAINTENANCE**

The following are the questions for the preventive maintenance program (see N.J.A.C. 7:31-3.6):

- 1. Have the preventive maintenance program documents been written, filed at the site, and are they available for inspection by the Department? \_\_\_\_\_
- 2. Has all EHS equipment needed to be included in the preventive maintenance program been identified? \_\_\_\_\_
- 3. Have all modifications been approved and authorized by the responsible manager? \_\_\_\_\_

(CITE 19 N.J.R. 1708)

**ENVIRONMENTAL PROTECTION**

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- 4. Have the internal and external inspection of EHS equipment prescribed by the preventive maintenance program been performed as scheduled?
- i. Are the frequencies of inspection sufficient to prevent the failure of the equipment?
- 5. Have the inspections or tests prescribed by the preventive maintenance program for pressure safety devices in EHS service been performed as scheduled?
- 6. Has the safety instrumentation in EHS service been checked for proper operation, as prescribed by the preventive maintenance program?
- 7. Have the procedures for commissioning new or modified EHS equipment and decommissioning existing EHS equipment prescribed by the preventive maintenance program been followed?
- 8. Have emergency power supply systems been tested in accordance with the schedule prescribed by the criteria for design and operation?
- 9. Has the training of the employees assigned to perform maintenance work on EHS equipment been performed in accordance with the requirements of the preventive maintenance program?
- 10. Have the procedures to insure that work performed by outside contractors is done in accordance with the requirements of the preventive maintenance program been followed?
- 11. Have the permits and checklists for all EHS equipment entries, lockouts, and welding and burning operations required by the preventive maintenance program been used?
- 12. Have all inspections reports, and preventive maintenance testing and training information been filed in a centralized location as required by the preventive maintenance program?
- 13. Has the record keeping system prescribed by the preventive maintenance program been followed?

**OPERATOR TRAINING**

The following are the questions for the EHS operator training program (see N.J.A.C. 7:31-3.7):

- 1. Has the training program for EHS operators been written?
- 2. Has a job description been written for each EHS operator position which includes the duties and responsibilities, the education, experience and training necessary to qualify for that position?
- 3. Have the evaluation procedures prescribed by the EHS operator training program to determine whether an EHS operator has demonstrated the ability to carry out the duties and responsibilities of a specific position been used?
- 4. Have the time periods prescribed by the EHS operator training program for in house training for each position been followed?

- i. Has the plan established for tracking the training progress of each EHS operator at regular intervals prescribed by the EHS operator training program been followed?
- 5. Has the training EHS operators received during the previous 12 months included:
  - i. For new employees, general orientation and initial training as prescribed by the EHS operator training program?
  - ii. For newly assigned EHS operators, the training on specific extraordinarily hazardous substance activities prescribed by the EHS operator training program?
  - iii. For newly assigned EHS operators, the on-the-job training at a specific EHS facility as prescribed by the EHS operator training program?
  - iv. The refresher training prescribed by the EHS operator training program?
- 6. Have the evaluations of EHS operators included oral and written tests?
- 7. Have EHS operators qualified within the maximum periods established for training in each EHS position?
- 8. Do all personnel responsible for training and evaluating EHS operators meet the qualifications prescribed for instructors and evaluators by the EHS operator training program?
- 9. Have all training, evaluations and qualifying activities been documented as prescribed by the EHS operator training program?

**ACCIDENT INVESTIGATION**

The following are the questions for the EHS accident investigation program (see N.J.A.C. 7:31-3.8):

- 1. Have the written procedures for investigating all EHS accidents prescribed by the accident investigation program been followed for each accident?
- 2. Were the EHS investigations completed within the time frame prescribed by the EHS accident investigation program?
- 3. Is there a written accident investigation report of each EHS accident that occurred during the past 12 months?
- 4. Did management review each EHS accident report completed during the past 12 months?
- 5. Did management implement the recommendations in each EHS accident investigation report?
- 6. Is there a requirement to include the review of EHS accident reports in operator refresher training and maintenance training?
- 7. Does each EHS accident report include:
  - i. The date, time and location of the EHS accident?
  - ii. The identity, amount and duration of the release or potential EHS release?

- iii. The EHS equipment, materials, procedures and personnel involved? \_\_\_\_\_
  - iv. A detailed chronological description of the accident including all the facts related to the EHS accident? \_\_\_\_\_
  - v. The consequences of the EHS accident including the number of people injured or killed and the impact on the community? \_\_\_\_\_
  - vi. The identity of the basic and contributory causes of the EHS accident? \_\_\_\_\_
  - vii. The determination of whether the EHS accident was caused by human error or equipment failure? \_\_\_\_\_
  - viii. Recommend actions addressing human error and equipment failure to be implemented to prevent a recurrence? \_\_\_\_\_
  - ix. Schedule for implementation of recommended actions? \_\_\_\_\_
  - x. Signatures and position titles of investigators? \_\_\_\_\_
8. Do the EHS accident investigation files include:
- i. A separate file of EHS accident reports for the Toxic Catastrophe Prevention Act program? \_\_\_\_\_
  - ii. A monthly list on which the implementation status of all active recommendations for corrective action is updated? \_\_\_\_\_
  - iii. An updated list of employees involved in EHS accidents? \_\_\_\_\_
  - iv. End of year summary reports consisting, at a minimum of the following:
    - (1) A list and brief description of each EHS accident? \_\_\_\_\_
    - (2) An identification of the cause of each EHS accident as human error or equipment failure or both? \_\_\_\_\_
    - (3) A consolidated schedule of implementation and completion status covering all EHS accidents? \_\_\_\_\_

**RISK ASSESSMENT**

The following are the questions for the risk assessment program for specific pieces of EHS equipment or operating alternative (see N.J.A.C. 7:31-3.9):

- 1. Was a hazard analysis conducted on each new EHS facility, operating alternative or modification required by N.J.A.C. 7:31-2.10 and 2.11? \_\_\_\_\_
- 2. Was each EHS facility subjected to a hazard analysis during the last three years? \_\_\_\_\_
- 3. Was the procedure used for hazard analysis:
  - i. A "What If" checklist? \_\_\_\_\_
  - ii. A HAZOP? \_\_\_\_\_
  - iii. An FMEA?, or \_\_\_\_\_
  - iv. An FTA? \_\_\_\_\_
- 4. Was the qualified team which conducted the hazard analysis composed of personnel of:
  - The registrant's staff? \_\_\_\_\_
  - A consulting firm? \_\_\_\_\_
  - The registrant's staff and a consulting firm? \_\_\_\_\_

- 5. Did each hazard analysis team:
  - i. Review EHS equipment failure data and EHS accident reports of the existing facility? \_\_\_\_\_
  - ii. Identify the point of possible EHS releases, the corresponding approximate quantity or rate of EHS releases and the corresponding cause of EHS releases? \_\_\_\_\_
  - iii. Determine the instances of possible EHS releases on which further study of risk assessment must be performed using the criteria set forth in N.J.A.C. 7:31-3.9(d)? \_\_\_\_\_
  - iv. Conduct a state of the art technology search for the instances not requiring a risk assessment? \_\_\_\_\_
- 6. Did each hazard analysis team:
  - i. Document its findings of possible EHS releases, estimates of quantity or rate of EHS releases, findings of the state of the art technology search and risk reduction recommendations? \_\_\_\_\_
  - ii. Provide an explanation for the exclusion of state of the art technology from its risk reduction recommendations? \_\_\_\_\_
- 7. Did each hazard analysis team prepare a report of hazard analysis of each *existing* EHS facility?
  - i. Identifying the EHS facility that is subject to hazard analysis? \_\_\_\_\_
  - ii. Identify the procedure followed in hazard analysis? \_\_\_\_\_
  - iii. Listing the names, positions and affiliation of the persons who performed the hazard analysis? \_\_\_\_\_
  - iv. Presenting the findings of possible points of EHS release, and the corresponding causes and quantities or rates of possible EHS release? \_\_\_\_\_
  - v. Presenting the findings of the state of the art technology search? \_\_\_\_\_
  - vi. Presenting the risk reduction plan and the dates of implementation, scheduled and actual? \_\_\_\_\_
- 8. Did each hazard analysis team prepare a report of hazard analysis of *new* EHS facilities or modifications?
  - i. Identifying the EHS facility that is subject to hazard analysis? \_\_\_\_\_
  - ii. Identifying the procedure followed in hazard analysis? \_\_\_\_\_
  - iii. Listing the names, positions and affiliation of the persons who performed the hazard analysis? \_\_\_\_\_
  - iv. Presenting the findings of possible points of EHS release, and the corresponding causes and quantities or rates of possible EHS release? \_\_\_\_\_
  - v. Presenting the findings of the state of the art technology search? \_\_\_\_\_
  - vi. Presenting the risk reduction measures incorporated into the design? \_\_\_\_\_

(CITE 19 N.J.R. 1710)

ENVIRONMENTAL PROTECTION

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- 9. Have risk assessments on the new EHS equipment, operating alternatives or modifications identified by a hazard analysis as having a potential for an EHS release in an amount within one hour which is equal to or greater than five times the minimum reportable quantity for that EHS listed in Table I of N.J.A.C. 7:31-2.3 been performed?
- 10. Is a written statement defining the procedures for risk assessment including the records and documentation used in risk assessment maintained at the site?
- 11. Did each risk assessment include:
  - i. An estimate of potential EHS release quantity?
  - ii. A dispersion analysis?
  - iii. A consequence analysis involving surrounding populations?
  - iv. An estimate of the probability of the occurrence of an EHS release?
  - v. An evaluation of state of the art, including alternate processes, procedures or equipment which would reduce the risk of the probability or consequence of an EHS release?
  - (1) Are the evaluations of the alternates based on estimates of their respective EHS release quantity and probability of occurrence along with corresponding dispersion and consequence analysis precise enough to arrive at a selection decision?
  - vi. Preparation of a risk reduction plan including the recommendations for remedial actions and a schedule for their implementation in each instance?
- 12. Have all estimates and analyses performed as part of the risk assessment been documented?
- 13. Did the persons performing the risk assessment on the *new* EHS facilities or modifications prepare a report of the risk assessment?

  - i. Identifying the EHS facility that is the subject of the risk assessment?
  - ii. Listing the names, positions and affiliations of persons who performed it?
  - iii. Presenting the risks identified?
  - iv. Identifying the features incorporated in the constructed EHS facility that reflect current state of the art and the lowered possible risk commensurate with the environment of the site?
  - v. Evaluating each incorporated feature of the risk reduction plan?

- 14. Did the persons performing the risk assessment of each *existing* EHS facility meeting the criteria of N.J.A.C. 7:31-3.9 prepare a report of the risk assessment:

  - i. Identifying the EHS facility that is the subject of the risk assessment?
  - ii. Listing the names, positions and affiliations of the persons who performed it?
  - iii. Presenting the risks identified?

- iv. Recommending a risk reduction plan that reflects consideration of state of the art including a proposed schedule of implementation?
- v. Presenting a summary of the evaluation of each recommended item of the risk reduction plan?

EMERGENCY RESPONSE

The following are the questions for emergency response planning (see N.J.A.C. 7:31-3.10):

- 1. Has the approved written emergency response program been updated to reflect changes approved by the responsible manager during the past 12 months?
- 2. Has the membership of the emergency response program committee been maintained at the level required by the emergency response program?
- 3. Has the emergency response program committee maintained and updated the emergency response plan?
- 4. Have the copies of the distributed emergency response plan been maintained in an up-to-date condition?
- 5. Have up-to-date plot plans and maps of the surrounding community been distributed as prescribed in the site's emergency response program?
- 6. Have up-to-date EHS material safety data sheets and process flow diagrams been distributed as prescribed in the site's emergency response program?
- 7. Has equipment capable of sensing the imminence or existence of an EHS release been maintained in working order?
- 8. Has the two-way radio equipment been maintained in working order?
- 9. Has the emergency lighting equipment been maintained in working order?
- 10. Have the procedures for recording sequence of events during emergency conditions been utilized during the past 12 months?
- 11. Has the self-contained breathing apparatus been maintained in working order and distributed in accordance with the emergency response program?
- 12. Has the fire fighting equipment been maintained in working condition?
- 13. Have the *portable* EHS gas monitors and detectors been maintained in working conditions and calibrated in accordance with the approved schedule in the emergency response program?
- 14. Have the emergency medical supplies been inspected, maintained and, where necessary, replenished?
- 15. Has the protective clothing been inspected, maintained and, where appropriate, replaced?
- 16. Has the scheduled initial and refresher emergency response training for all site employees been performed?

- i. Did the emergency response training include:
  - (1) Alarm identification and response? \_\_\_\_\_
  - (2) Response to EHS release? \_\_\_\_\_
  - (3) Use of emergency response protective equipment? \_\_\_\_\_
  - (4) Evacuation procedures? \_\_\_\_\_
- 17. Has the scheduled initial and refresher emergency response training for the site's emergency response team been performed? \_\_\_\_\_
  - i. Did emergency response training include:
    - (1) Alarm identification and response? \_\_\_\_\_
    - (2) Response to EHS release? \_\_\_\_\_
    - (3) Use of emergency protective equipment? \_\_\_\_\_
    - (4) Rescue procedures? \_\_\_\_\_
    - (5) Evacuation procedures? \_\_\_\_\_
    - (6) Medical assistance? \_\_\_\_\_
    - (7) Training in specific assigned emergency response duties? \_\_\_\_\_
- 18. Have the two scheduled emergency response drills been performed? \_\_\_\_\_
- 19. Has there been a written assessment of the emergency response program including, but not limited to:
  - i. The adequacy of the emergency response plan? \_\_\_\_\_
  - ii. The implementation of the emergency response plan during the two drills and any emergencies that occurred during the past 12 months? \_\_\_\_\_
  - iii. The performance of the site personnel and the site emergency response team during the two drills and any emergencies that occurred during the past 12 months? \_\_\_\_\_
  - iv. The adequacy of first aid and medical treatment procedures during the two drills and any emergency that occurred during the past 12 months? \_\_\_\_\_
  - v. The adequacy of the on-and-off site emergency response communications system? \_\_\_\_\_
  - vi. The adequacy of emergency power and lighting systems? \_\_\_\_\_
- 20. Has the onsite meteorological station been properly maintained in working condition? \_\_\_\_\_
- 21. Has the site's emergency response plan been coordinated with the emergency response plan of the local emergency planning committee during the past 12 months? \_\_\_\_\_
- 22. Has a written emergency response plan been prepared in accordance with N.J.A.C. 7:31-3.10(b) and is it maintained at the site? \_\_\_\_\_
- 23. Has the list of the emergency response equipment and supplies and their location at the site been updated in the last six months? \_\_\_\_\_
- 24. Are the names and titles of the site emergency coordinator and alternates current? \_\_\_\_\_

- 25. Is the designation of emergency operators required by N.J.A.C. 7:31-3.10(b)6i current? \_\_\_\_\_
- 26. Has the Department's emergency control center been notified immediately for each EHS release or imminent EHS release at the site as prescribed by the plan? \_\_\_\_\_
- 27. Has the site's emergency coordinator placed a second call to the Department within 15 minutes of each EHS release or imminent EHS release at the site as prescribed by the emergency response plan? \_\_\_\_\_

## HUMAN SERVICES

### (a)

#### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

#### Pharmaceutical Services Manual Dispensing Fee

#### Proposed Amendment: N.J.A.C. 10:51-1.17

Authorized By: Drew Altman, Commissioner, Department of Human Services

Authority: N.J.S.A. 30:4D-3i, 30:4D-6b(6) and g(1) and (2), 30:4D-7, 7a, b and c, and 12, 30:4D-20 and 24

Proposal Number: PRN 1987-381.

Submit comments by October 21, 1987 to:

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

The agency proposal follows:

#### Summary

Pharmacies that participate in the Medicaid and/or PAAD (Pharmaceutical Assistance to the Aged and Disabled) programs are reimbursed by the following method: cost of the drug, plus a dispensing fee. This proposed amendment will raise the dispensing fee by \$0.10 (10 cents) or from \$3.53 to \$3.63. This fee increase pertains only to legend drugs.

The basis for the fee increase is the State Appropriations Act for State Fiscal Year 1988 (P.L. 1987, c.154).

#### Social Impact

There should be a positive social impact on both pharmaceutical providers and the community. The providers should continue to participate in both the Medicaid and PAAD programs, thereby enabling qualified individuals to receive necessary pharmaceutical services.

#### Economic Impact

The total cost of the fee increase has been projected to be approximately \$1.2 million. The cost to the State will be approximately \$850,000. The Federal government will contribute approximately \$350,000. The reason for the difference in Federal-State dollars is that only the Medicaid program is entitled to federal matching funds. The PAAD program is wholly State funded.

The economic impact on pharmaceutical providers who participate in Medicaid and/or PAAD will vary, depending on the number of prescriptions filled under these programs.

There will be no cost to the Medicaid patient. The PAAD beneficiary is required to pay a \$2.00 co-payment for each prescription.

#### Regulatory Flexibility Statement

This proposed amendment does not require a regulatory flexibility analysis because it does not impose any reporting, recordkeeping or compliance requirements upon small business. There are no capital costs for complying with this rule.

Pharmaceutical providers already required to keep sufficient records to fully disclose the name of the recipient to whom the service was rendered, the date of the service, the nature and extent of the service, and any additional information required by regulation (N.J.S.A. 30:4D-12(d)).

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

10:51-1.17 Legend drug dispensing fee

(a) The dispensing fee for legend drugs, dispensed by providers having Retail Permits to patients other than those in long-term care facilities, shall be \$[3.53]3.63. Additional increments shall be given to pharmacy providers who provide the following:

1.-3. (No change.)

(b) (No change.)

## (a)

### HEALTH AND LONG TERM CARE

#### Statewide Respite Care Program

#### Proposed New Rules: N.J.A.C. 10:69C

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4F-7 et seq., specifically N.J.S.A.

30:4F-12 (P.L. 1987, c.119) (effective September 11, 1987).

Proposal Number: PRN 1987-391.

Submit comments by October 21, 1987 to:

Angela R. Waff

Health and Long Term Care Unit

Department of Human Services

222 South Warren Street

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

This proposal establishes new rules to govern a Statewide Respite Care Program within the Department of Human Services. Based on the authority of N.J.S.A. 30:4F-7 et seq. (P.L. 1987, c.119), the Department of Human Services proposes this program to provide relief and support to family or other caregivers who are not remunerated for their services in meeting the demands of the daily care of frail elderly and other functionally impaired persons. The Program offers an alternative to long-term care institutionalization by encouraging families to provide care for the elderly and disabled persons at home. In accordance with N.J.S.A. 30:4F-12, the proposal provides for a sliding fee scale, based on income and ability to pay; standards for eligibility for respite care service; target populations and situations to be given priority in receiving services; qualifications and requirements of sponsors and providers; provider reimbursement and payment levels; service and cost limitations; and reporting procedures.

#### Social Impact

The proposed new rules will have a positive impact on the lives of elderly and functionally disabled individuals in New Jersey and their caregivers. This program will provide a means by which families can keep their elderly and disabled family members at home for a longer period of time, thus keeping them out of institutional care.

The proposed rules will contribute to services for all functionally impaired persons aged 18 years or older who are living at home. It is expected that the proposed rules will implement a program that will provide relief to families throughout New Jersey's 21 counties.

#### Economic Impact

No adverse economic impact is anticipated from the proposed new rules. The full cost of the program has been appropriated through legislation, of which 10 percent has been designated for administrative expenses. Any other costs incurred in administering the program will be absorbed by the Department of Human Services' general budget.

The economic impact on the individuals targeted for service through this Program is anticipated to be a positive one. Those individuals will be able to remain in their own homes for greater lengths of time, thus avoiding expensive institutional care. This will then also have a positive

impact on the families, preventing unnecessary depletion of family resources for institutionalized care and the daily stress of caring for an elderly or disabled person.

The providers of services will also realize a positive economic impact through their reimbursement rates, which will allow them to hire additional staff to provide services. The jobs created will also provide further economic benefit to the general public.

#### Regulatory Flexibility Statement

The proposed new rules do not impact small businesses; therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows.

### CHAPTER 69C

#### STATEWIDE RESPITE CARE PROGRAM

##### SUBCHAPTER 1. GENERAL PROVISIONS

###### 10:69C-1.1 Purpose

Pursuant to N.J.S.A. 30:4F-7 et seq., the Department of Human Services intends to use the Statewide Respite Care Program to provide relief and support to family or other uncompensated caregivers from the demands of the daily care of frail elderly and other functionally impaired persons.

###### 10:69C-1.2 Scope of service

(a) This chapter shall apply to all activities and persons participating in the Statewide Respite Care Program, including but not limited to applicants, recipients, caregivers and sponsors.

(b) Pursuant to N.J.S.A. 30:4F-7 et seq., the New Jersey Statewide Respite Care Program is limited to the provision of and payment for short-term, intermittent respite care for frail elderly and functionally disabled adults.

###### 10:69C-1.3 Target population; priority of services

(a) The target population is limited to those individuals providing the basic, daily care of the eligible person, who are at risk of severe illness, fatigue, or stress due to the demands of their caregiving responsibilities.

(b) Situations to be given priority in receiving services are those where the eligible person is at risk of institutionalization due to incapacity of a caregiver.

###### 10:69C-1.4 Definitions

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

"Caregiver" means a spouse, parent, child, relative, or other person who is 18 years of age or older and who has the primary responsibility of providing daily care for the eligible person and who does not receive financial remuneration for the care.

"Co-payment" means financial participation in service costs by the eligible person according to a sliding fee scale.

"Companion and sitter services" means a non-medical, basic supervision service which is provided for the eligible person in his or her home on a short-term, intermittent basis. Companion and sitter services are intended for those eligible persons who do not require any personal care assistance, medical assistance, or housekeeping services during the time when respite care services are provided.

"Department" means the New Jersey Department of Human Services.

"Eligible person" means a functionally impaired person 18 years of age or older who would be at risk of long-term institutional placement if his or her regular caregiver could not continue in that role without the assistance of temporary home and community support services, including respite care.

"Emergency care" means providing respite care in the case of a sudden or unexpected event that impairs the ability of the caregiver to continue in that role. Such circumstances include, but are not limited to, sudden illness of a caregiver, the caregiver's spouse or children; a natural disaster; a death in the family of the caregiver; or an accident affecting the caregiver, the caregiver's spouse, or the caregiver's children.

"Functionally impaired" means the presence of a chronic physical or mental disease, illness, or disability as certified by the physician or a sponsor-provided assessment team, which causes physical dependence on others, and which leaves a person unable to attend to his or her basic daily needs without the substantial assistance or continuous supervision of a caregiver.

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"Home health services" means the provision of services by a licensed home health agency which may include skilled nursing care, homemaker/home health aide service, physical, occupational, medical social services, and speech/language pathology services. Covered home health services are provided according to medical, nursing, and other health-related needs, as documented in the individual service plan.

"Homemaker services" means services which include personal care, household tasks, and activities provided to recipients in their homes by a homemaker or home health agency.

"Medical day care" means a program of medically supervised, health and health related services provided in an ambulatory care center to persons who are nonresidents of that center.

"Peer support" means the provision of mutual support services for caregivers involved in the Statewide Respite Care Program. The sponsor agency selected in each county is responsible for setting up a program of peer support.

"Personal care" means the provision of services to assist a person to provide for his or her personal needs (that is, eating, grooming, hygiene, toileting) and activities of daily living.

"Provider" means a person, public agency, private nonprofit agency, or proprietary agency which is licensed or certified or otherwise approved by the Commissioner to supply any service or combination of services described under "respite" as defined below.

"Respite" or "respite care" means the provision of temporary, short-term care for, or the supervision of, an eligible person on behalf of the caregiver in emergencies or on an intermittent basis to relieve the daily stress and demands of caring for the functionally impaired adult. Respite may be provided hourly, daily, overnight, or on weekends and may be provided by paid or volunteer staff. The term includes, but is not limited to, companion or sitter services, homemaker and personal care services, adult day care, short-term inpatient care in a facility licensed or certified to provide intermediate care or skilled nursing care, emergency care, and peer support and training for caregivers.

"Service plan" means a written document agreed upon by the eligible person, the caregiver, and the sponsor which specifies the type(s), frequency, and duration of services to be provided. The service plan shall take into account other services available to the eligible person and his or her caregiver.

"Social adult day care" means a program, for six or more people, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or younger disabled adults who need care in a group setting outside the home.

"Sponsor" means a county or regional agency, either public or private non-profit, which contracts with the Department of Human Services to administer the local program and arranges for services for eligible applicants after making an eligibility determination.

## SUBCHAPTER 2. ADMINISTRATIVE ORGANIZATION

### 10:69C-2.1 Department of Human Services

The Department of Human Services is the administrative unit of the State government which has control over the administration of the Statewide Respite Care Program. Under the terms of N.J.S.A. 30:4F-7 et seq., the Department is responsible for the general policies governing administration of the New Jersey Statewide Respite Care Program, for effecting the issuance of rules and procedures in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) for implementing the statutory provisions and for statewide coordination of the program.

### 10:69C-2.2 County administration

The Human Service Advisory Council in each county shall be responsible for choosing the sponsor agency in its respective county subject to confirmation by the Department. The sponsor agency shall administer the Statewide Respite Care Program in that county and process applications for services.

## SUBCHAPTER 3. APPLICATION PROCESS

### 10:69C-3.1 General provisions

(a) The application process includes all activity related to a request for eligibility determination under the Statewide Respite Care Program. The process begins with the receipt of an application by a sponsor agency and continues in effect until there is an official disposition of the eligibility request from that sponsor agency.

(b) All applications for eligibility determination shall be made with the sponsor agency in each county. The sponsor agency shall make a determination of eligibility and perform appropriate assessments within 30 days after the receipt of an application.

### 10:69C-3.2 Authorized agent

(a) Where the eligible person is incompetent or incapable of filing an eligible application on his or her own behalf, the sponsor agency shall recognize any of the following persons, listed in order of priority, as an authorized agent for the purpose of initiating such application:

1. A close relative of the eligible person by blood or marriage, such as parent, spouse, son, daughter, brother or sister;
2. A representative payee designated by the Social Security Administration;
3. A staff person of a public or private social service agency, of which the person is a client, who has been designated by the client to so act; or
4. A friend of the eligible person.

### 10:69C-3.3 Responsibilities in the application process

(a) Pursuant to statutory authority, the Department of Human Services establishes procedures for the application process consistent with law and supervises the operation with the policy and procedures so established.

(b) The sponsor has the responsibility in the application process to:

1. Explain the purposes and eligibility requirements of the program and indicate the applicant's rights and responsibilities under its provisions;
2. Process applications; and
3. Maintain files including applications and supporting documents for all applicants.

(c) The applicant has the responsibility to:

1. Complete the eligibility application forms truthfully, legibly, and accurately; and
2. Assist the sponsor agency in obtaining documentation that supports statements made on the eligibility application, when required.

(d) The beneficiary has the responsibility to notify the sponsor agency whenever one of the following occurs:

1. He or she moves out of the State of New Jersey;
2. His, her or their annual income changes to an amount that will change their eligibility for services or their co-payment requirement;
3. His or her marital status changes; or
4. He or she moves anywhere within the State of New Jersey.

## SUBCHAPTER 4. ELIGIBILITY

### 10:69C-4.1 Eligibility standards

(a) For the purposes of the Statewide Respite Care Program, an eligible person shall meet the following eligibility standards:

1. An eligible person shall be 18 years of age or older, functionally impaired, and being cared for at home by a caregiver who is not remunerated for his or her services; and is at risk of long-term institutional placement if his or her regular caregiver could not continue in that role;
2. The maximum income level, not including the income of the spouse or family of the individual, shall be 300 percent of the Federal Supplemental Security Income standard for an individual living alone, in effect under section 1611(a)(1)(A) of the Social Security Acts (as increased pursuant to section 1617 of such Act). In the case of an individual and a spouse who are both dependent on the caregiver, the couple's combined income shall be subject to this same income standard; and
3. The eligible person shall be a resident of the State of New Jersey.

### 10:69C-4.2 Confidentiality and disclosure of information

(a) All personally identifiable information regarding applicants or beneficiaries obtained or maintained under the Statewide Respite Care Program shall be confidential and shall not be released without the written consent of the applicant or beneficiary or their authorized agent.

(b) The prohibition against unauthorized disclosure in (a) above shall not be construed to prevent:

1. The release of statistical or summary data or information in which applicants or beneficiaries cannot be identified.
2. The release to the Attorney General, or other legal representative of the State, of information or files relating to the claim of any applicant, beneficiary, or their authorized agent challenging the program's statute, rules, or a determination made pursuant thereto, or against whom an action or proceeding for the recovery of incorrectly paid benefits has been instituted.
3. The release of information or files to the State Treasurer or other governmental agency, or to their duly authorized representatives, for an audit, review of expenditures or similar activity authorized by law.
4. The release of information or files to any law enforcement authority charged with the investigation or prosecution of violations of the criminal laws of this State.

10:69C-4.3 Primary and secondary payment

If an eligible person's respite service costs are covered in whole or in part by another State or federal government program or insurance contract, the government program or insurance carrier shall be the primary payer and the Statewide Respite Care Program shall be the secondary payer.

SUBCHAPTER 5. SPONSORS AND PROVIDERS

10:69C-5.1 Qualifications and requirements of sponsors

(a) The Commissioner shall designate one sponsor agency for the Statewide Respite Care Program in each county in New Jersey, subject to the following qualifications:

1. A sponsor agency shall be a public or private nonprofit agency and shall contract annually with the Department of Human Services to administer the local respite program.

2. Each sponsor agency shall demonstrate its ability to purchase respite services from provider agencies and individuals in the county and shall provide evidence of its capability to deliver the full range of respite services mandated by the program. These respite services shall include, but not be limited to, companion or sitter services, homemaker and personal care services, adult day care, short-term inpatient care in a facility meeting standards for licensing or certification as a skilled nursing or intermediate care facility, emergency care, and peer support and training for caregivers.

(b) Each sponsor agency shall satisfy the following requirements:

1. Annually determine the maximum number of eligible persons to be served in its respective county based on the financial allocation made by the Department of Human Services. The sponsor shall not admit or serve more eligible persons than can be afforded with available resources.

2. Maintain a waiting list of those persons eligible for respite care, but not able to receive it.

3. Determine sources of payment for respite services for each eligible person, for collecting all co-payments through retrospective billing, and for determining the eligibility of all individuals who apply for services under the Statewide Respite Care Program.

4. Verify the income of each eligible person applying for services under the Statewide Respite Care Program to determine the eligible person's ability to contribute to the cost of the respite services. This income verification shall be determined on an annual basis, or sooner if circumstances change.

5. Develop a Service Plan for each person served under the Statewide Respite Care Program.

6. Submit monthly statistical and/or financial reports on the respite program in its respective county to the Department of Human Services.

7. Agree to comply with the program rules contained in this chapter.

(c) Any breach of contract provisions or of (a) and (b) above by the sponsor agency may constitute grounds for contract cancellation upon reasonable notice of such by the Department of Human Services.

10:69C-5.2 Qualifications and requirements for provider agencies

(a) Provider agencies in each county shall be accountable to the sponsor agency for the provision of respite services and shall enter into contracts with the designated sponsor agency.

(b) Provider agencies shall have demonstrated prior experience in delivering services to families with elderly and/or disabled members.

(c) Provider agencies shall agree to provide services at the rates set by the Department of Human Services unless negotiated rates are clearly allowed in the rate schedule.

(d) Provider agencies shall submit monthly reports to the sponsor agency in their county to comply with state and federal requirements.

(e) An individual desiring to provide services under the Statewide Respite Care Program shall enter into a sub-contract with the sponsor agency as a provider and be subject to all requirements of provider agencies.

(f) All individuals providing respite care which includes home health or homemaker aide services shall be certified home health/homemaker aides.

(g) The sponsor agency and/or the Department of Human Services shall reserve the right to cease purchasing services from any provider agency when any breach of the rules contained in this chapter occurs, constituting grounds for contract cancellation upon reasonable notice.

SUBCHAPTER 6. FEES

10:69C-6.1 Provider reimbursement and payment levels

(a) The Department of Human Services shall determine reimbursement and payment levels for the respite services to be provided under the

program. The reimbursement rates and payment levels shall be reviewed semiannually to determine appropriateness and compatibility with rates paid for similar services provided under other respite programs.

(b) Reimbursement levels for services provided under the Statewide Respite Care Program shall be those levels used by the Division of Medical Assistance and Health Services for Medicaid reimbursements for homemaker, home health aide, and personal care assistant services, N.J.A.C. 10:60-2.2(f)1.i.-ii.; nursing home and hospital inpatient care, N.J.A.C. 10:63-1.7(a) and N.J.A.C. 8:1-1 et seq.; and medical day care, N.J.A.C. 10:65-2.1(a)2.

(c) Reimbursement for companion and sitter services shall be up to \$5.00 per hour for services rendered on weekdays and \$6.00 per hour for services rendered on weekends.

(d) Reimbursement for social adult day care shall be up to \$20.00 for a full-day session.

(e) Reimbursement for emergency care shall be based on the type of service received and shall be the reimbursement level for that service under non-emergency circumstances.

10:69C-6.2 Service and cost limitations for eligible persons

(a) For the first year of the Statewide Respite Care Program, each eligible person shall receive not more than \$1200.00 of respite services. These service levels shall be adjusted based on funding available to the Department of Human Services.

10:69C-6.3 Sliding fee scale for co-payments

(a) The Department of Human Services shall establish a sliding fee schedule for co-payments by eligible persons. This fee scale shall be based on the eligible person's income and on other resources available to the eligible person to pay for respite services. The sliding fee scale shall be reviewed on an annual basis by the Department of Human Services. If any changes to the fee scale are deemed necessary, the Department shall publish the proposed changes in the New Jersey Register.

(b) The sliding fee schedule shall be as follows:

Monthly income	Percent of service costs to be paid by the eligible person
below \$371.00	0%
371.00- 459.99	1%
460.00- 499.99	5%
500.00- 539.99	10%
540.00- 579.99	15%
580.00- 619.99	20%
620.00- 659.99	25%
660.00- 699.99	31%
700.00- 739.99	37%
740.00- 779.99	43%
780.00- 819.99	50%
820.00- 859.99	55%
860.00- 899.99	60%
900.00- 939.99	65%
940.00- 979.99	70%
980.00-1020.00	75%
over 1020.00	100%

(c) All co-payments shall be collected by the sponsor agency retroactively within six weeks after the provision of the services prescribed by the service plan.

10:69C-6.4 Procedures for reporting on implementation of program

(a) Each sponsor agency shall file monthly reports to the Department of Human Services on forms supplied by the Department of Human Services containing the following information:

1. The number of eligible persons served by all provider agencies in the county;
2. The number of hours of respite care provided per type of respite care to all eligible persons in the county;
3. Financial data on the administration of the program;
4. Financial data on the services provided; and
5. Other information necessary for successful evaluation of the program.

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 21, 1987

(a)

**DIVISION OF PUBLIC WELFARE****General Assistance Manual  
Emergency Assistance****Proposed Amendments: N.J.A.C. 10:85-4.6**Authorized By: Drew Altman, Commissioner, Department of  
Human Services.

Authority: N.J.S.A. 44:8-111(d), 122, and 124.

Proposal Number: PRN 1987-390.

A **public hearing** concerning this proposal will be held on October 6,  
1987 at the following location and times:War Memorial Ballroom  
West Lafayette Street Entrance  
Trenton, New Jersey  
12:00 noon—4:30 P.M.  
6:00 P.M.—8:00 P.M.**Individuals interested** in testifying at the hearing must advise the  
Division of Public Welfare, Mercerville, New Jersey by telephone at (609)  
588-2296 no later than 12:00 noon on October 5, 1987 and provide their  
name(s), organization represented, and telephone number. Interested  
speakers will be limited to 10 minutes of oral testimony. **Interested parties**  
may submit written testimony at the hearing.

Submit comments by October 21, 1987 to:

Marion E. Reitz, Acting Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendments to N.J.A.C. 10:85-4.6 expand the provision of Emergency Assistance (EA) for individuals and couples served under the terms of the General Assistance (GA) program. The proposed amendments are similar to those proposed for emergency assistance governing family cases, using standards of the Aid to Families with Dependent Children (AFDC) program, published in the July 6, 1987 issue of the New Jersey Register at 19 N.J.R. 1171(b). They are also being proposed in response to the decision of the Appellate Division of the New Jersey Superior Court in *Rodgers et al. v. Gibson et al.*, Docket No. A-3076-86T5, which modifies the emergency assistance provisions for the GA program to parallel revisions made for AFDC program related cases in compliance with the Superior Court decision of February 3, 1987 set forth in *Maticka*. Specifically, individuals who lack realistic capacity to plan in advance for a foreclosure or eviction would be eligible for EA even though they may have had advance notice of impending homelessness. "Realistic capacity" is defined. Payments of up to two months for rent or mortgage arrears are authorized when such payments will prevent an eviction or foreclosure. Payments are also authorized for up to three calendar months for emergency shelter where there is actual eviction, foreclosure, or loss of prior permanent housing. Rules for the authorization of payments for moving expenses, advance rent, and security deposits, are made clear. Client responsibility in the search for permanent shelter is defined. The time limit for filing for benefits following the onset of homelessness is expanded from seven to 30 days prior to the date of application for GA. Municipal welfare departments are also authorized to extend payments for temporary shelter for two additional months, a total of up to five months, for persons for whom personal efforts, together with those of the municipal welfare agency, to locate permanent shelter have not been successful. Acceptable reasons for continuation include, but are not limited to, the inability to search for shelter because of the illness or incapacity of the client or of another person which requires the presence of the client at home, or a delay in the availability of a shelter which has been located. Services to be provided by the municipal welfare department are also listed in the proposed amendments.

The two programs, GA and AFDC, have different statutory bases, operate with different eligibility requirements, and serve different groups of people. For those reasons, the GA regulations addressing EA are not identical to those presented in AFDC. Differences arising solely from formatting variations in the regulatory schemes of the two programs are not detailed here.

AFDC offers an exception to the requirement for "deprivation", a term used in that program to describe the condition of children who lack the

care and support of parents. There are very few children on the GA rolls and those are not subject to such an eligibility requirement. Hence, that exception is not needed and is omitted.

AFDC offers an exception to the requirement for enumeration, the system which uses Social Security numbers in case identification. While GA seeks Social Security numbers and uses them in identification, the requirement cannot produce a delay in grant as it can in AFDC. The exception for GA is, thus, not necessary and is omitted.

AFDC offers an exception to the requirement for evaluation of legally responsible relatives. The absolute connection between assistance eligibility and firm requirements of the Child Support and Paternity Program does not exist in GA as it does in AFDC. In GA the evaluation is required but cannot cause a delay in grant as it can in AFDC. Again, that exception is not necessary and is omitted.

These proposed GA rules expand to 30 days the allowable time period between the onset of an emergency and the date of application filing, while the proposed amendments to N.J.A.C. 10:82-5.10 currently limit the time period between the onset of an emergency and the date of filing an application for EA to 10 days. The time limit, however, is subject to further Departmental review.

AFDC specifies an authorization period of 30 days following the filing of an application. The specification was necessary in order to comply with Federal requirements. Because GA is a non-federally funded program, that restriction was not necessary and is omitted.

The AFDC regulation specifically precludes grants of Emergency Assistance when the need for such arose from a refusal without good cause to accept employment or training for employment. That requirement is based on Federal provisions. GA, not being federally funded, is not bound by those provisions. The work requirements of the GA program are an integral part of the basic eligibility determination process, are detailed elsewhere, and are omitted as unnecessary as a part of the Emergency Assistance regulation. On balance, the General Assistance provision is somewhat less restrictive than the AFDC counterpart.

AFDC carries special provisions for cases in which the Division of Youth and Family Services is involved. There being few, if any, children in the GA caseload, that provision is unnecessary and is omitted. The provision for offering help in location of child care services is omitted for the same reason.

The GA program contains a requirement for a monthly review of eligibility. That requirement is mandated by statute at N.J.S.A. 44:8-118(c). The AFDC program has no comparable feature. The time periods between client contacts with the agency thus tend to be shorter in GA and the reminders about client responsibility for seeking housing are thereby offered more frequently. The signed statement about that responsibility could thus be omitted in GA.

Similarly, it is expected that GA recipients will, through personal efforts and those of the municipal welfare agency, be able to secure permanent housing much sooner than will AFDC recipients. GA clients, lacking child care responsibility, can be more mobile in the search for housing and they are not seeking the larger size units which are required to avoid the breaking up of families with children. For that reason, in GA, the active search for permanent housing is a requirement for the ongoing receipt of EA for the second through the fifth month. The use of the already existing monthly redetermination for monitoring allows for efficient implementation of the requirement with minimum inconvenience for the client and for the agency.

These rules are proposed not only in recognition of *Maticka* and *Rodgers*, but also in response to the changing nature of the emergency situations faced by public assistance recipients who find themselves without adequate housing. The State, and in fact the entire country, is suffering from an intensifying shortage of housing affordable to low-income people. It is not the purpose of these amendments to resolve the shortage, nor can this Department working alone hope to accomplish this. For that reason, the broadest possible input is sought in the development of this proposal. For the *Maticka* hearings, in addition to the usual notices to public welfare agencies, requests for testimony were sent to over 120 others, largely agencies and organizations concerned with the problems of the low-income homeless. It is expected that mailings for the proposed amendments will be much broader. It is further anticipated that those outreach efforts will serve to enhance the coordination between the public assistance agencies and the other interested persons and organizations in order to make the best possible use of the resources available, both public and private.

**Social Impact**

The proposed amendments will address the critical situation of homelessness among low income individuals. The expanded eligibility criteria will have a positive social impact. Homeless recipients will be provided temporary shelter for a longer period during which the search for permanent housing can take place. In addition, the proposed amendments will assist individuals and childless couples in retaining their current housing in court-ordered or actual eviction for nonpayment of rent cases or in foreclosure situations. The expanded time frame between occurrence of homelessness and application for EA will ensure that such persons are not denied assistance merely because they had no opportunity to make the emergency known to the municipal welfare department within the current seven calendar day provision. Clarification of the services available under emergency assistance funding and the expanded coverage of EA will redirect EA toward permanent rather than short-term solutions to problems of homelessness.

**Economic Impact**

The proposed amendments will result in additional expenditures of State and local assistance. Approximately 625 GA recipients per year are estimated to require temporary shelter or payment of back rent or mortgage payments. Of those requiring temporary shelter, some will also require security deposits for rent and/or utilities, advance rent, and moving expenses when permanent housing is secured. The total annual cost of assistance for such emergency payments is estimated at \$1,531,250, representing \$1,148,438 in State funds and \$382,813.00 in municipal funds.

**Regulatory Flexibility Statement**

This proposal has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169, effective December 4, 1986. This proposed amendment imposes no compliance requirements on small businesses.

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

## 10:85-4.6 Emergency grants

(a) An emergency grant shall be authorized to or for an individual(s) otherwise eligible to receive General Assistance under the regulations in this manual when circumstances set forth in (a)1-2 below exist. In addition, these regulations shall apply to an emergency (as described in (a)1-2 below) which occurred within the [seven] **30** calendar days immediately prior to the application for General Assistance if the applicant(s) is determined eligible at the time of application under established procedures and standards.

1. Fire or natural disaster: **When [T]here has been substantial loss of shelter, food, clothing and/or household furnishings by fire, flood or other similar [natural] disaster, and the eligible individual(s) is in a state of homelessness and the director determines that the provision of one or more of these basic needs is essential for the health and safety of the individual [; or].**

2. Situation beyond client's control: Because of an emergent situation over which the individual had no control or opportunity to plan in advance, he or she is in a state of homelessness, and the municipal welfare director determines that provision of shelter, food, clothing, or minimum essential house furnishings are necessary for the health and safety of the individual:]

[i.]2. Domestic violence: The state of homelessness may result from imminent or demonstrated violence which imperiled the health and safety of the individual or eligible unit.

3. **When there is an order from a court for eviction or foreclosure, an actual eviction or foreclosure has occurred, or when prior permanent shelter is no longer available, and the eligible individual(s) demonstrates a lack of realistic capacity to plan for substitute housing as defined in iii. below, emergency assistance shall be authorized in accordance with i. and ii. below.**

i. **Payment may be authorized for two calendar months of retroactive rental or mortgage payments if it will prevent actual eviction or foreclosure.**

ii. **In situations of homelessness due to actual eviction or foreclosure or when prior payment shelter is no longer available, payment shall be authorized for emergency shelter in accordance with (b)1. below.**

iii. **Lack of realistic capacity: Lack of realistic capacity to plan for substitute housing exists in the following circumstances:**

(1) **When the eligible person(s) can demonstrate that there was insufficient time to secure substitute housing between receipt of notice of imminent loss of shelter and actual eviction, foreclosure or loss of prior permanent shelter; or,**

**(2) When the eligible person(s) can demonstrate that available funds were exhausted in payment of ordinary and necessary household and living expenses, such as food, clothing and shelter, and that payment of such expenses resulted in homelessness.**

(b) Standards for emergency grants are:

1. Emergency shelter: [When an actual state of homelessness exists or is manifestly imminent in accordance with (a)1 or (a)2 of this section,] [the]The authorized payment shall be the actual cost of adequate emergency shelter arrangement, at the most reasonable rate available, for a specified temporary period not to exceed the two calendar months following the month in which the state of homelessness first becomes known to the municipal welfare department. **Such emergency shelter need not be located in the municipality in which the eligible person(s) currently resides.**

[i. Payment may be authorized for security deposits for rent and/or utilities when the municipal welfare director determines it is necessary to establish the client in a new permanent living arrangement.]

[ii.]j. The regular grant of assistance (including calculated earned income and exempt income) is not to be counted in the determination of eligibility for or the amount of emergency assistance payments authorized for temporary emergency shelter.

(1) When plans for more permanent living arrangements are made, any funds actually available to the clients are to be counted in the determination of emergency assistance payments for shelter, utility deposits, **moving expenses, furniture and appliances.**

ii. **Client responsibility: While receiving emergency assistance for temporary shelter, eligible persons have a continuing responsibility to seek alternative permanent shelter. The eligible persons are also responsible for documenting their efforts in locating alternative permanent housing. The efforts are to begin no later than the 11th day after the date on which the agency became aware of the emergency. Such documentation must reflect at least 10 contacts per week unless the agency determines that fewer contacts are appropriate or that good cause, for example, illness or incapacity, exists for fewer contacts. Contacts may be made by telephone, personal visit, or a combination of both. Documentation consists of a written record showing:**

- (1) **Date of contact;**
- (2) **Telephone number (if applicable);**
- (3) **Address (location) of housing site; and**
- (4) **Name of person contacted (landlord or agent).**

iii. **Each person receiving emergency assistance for temporary shelter shall present the record of contacts at each monthly review of eligibility and at such other times as may be required by the agency.**

iv. **If the municipal welfare agency locates suitable permanent housing of sufficient size, not necessarily in the municipality of prior residence, the client must accept the arrangement. Refusal to relocate without good cause renders the person ineligible for further emergency assistance for temporary shelter. Good cause may include, but is not limited to, the need to travel more than one hour each way to and from a place of employment by public or private transportation.**

v. **In situations where the municipal welfare agency determines that, despite efforts of both the client and the agency, permanent living arrangements are unavailable at the expiration of the initial emergency assistance period, an extension for up to two additional months may be authorized under conditions including but not limited to, the following:**

(1) **Illness or incapacity of the client or of another person which requires the client's presence in the home on a substantially continuous basis, and no other person is available to seek permanent shelter;**

(2) **Permanent housing has been secured but will not be available until after the expiration of the initial emergency assistance period;**

vi. **Payment may be authorized for moving expenses, advance rent and security deposits for rent and/or utilities when the municipal welfare director determines it is necessary to establish the client in a new permanent living arrangement.**

2.-4. (No change.)

(c)-(e) (No change.)

(f) **Services: The following services shall be performed by agency personnel and must, where appropriate, be provided to all cases granted emergency assistance benefits:**

1. **Information;**
2. **Referral;**
3. **Counseling;**
4. **Assistance in securing shelter, including transportation; and**
5. **Referral for legal services.**

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 21, 1987

**CORRECTIONS****THE COMMISSIONER**

The following proposals are authorized by William H. Fauver, Commissioner, Department of Corrections.

Submit comments by October 21, 1987 to:

Elaine W. Ballai, Esq.  
Special Assistant for Legal Affairs  
Department of Corrections  
CN 863  
Trenton, New Jersey 08625

**(a)**

**Security and Control  
Use of Personal Firearms and Use of Force While  
Off-Duty**

**Proposed New Rule: N.J.A.C. 10A:3-4.1**

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

Proposal Number: PRN 1987-383.

The agency proposal follows:

**Summary**

The proposed amendment modified N.J.A.C. 10A:3-4.1(b) to permit Superintendents and Assistant Superintendents of additional correctional facilities to be placed on the list of persons with Department of Corrections titles who can be sworn as peace officers and carry firearms while off-duty.

**Social Impact**

The proposed amendment will have no significant social impact since it merely adds several Superintendents and Assistant Superintendents to the list of persons with Department of Corrections titles who can be sworn as peace officers and carry firearms while off-duty.

**Economic Impact**

The proposed amendment will have no significant economic impact because additional funding is not necessary to implement or maintain the amended rule.

**Regulatory Flexibility Statement**

The proposed amendment impacts upon the Department of Corrections. Since small businesses are not affected by this proposed amendment, a regulatory flexibility analysis is not required.

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

10A:3-4.1 Who may carry firearms while off-duty

(a) (No change.)

(b) **Persons with the** [The] following Department of Corrections titles may be sworn as peace officers:

Commissioner  
Deputy Commissioner  
Assistant Commissioner—Division of Adult Institutions  
Administrator (Superintendent)—State Prison, Trenton  
Associate Administrator (Assistant Superintendent)—State Prison, Trenton  
Assistant to the Superintendent—State Prison, Trenton  
Administrator (Superintendent)—State Prison, Rahway  
Associate Administrator (Assistant Superintendent)—State Prison, Rahway  
Assistant to the Superintendent—State Prison, Rahway  
Administrator (Superintendent)—State Prison, Leesburg  
Associate Administrator (Assistant Superintendent)—State Prison, Leesburg  
Assistant to the Superintendent—State Prison, Leesburg  
Superintendent—Mid-State Correctional Facility  
Assistant Superintendent—Mid-State Correctional Facility  
Assistant to the Superintendent—Mid-State Correctional Facility  
Superintendent—Correctional Institution for Women, Clinton  
Assistant Superintendent—Correctional Institution for Women, Clinton  
Assistant to the Superintendent—Correctional Institution for Women, Clinton  
Superintendent—State Prison, Riverfront

Assistant Superintendent—State Prison, Riverfront  
Administrator (Superintendent)—Youth Reception and Correction Center, Yardville  
Associate Administrator (Assistant Superintendent)—Youth Reception and Correction Center, Yardville  
Assistant to the Superintendent—Youth Reception and Correction Center, Yardville  
Superintendent—Youth Correctional Institution, Bordentown  
Assistant Superintendent—Youth Correctional Institution, Bordentown  
Assistant to the Superintendent—Youth Correctional Institution, Bordentown  
Superintendent—Youth Correctional Institution, Annandale  
Assistant Superintendent—Youth Correctional Institution, Annandale  
Assistant to the Superintendent—Youth Correctional Institution, Annandale  
Superintendent—Adult Diagnostic and Treatment Center  
Assistant Superintendent—Adult Diagnostic and Treatment Center  
Assistant to the Superintendent—Adult Diagnostic and Treatment Center  
[Superintendent] **Superintendent**—Southern State Correctional Facility  
Assistant Superintendent—Southern State Correctional Facility  
Assistant to the Superintendent—Southern State Correctional Facility  
**Superintendent—Northern State Prison**  
**Assistant Superintendent—Northern State Prison**  
Superintendent—Juvenile Medium Security Unit  
Assistant Superintendent—Juvenile Medium Security Unit  
**Superintendent—Newark House**  
**Assistant Superintendent—Newark House**  
**Superintendent—Essex Community Service Center**  
**Assistant Superintendent—Essex Community Service Center**  
Director—Vroom Readjustment Unit  
Director of Custody Operations I  
Director of Custody Operations II  
Director of Custody Operations III  
Correction Captain  
Correction Lieutenant  
Correction Sergeant  
Senior Correction Officer  
Chief Investigator  
Assistant Chief Investigator  
Principal Investigator  
Senior Investigator  
Investigator  
Interstate Transportation Officers—Office of Interstate Services  
(c) (No change.)

**(b)**

**Inmate Discipline  
Suspending Sanctions**

**Proposed New Rule: N.J.A.C. 10A:4-9.18**

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

Proposal Number: PRN 1987-384.

The agency proposal follows:

**Summary**

The proposed new rule permits the Adjustment Committee or the Disciplinary Hearing Officer to suspend a sanction that has been imposed on an inmate for a violation of a prohibited act, when such action appears to be warranted by the circumstances of the case.

**Social Impact**

The proposed new rule will have no new or additional social impact on either the Adjustment Committee, disciplinary hearing officer or inmate because the rule simply codifies the longstanding practice of suspending sanctions when the circumstances of a case warrant such action.

**Economic Impact**

The proposed new rule will not have an economic impact because additional costs are not necessary to implement or maintain this rule.

**Regulatory Flexibility Statement**

The proposed new rule impacts on inmates and the Department of Corrections. Since small businesses are not affected, a regulatory flexibility analysis is not required.

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

**10A:4-9.18 Suspending sanctions**

(a) **The Adjustment Committee or Disciplinary Hearing Officer may suspend a sanction(s) imposed upon an inmate for a violation of a prohibited act when, in their opinion, such action is warranted by the particular circumstances of the case.**

(b) **When a sanction(s) is suspended, the inmate's behavior shall be watched closely for a period of time to see if his or her intentions to conform to the required code of behavior are sincere.**

(c) **If the inmate whose sanction(s) has been suspended commits further violations of the correctional facility's rules or regulations, the Adjustment Committee or Disciplinary Hearing Officer shall enforce the sanction(s) which was suspended and impose an additional sanction(s) for the new violation(s).**

Recodify existing 10A:4-9.18 through 9.22 as **10A:4-9.19** through **9.23** (No change in text.)

**INSURANCE****(a)****DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION****Sale of Interstate Properties****Proposed Amendment: N.J.A.C. 11:5-1.25**

Authorized By: The New Jersey Real Estate Commission,

Daryl G. Bell, Executive Director.

Authority: N.J.S.A. 45:15-6 and 45:15-16.19.

Proposal Number: PRN 1987-379.

Submit comments by October 21, 1987 to:

Robert J. Melillo, Special Assistant to Director  
New Jersey Real Estate Commission  
201 East State Street, CN 325  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 11:5-1.25 clarifies the scope of and procedure for review and approval of advertisements pertaining to properties registered with the New Jersey Real Estate Commission pursuant to the Land Sales Full Disclosure Act, N.J.S.A. 45:15-16.3 et seq. The proposed amendment will remove some confusion which presently exists within the brokerage community and amongst the public in general concerning the procedure to be followed in seeking the Commission's approval of such advertisements. The proposed amendment enumerates many of the types of advertisements to which the approval procedure applies and directs that all advertisements submitted to the Commission for approval shall first have been reviewed by the subdivider's designated New Jersey broker of record to insure their compliance with the requirements concerning advertisements for the sale of interstate properties established in other provisions of this rule. Thus the proposed amendment establishes a pre-screening process which is to be completed by the New Jersey broker of record prior to the submission of advertisements to the Commission for approval. The proposed amendment also directs that the "NJA" number assigned to all approved advertisements must be represented or stated in the advertisement immediately following the representation or statement of the legend informing the public that the subject of the advertisement has been registered with the Commission.

**Social Impact**

The proposed amendment will have a favorable impact upon the public and New Jersey real estate licensees. The pre-screening of ads by the broker of record will increase the likelihood of a particular promotion's compliance with the standards applicable to such ads and, consequently, the receipt of the Real Estate Commission's approval in a timely manner. By reducing the number of non-complying submissions, the demands

placed upon the staff of the Commission to process and return initial non-complying submissions and then again review the revised versions will be reduced, resulting in an increase in the efficiency of the Commission's operations. Consequently, the public will be exposed in a more timely manner to a larger number of advertisements which make a full and fair disclosure of information regarding out-of-state subdivisions and will therefore be better equipped to make informed and intelligent decisions upon whether or not to make further inquiries on a particular property.

**Economic Impact**

The proposed amendment will have a favorable economic impact. By increasing the efficiency of the operations of the Commission's staff, and reducing the number of rejected applications, the number of applications which can be processed within a given period of time will increase.

The people most directly affected by this proposed amendment will be the designated New Jersey broker of record. It is possible that the proposed amendment will have a negative economic impact upon a certain percentage of these individuals, as they will be required to expend their time and resources to conduct the pre-screening of ads. However, such individuals can seek to renegotiate their agency agreements with their subdivider clients at an appropriate time if they feel it is necessary to do so as a result of the additional operations they may perform should the proposal be adopted.

**Regulatory Flexibility Statement**

The persons directly effected by this proposed amendment are the designated New Jersey brokers of subdividers, the subdividers themselves and their authorized marketing agents. However, the burden imposed by compliance with this proposed amendment on all such persons with the exception of the New Jersey broker is minimal, since all that is required is that applications for advertising approvals be submitted to the New Jersey broker of record for review prior to their submission to the Real Estate Commission. The current rule now requires all such applications to be submitted to and approved by the Commission before an advertisement can be used. This proposed amendment is intended to insure that such applications are in compliance with existing standards and requirements for approval. No additional substantive requirements for approval are being imposed by this proposed amendment.

There will be a burden placed upon New Jersey brokers of record in that the proposed amendment requires them to review advertising approval applications prior to their submission to the Commission. However, assuring the compliance of a subdivision's advertisements with the Commission's standards for such ads is considered by the Commission to be part of the responsibility a licensee assumes when they are certified as the designated broker of record of a particular subdivision.

Both the initial capital cost to the broker of record and the annual cost of compliance with this proposed amendment are not susceptible to accurate qualification or estimation, since they would vary depending upon both the amount of advertising material produced and the number of subdividers and projects which a particular broker represents. This proposed amendment is designed to minimize any adverse economic impact upon small businesses, in that it imposes no substantial economic burden upon any licensees, regardless of the size of their business, which could not be offset by the licensee increasing the fee they charge to a subdivider to represent them as their designated broker of record for a particular registered subdivision.

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

**11:5-1.25 Sale of interstate properties**

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

(h) Rules concerning advertising and sales promotions with respect to sales of interstate properties are as follows:

1. (No change.)

2. **All advertisements pertaining to a registered subdivision, including but not limited to brochures, pamphlets, letters, all forms of print advertising, the scripts or videotapes of any advertisements or promotional presentations to be aired via any broadcast media or viewed through any electronic means, and all offers of merchandise, vacation certificates or other things of value, regardless of the form in which the offer is made, shall be submitted to the Commission for approval at least 30 days prior to use. Such submissions shall be made by the designated New Jersey broker of record of the subdivider, by the subdivider directly or by the subdivider's authorized marketing agent. In the event an advertisement is not submitted by the designated New Jersey broker of record, a copy thereof shall be provided to and**

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reviewed by the New Jersey broker of record to insure its compliance with the provisions of this rule prior to its submission to the Commission for approval.

[2.]3. In reviewing any advertising submitted by an applicant, the Commission shall determine whether it makes a full and fair disclosure or is false and misleading within the intent and meaning of the Act and these rules, by examining the form, language and content of the advertising and supporting data and any other available information to ascertain whether the express and implied representations therein are true and make a full and fair disclosure **and whether all applicable provisions of this rule have been complied with.** If it appears that the representations are not true and do not make a full and fair disclosure as to [all] **the registered** subdivided lands to which the filing relates, the Commission will reject the advertisement. [All advertisements must be submitted for approval by the subdivider or agent to the Commission at least 30 days prior to use.]

[3.]4. [Any advertising in newspapers or periodicals] **All advertisements as specified in (h)2 above**, whether to appear in New Jersey media, or in interstate media which have a distribution in **or broadcasting range which includes New Jersey, or to be presented or provided directly or indirectly to the public by the subdivider and/or any New Jersey brokers acting on the subdivider's behalf and/or any other persons involved in the marketing of a registered project**, must be submitted to the Commission for review, acceptance and assignment of an advertisement approval number as described below before being [used] **published, broadcast or disseminated. Unless authorization is obtained from the Commission pursuant to (h)6 below for the use of an abbreviated legend, [E]each such advertisement must contain the following legend:**

A Statement of Record filed with the New Jersey Real Estate Commission permits this property to be offered to New Jersey residents, but

the New Jersey Real Estate Commission does not pass on its merits or value. Obtain the New Jersey Public Offering Statement and read it before signing anything.

i. (No change.)

[4.]5. [Literature, circulars, fliers, cards, letters and other promotional items used in connection with the advertising or offering for sale] **All advertisements as specified in (h)2 above** must be submitted to the Commission for review, and if accepted will be assigned an advertisement approval number with the prefix "N[.]J[.]A." The [above] legend [as] set forth in (h)34 and the assigned N.J.A. number] must be shown or stated in these materials in a place reasonably calculated to capture the attention of the public. **The assigned "NJA" number must appear or be stated in the advertisement immediately following the representation or statement of the legend set forth in (h)4 above.**

[5.-7.]6.-8. (No change in text.)

[8.]9. Reimbursement of travel expenses in cash or merchandise shall be subject to the following:

i. (No change.)

ii. Any advertisement or other promotional material of a subdivider or agent offering to provide travel expenses may be published in New Jersey only after the filing of a copy of such proposed advertising or other material with the Commission at least 30 days prior to the proposed use, and only after approval by the Commission as prescribed by N.J.A.C. 11:5-1.25(h)23. Satisfactory evidence that the value of such equivalent in cash or merchandise does not exceed the cost of transportation, room and board must also be submitted.

iii.-v. (No change.)

(i)-(n) (No change.)

# RULE ADOPTIONS

## COMMUNITY AFFAIRS

### DIVISION OF HOUSING AND DEVELOPMENT

#### (a)

#### Uniform Fire Code: Fire Safety Code

#### Adopted Amendments: N.J.A.C. 5:18-4.7 and 4.9

Proposed: June 15, 1987 at 19 N.J.R. 1023(a).

Adopted: August 20, 1987 by Leonard S. Coleman, Jr.,  
Commissioner, Department of Community Affairs.

Filed: August 21, 1987 as R.1987 d.373, **without change.**

Authority: N.J.S.A. 52:27D-198.

Effective Date: September 21, 1987.

Expiration Date: February 1, 1990.

#### Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

#### 5:18-4.7 Fire suppression systems

(a) (No change.)

(b) All buildings of Use Group I-1 or portions thereof when separated in accordance with (k) below greater than two stories in height above grade or having an occupant load greater than 20 excluding staff shall be equipped throughout with an automatic fire suppression system in accordance with the New Jersey Uniform Construction Code.

(c)-(k) (No change.)

#### 5:18-4.9 Automatic fire alarms

(a) An automatic fire alarm system shall be installed as required below in accordance with the New Jersey Uniform Construction Code.

1. In all buildings of Use Group I;

i. Alarm systems in buildings of Use Group I must be supervised.

2. In all buildings of Use Group R-1 and R-2 as follows:

i.-v. (No change.)

vi. All buildings of Use Group R-1, regardless of the number of units, shall have available at least one portable visual alarm type smoke detector for the deaf or hearing impaired for each 50 units or less. The owner may require a refundable deposit for such portable smoke detector not to exceed the value of the smoke detector. Notification of the availability of such devices shall be provided to each occupant.

3.-4. (No change.)

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

#### (b)

#### Uniform Construction Code

#### Subcodes

#### Adopted Amendment: N.J.A.C. 5:23-3.2, 3.4, 3.8A,

**3.14, 3.15, 3.16, 3.17, 3.20 and 3.21**

#### Adopted Repeal: N.J.A.C. 5:23-4.16

Proposed: June 15, 1987 at 19 N.J.R. 1024(a).

Adopted: August 20, 1987 by Leonard S. Coleman, Jr.,  
Commissioner, Department of Community Affairs.

Filed: August 21, 1987 as R.1987 d.374, **without change.**

Authority: N.J.S.A. 52:27D-123 and 124.

Effective Date: September 21, 1987.

Expiration Date: April 1, 1988.

#### Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

#### 5:23-3.2 Matters covered: exceptions

(a) (No change.)

(b) Rules concerning exceptions are as follows:

1. Health care facilities shall be in accordance with this code and the standards imposed by the United States Department of Health and Human Services (DHHS) and the State Department of Health, and the department, specifically the DHHS "Guidelines for Construction and Equipment of Hospitals and Medical Facilities" (DHHS Publication No. (HRS-M-HF) 84-1). In order to avoid conflict, section 501.3, article 7 except section 713.0 of the building subcode of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities. The DHHS HRS-M-HF 84-1 shall serve as the Uniform Code of the State in all matters regulated by the sections herein specified.

2. (No change.)

#### 5:23-3.4 Responsibility

(a) Responsibility for enforcement of specific provisions of the building subcode shall be as follows:

1. Plan review functions of sections 513.0, 601.0, through 604.0, 606.0, 607.0, 609.0 through 622.0, and 626.0; articles 8, 9 and 10; sections 2002.0 and 2301.0, articles 24 and 25; and sections 2607.0, 2608.0, 2611.0, 2612.0, 2616.0, 2617.0, 3018.0 and 3020.0; shall be enforced jointly by the building subcode official and fire protection subcode official.

2. Plan review functions of sections 605.0 and 608.0 and 623.0 through 625.0 shall be enforced exclusively by the building subcode official.

3. Construction inspection functions of sections 513.0 and 601.0 through 626.0; articles 8 and 9; section 2002.0 and article 24 shall be enforced exclusively by the building subcode official.

4. Construction inspection functions of articles 10 and 25; and sections 2608.3, 2611.4, 2617.3, 3018.0 and 3020.0 shall be enforced exclusively by the fire protection subcode official.

5.-6. (No change.)

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

#### 5:23-3.8A Products violating the Code

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

(d) The Commissioner has determined that the following materials and supplies are not in conformance with the State Uniform Construction Code:

1. Building materials and supplies:

i. Wood paneling being used as an interior finish not in conformance with section 904.2 of the building subcode. This section specifies that finish shall be classified in accordance with ASTM E84;

ii. Carpeting used as an interior floor finish material not in conformance with section 904.3 of the building subcode. This section specifies that interior floor finish shall be classified in accordance with ASTM E648;

2.-4. (No change.)

#### 5:23-3.14 Building subcode

(a) Rules concerning the building subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, the commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc., known as the "BOCA National Building Code/1987," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the building subcode for New Jersey subject to the modifications stated in subsection (b) of this section.

i. (No change.)

ii. "The BOCA National Building Code/1987," including all subsequent revisions and amendments thereto, may be known and cited as the "building subcode."

2. Any references to the mechanical code, plumbing code, or NFIPA 70 (including reference to Article 27) listed in Appendix A shall be considered a reference to the appropriate adopted mechanical, plumbing, or electrical subcode in N.J.A.C. 5:23-3.

(b) The following articles or sections of the building subcode are modified as follows:

1. Article 1 of the building subcode, entitled "Administration and Enforcement" is deleted in its entirety.

2. The following amendments are made to article 2 of the building subcode, entitled "Definitions," section 201.0—general definitions.

i. (No change.)

ii. The definition of the term "approved agency" is amended to add the phrase "by the code official or other authority having jurisdiction in accordance with the regulations" at the end;

iii.-iv. (No change.)

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v. The definition of the term "building" is deleted and substitute in lieu thereof, the definition of "building" found in N.J.A.C. 5:23-1.4;

vi. The term and the definition of "certificate of use and occupancy" is deleted;

vii. The term and the definition of "change of use" is deleted;

viii. The definition of the term "code official" is deleted and is redefined herein and throughout the subcode as the "building subcode official" as defined in N.J.A.C. 5:232-1.4 unless indicated otherwise;

ix.-xi. (No change.)

xii. The term "and the definition of "inspection, special" is deleted;

xiii. The term "mobile unit" is deleted and in lieu thereof, substitute the term "manufactured home." Further, the definition is deleted, and substituted in lieu thereof, the definition found in N.J.A.C. 5:23-1.4;

xiv. (No change in text.)

xv. The term and the definition of "positive heat supply" is deleted.

xvi. The term and the definition of "posted use and occupancy" is deleted.

xvii.-xix. (No change in text.)

3. The following amendments are made to article 3 of the building subcode entitled "Use Group Classification."

i. Section 309.5 is amended to delete the phrase "not more than three stories in height" on line 2 and delete the phrase "One and Two Family Dwelling Code listed in Appendix A" on lines 3, 4 and 5 and substitute in lieu thereof "one and two family dwelling subcode";

4. The following amendments are made to Article 5 of the building subcode entitled "General Building Limitations."

i. Section 505.0 is deleted in its entirety;

ii. Section 510.1 is amended to delete the phrase "code official" on line 1 and substitute in lieu thereof, "construction official";

iii.-iv. (No change in text.)

v. Section 512.0 is deleted in its entirety.

vi. Section 513.1 is amended to delete the phrase "subject to the approval of the board of appeals" on line 5. Further, section 513.1 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official";

5. The following amendments are made to Article 6 of the building subcode entitled "Special Use and Occupancy Requirements."

i. Section 600.1 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official";

ii. Section 600.2 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official";

iii. Section 621.0 is amended to delete the phrase "mobile units" and substitute in lieu thereof "manufactured homes";

iv. Sections 621.1 and 621.2 are deleted in their entirety;

v. Sections 621.3 and 621.3.1 are amended to delete the words "mobile units," "unit" and "units" and substitute in lieu thereof "manufactured homes," "home" and "homes";

vi. Section 623.5 is amended to add the phrase "to comply with the requirements of the electrical subcode" after the word "grounded";

vii. Section 625.3 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official";

viii. Section 625.6 is amended to add the phrase "in accordance with the plumbing subcode" at the end;

ix. Section 625.6.1 is deleted;

x. Section 625.6.2 is amended to add the phrase "in accordance with the plumbing subcode" at the end;

xi. Section 625.9 is amended to delete the phrase "governing body" and substitute in lieu thereof "construction official";

xii. Section 626.1 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official";

xiii. Section 626.5 is amended to delete the phrase "code official" and substitute in lieu thereof "fire protection subcode official";

xiv. Section 626.6 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official."

6. The following changes are made to Article 7 of the building subcode entitled "Interior Environmental Requirements."

i. Section 702.0 is deleted in its entirety;

ii. Section 711.1 is amended to delete the phrase "of the minimum dimensions herein prescribed";

iii. Section 711.1.1 and 711.1.2 are deleted in their entirety.

7. The following amendments are made to Article 8 of the building subcode entitled "Means of Egress."

i-ii. (No change.)

iii. Section 804.0 is deleted in its entirety;

iv. Sections 812.4, 812.4.1.2 and 812.4.2 are amended to delete the phrase "15-pounds (73N)" and substitute in lieu thereof "8-pounds (39N)";

v. Section 815.3 is amended to delete the phrase "the physically handicapped . . . otherwise" and substitute in lieu thereof "Barrier-Free accessibility shall be in accordance with the Barrier-Free Subcode";

vi. Sections 815.4 and 815.5 are amended to delete the third sentence and substitute in lieu thereof "Barrier-Free accessibility shall be in accordance with the Barrier-Free Subcode";

vii. Section 825.6 is amended to delete the phrase "Section 512.0" and substitute in lieu thereof "the Barrier-Free Subcode."

8. The following amendments are made to Article 9 of the building subcode, entitled "Fireresistive Construction."

i. Section 902.2 is amended to delete the phrase "or its designation shall be fixed by the approved rules";

ii. Sections 904.4.3 and 922.7.2 are amended to delete the phrase "code official" and substitute in lieu thereof "fire protection subcode official."

9. The following amendments are made to Article 10 of the building subcode, entitled, "Fire Protection Systems".

i. Section 1000.3 is amended to add the phrase "and fire protection subcode official" following the words "fire department" on lines 5 and 8;

ii. Section 1000.6 is amended to delete the words "administrative authority" on line 3 and substitute in lieu thereof, "fire protection subcode official";

iii. Section 1001.1 is amended to delete the word "department" on line 2 and in lieu thereof, substitute "fire protection and building subcode officials"; and to delete the word "Since" on line 3; and substitute in lieu thereof, "If";

iv. Section 1001.2 is amended to delete the word "department" on line 1 and substitute in lieu thereof, "fire protection and building subcode officials";

v. Section 1002.22 is amended delete the "code" on line 4 and substitute in lieu thereof, "fire protection subcode"; and to delete the words "and the fire prevention code official" on line 5;

vi. Section 1003.1 is amended to delete the words "administrative authority" and substitute in lieu thereof "fire protection subcode official";

vii. Section 1003.3 is amended to delete the words "code official" and substitute in lieu thereof, "fire protection subcode official";

viii. Sections 1014.1 and 1014.3 are amended to delete the term "department" on line 6 and line 2 and substitute in lieu thereof "fire protection subcode official";

ix. Section 1016.1 is amended to delete the phrase "administrative authority of this jurisdiction" and substitute in lieu thereof "fire protection subcode official";

x. Section 1017.3 is amended to delete the words "new and existing" in the first line;

xi. Section 1017.7.3 is amended to delete the term "code official" on line 2 and substitute in lieu thereof, "fire protection subcode official";

xii. Section 1017.7.4 is amended to delete the word "department" and substitute in lieu thereof "Fire Protection Subcode Official";

xiii. Section 1019.1.3 is deleted in its entirety;

xiv. Section 1019.2.3 is amended to delete the phrase "code official" and substitute in lieu thereof "Fire Protection Subcode Official";

xv. Section 1019.5.4 is amended to delete the phrase "fire department" on lines 6 and 7 and substitute in lieu thereof "fire protection subcode official."

10. The following amendments are made to Article 13 of the building subcode entitled "Materials and Tests":

i. Section 1301.1 is amended to delete the words "Section 110.0" and substitute in lieu thereof, "the regulations";

ii. Section 1302.1 is amended to delete the phrase "and the approved rules" on line 7 and 8;

iii. Section 1303.6 is amended to delete the phrase "the approved rules" on line 10 and substitute in lieu thereof, "the regulations";

iv. Section 1304.1 is amended to delete the phrase "the approved rules" on line 5 and substitute in lieu thereof, "the regulations";

11. The following amendments are made to Article 21 of the building subcode, entitled "Exterior Walls":

i. Section 2102.7 is amended to delete the phrase "mobile units" and substitute in lieu thereof "manufactured homes";

ii. Section 2102.8 is deleted in its entirety;

iii. Section 2102.9 is deleted in its entirety.

12. The following amendments are made to Article 23 of the building subcode entitled "Roofs and Roof Coverings":

i. Section 2301.2 is deleted in its entirety.

13. The following amendments are made to Article 25 of the building subcode entitled "Mechanical Equipment and Systems":

- i. Section 2503.0 is deleted in its entirety;
  - ii. Section 2504.0 is deleted in its entirety.
14. The following amendments are made to Article 26 of the building subcode entitled "Elevators, Dumbwaiter and Conveyor Equipment, Installation and Maintenance":
- i. Section 2600.1 is amended to delete the phrase "Except as may be otherwise provided by statute" in the first line;
  - ii. Section 2600.2 is amended to delete the phrase "and except where more restrictive provisions govern" on lines 1 and 2;
  - iii. Section 2600.3 is amended to delete the word "exceptions" and substitute in lieu thereof, "variations";
  - iv. Sections 2601.1, 2601.2, 2601.3, 2603.1, 2603.2, 2603.3, 2604.4, 2604.5 and 2604.6 are amended to delete the term "code official" and substitute in lieu thereof, "construction official";
  - v. Section 2604.4 is amended to delete the phrase "or not in accordance with the provisions of this code" on lines 2 and 3;
  - vi. Section 2605.0 is deleted in its entirety;
  - vii. Section 2607.4 is amended to delete the phrase "ANSI A117.1 listed in Appendix A" and substitute in lieu thereof "the Barrier-Free subcode";
  - viii. Section 2616.2.2 is amended to delete the phrase "code official" and substitute in lieu thereof "fire protection subcode official".
15. The following amendments are made to Article 27 of the building subcode entitled "Electrical Wiring, Equipment and Systems":
- i. Article 27 is deleted in its entirety.
16. The following amendments are made to Article 28 of the building subcode entitled "Plumbing Systems":
- i. Article 28 is deleted in its entirety.
17. The following amendments are made to Article 29 of the building subcode entitled "Signs":
- i. Section 2901.1 is amended to delete the term "code official" and substitute in lieu thereof, "construction official";
  - ii. Section 2901.2 is amended to delete the phrase "code official and the required bond . . . Section 2906.0" and substitute in lieu thereof "construction official";
  - iii. Section 2901.3 is amended to delete the phrase "code official" and substitute in lieu thereof, "construction official";
  - iv. Section 2903.1 is amended to delete the reference to "section 121.0" and substitute in lieu thereof, "N.J.A.C. 5:23-2.32";
  - v. Section 2906.0 is deleted in its entirety.
18. The following amendments are made to Article 30 of the building subcode, entitled "Precautions During Building Operations":
- i. Section 3003.2 is amended to delete the reference to "sections 121.0 and 123.0" and substitute in lieu thereof "N.J.A.C. 5:23-2.32";
  - ii. Section 3005.2 is amended to delete the words "and the construction and extension of soil and vent stacks and the location of window openings shall conform to the provisions of section 2805.4" and substitute in lieu thereof, the following language:
    - (1) "When a new building is erected higher than an existing building, windows or other wall openings shall not be located nearer than 10 feet to an existing soil or vent stack on the lower building unless the owner of the new building marked the necessary provision to extend such soil or vent stacks to a height of not less than two feet above the topmost opening at his own expense and with the approval of the adjoining owner."
    - (2) "When the existing adjoining building is of greater height than the new building, the owner of the structure of greater height may, with consent of the owner of the new structure, extend all new soil, waste or vent stacks which are located within 20 feet of the common lot line to a level above the higher existing roof";
  - iii. Section 3022.1 is amended to delete the phrase "code official" and substitute in lieu thereof "construction official".
19. The following amendments are made to Article 31 of the building subcode entitled "Energy Conservation":
- i. Article 31 is deleted in its entirety.
20. The following amendments are made to Article 32 of the building subcode entitled "Repair, Alteration, Addition and Change of Use of Existing Building":
- i. Article 32 is deleted in its entirety.
21. The following amendments are made to Appendix A of the building subcode entitled "Reference Standards":
- i. Delete the entire subheading "ASHRAE" and all titles under this subheading;
  - ii. Under the subheading "BOCA," delete the following titles:
    - (1) National Existing Structure Code;
    - (2) National Mechanical Code;

- (3) National Plumbing Code;
  - (4) Basic/National Private Sewage Disposal Code.
- iii. Under the subheading "CABO," delete the following titles:
    - (1) One and Two-Family Dwelling Code;
    - (2) Model Energy Code.
  - iv. Under the subheading "NFIPA", delete the title "National Electrical Code."
- 5:23-3.15 Plumbing subcode
- (a) Rules concerning subcode adopted are as follows:
    - 1. Pursuant to authority of P.L. 1975, c. 217, the commissioner hereby adopts the Model Code of the National Association of Plumbing-Heating-Cooling Contractors, known as "The National Standard Plumbing Code/1987", including all subsequent revisions and amendments thereto, as the plumbing subcode for New Jersey.
      - i. (No change.)
    - 2. "The National Standard Plumbing Code/1987," including all subsequent revisions and amendments thereto, may be known and cited as "the plumbing subcode."
      - (b) The following pages, chapters, sections or appendices of the plumbing subcode are amended as follows:
        - 1.-7. (No change.)
        - 8. Chapter 7 of the plumbing subcode, entitled "Plumbing Fixtures," is amended as follows:
          - i.-ii. (No change.)
          - iii. Section 7.25 is amended to delete the words "local Administrative Authority" on line 2 and in lieu thereof substitute the words "Barrier Free Subcode."
          - iv. (No change.)
          - v. Figure 7.4.5 on page 7-3 is amended to insert the words "21 inches" in the space for clearance on the first fixture. Also delete the word "Code" and substitute in lieu thereof "Subcode" in the block at bottom.
        - 9.-12. (No change.)
        - 13. Chapter 13 of the plumbing subcode, entitled "Storm Drains," is amended as follows:
          - i. Section 13.1.5 is amended to delete the words on lines 1 and 2 "around the perimeter of all buildings having basements, cellars or crawl spaces or floors below grade" and in lieu thereof, substitute the words "in accordance with Section 1224.4.1 of the building subcode."
          - ii. (No change.)
        - 14.-19. (No change.)
- 5:23-3.16 Electrical subcode
- (a) Rules concerning subcode adopted are as follows:
    - 1. Pursuant to authority of P.L. 1975, c. 217, the Commissioner hereby adopts the Model Code of the National Fire Protection Association known as "The National Electrical Code/1987, including all subsequent revisions and amendments thereto, as the electrical subcode for New Jersey.
      - i. (No change.)
      - 2. The National Electrical Code/1987, including all subsequent revisions and amendments thereto, may be known and cited as "the electrical subcode."
        - (b) The following chapters or articles of the electrical subcode are amended as follows:
          - 1. (No change.)
          - 2. Chapter 1 of the electrical subcode Article 100, entitled "Definitions" is amended as follows:
            - i. The definition of the term "approved" is amended to delete the phrase "authority having jurisdiction" and substitute in lieu thereof, the phrase "electrical subcode official. Approval shall be in accordance with N.J.A.C. 5:23-3.7 and 3.8".
            - ii.-iv. (No change.)
          - 3. Chapter 3 of the electrical subcode, entitled "Wiring Methods and Materials," is amended as follows:
            - i. Section 300-4(a)(1) is amended to delete all wording from "so that the edge . . ." on line 3 through " . . . cover the area of the wiring," on line 8 in lieu thereof substitute," as required by the building subcode."
            - 4. Chapter 5 of the electrical subcode, entitled "Special Occupancies," is amended as follows:
              - i. In Article 550, entitled "Mobile Homes and Mobile Home Parks," delete from the title the words "Mobile Homes and".
                - (1) Section 550-1 is amended to delete the phrase "within or on mobile homes" on line 2.
                - (2) Section A, entitled "Mobile Homes," comprising sections 500-5 through 550-15 is deleted in its entirety with the exception of section 550-5(a) which shall be retained.

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ii. In Article 551, entitled "Recreational Vehicles and Recreational Vehicle Parks," delete from the title the words "Recreational Vehicles and".

(1) Section 551-1(a) is amended to delete the phrase "within or on recreational vehicles" on line 2.

(2) Section A, entitled "Recreational Vehicles," comprising sections 551-3 through 551-27(b) is deleted in its entirety.

## 5:23-3.17 Fire protection subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, as amended, the commissioner hereby adopts the following portions of the building, electrical and mechanical subcodes to the extent delineated in N.J.A.C. 5:23-3.4, as the Fire Protection Subcode for New Jersey.

i. BOCA National Building Code 1987 of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.14):

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

(4) Article—Fire Resistive Construction;

(5) Article 10—Fire Protection Systems;

(6) Section 2002.0 of Article 20—Plastic;

(7) Section 2301.0 of Article 23—Roofs and Roof Coverings;

(8) Article 24—Masonry Fireplaces;

(9) Article 25—Mechanical Equipment and Systems;

(10) Sections 2608.0, 2611.0, 2612.0, 2616.0 and 2617.0 of Article 26—Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance;

(11) Sections 3018.0 and 3020.0 of Article 30—Precautions During Building Operations.

ii. National Electrical Code/1987 of the National Fire Protection Association (N.J.A.C. 5:23-3.16).

(1)-(4) (No change.)

iii. BOCA National Mechanical Code/1987 of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.20):

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

2. (No change.)

(b) (No change.)

## 5:23-3.20 Mechanical Subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc. known as the "BOCA National Mechanical Code/1987," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the Mechanical Subcode for New Jersey subject to the modifications stated in subsection (b) of this section.

i. (No change.)

ii. The "BOCA National Mechanical Code/1987," including all subsequent revisions and amendments thereto, may be known and cited as the "mechanical subcode."

2. Any references to the building code, plumbing code, or NFPA 70 listed in Appendix A shall be considered a reference to the appropriate adopted building, plumbing, or electrical subcode in N.J.A.C. 5:23-3.

(b) The following articles, sections or pages of the BOCA National Mechanical Code/1987 are amended as follows:

1. (No change.)

2. Article 2 of the mechanical subcode, entitled "Definitions," is amended as follows:

i.-iv. (No change.)

v. The definition of the term "code official" is deleted in its entirety, and substitute in lieu thereof, the following language: "For the purpose of the mechanical subcode, the term "code official" shall mean the appropriate subcode designated in N.J.A.C. 5:23-4."

vi-viii. (No change in text.)

ix. (No change.)

3. Article 4 of the mechanical subcode, entitled "Mechanical Equipment," is amended as follows:

i. (No change.)

4. Article 5 of the mechanical subcode, entitled "Kitchen Exhaust Equipment," is amended as follows:

i. Section M-508.0, "Test and Cleaning Schedule" is deleted.

5. Article 15 of the mechanical subcode, entitled "Incinerators and Crematories," is amended as follows:

i. (No change.)

6. Article 17 of the mechanical subcode, entitled "Air Quality" is deleted in its entirety.

7. Article 19 of the mechanical subcode, entitled "Energy Conservation" is deleted in its entirety.

8. Article 21 of the mechanical subcode entitled "Boilers and Pressure Vessels, Maintenance and Inspection" is deleted in its entirety.

9. The following amendments are made to Appendix A of the mechanical subcode, entitled "Referenced Standards":

i. (No change.)

ii. Under the subheading "BOCA," delete the following titles:

(1) National Building Code

(2) National Plumbing Code

iii. (No change.)

## 5:23-3.21 One and two family dwelling subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the Commissioner hereby adopts the model code of the Council of American Building Officials known as "The CABO One and Two Family Dwelling Code/1986", including all subsequent revisions and amendments thereto, as the one and two family dwelling subcode for New Jersey subject to the modifications stated in (b) below.

i. (No change.)

(b) The following articles or sections of the one and two family building subcode are modified as follows:

1. Chapter 1 entitled "Administrative" is amended as follows:

i. Sections R-101 to R-114 are deleted and substitute in lieu thereof, "UCC regulations."

ii. Section R-115 is amended to change the definitions as follows:

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

(4) The definition of the term "Grade" is deleted and in lieu thereof substitute, "A reference plane representing the average of finished ground level adjoining the building at all exterior walls. When the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line, or when the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building."

(5) The definition of the term "Story (first)" is amended to add after the word grade "except that a basement shall be considered as a story above grade when the distance from grade to the finished surface of the floor above the basement is more than 6 feet for more than 50 percent of the total perimeter or more than 12 feet at any point."

2. Chapter 2 entitled "Building Planning" is amended as follows:

i. (No change.)

ii. Sec. R-203.1, in the first and third lines, delete "3 feet" and substitute in lieu thereof, "5 feet";

iii. Sec. R-210.1—Opening Protection—Delete and substitute in lieu thereof the following: "Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid core wood doors not less than 1-3/4 inches in thickness or approved equivalent. A raised sill shall also be provided between garage and adjacent interior spaces with a minimum height of 4 inches";

iv. Sec. R-210.2—Separation Required—Delete and substitute in lieu thereof the following: "Private garages located beneath rooms shall have walls, partitions, floors and ceilings separating the garage space from the adjacent interior spaces constructed of not less than 1 hour fire-resistance rating. Attached private garages shall be completely separated from the adjacent interior spaces and the attic area by means of 1/2-inch gypsum board or equivalent applied to the garage side";

v. Sec. R-213, under the second exception in the second line, delete "8 1/2 inches" and substitute in lieu thereof, "8 inches";

vi. Sec. R-214.2, in the fifth line, delete "4 inches" and substitute in lieu thereof, "6 inches";

vii. Sec. R-215.1, in the third line delete "four or more risers" and substitute in lieu thereof, "three or more risers";

viii. Sec. R-216.1 is amended to delete the second paragraph;

ix. Sec. R-216.2 is amended to delete the words "or in building which undergo . . . section" at the end;

x. Sec. R-217.2.4, after the words "foam filled doors" add the phrase "except for fire doors";

xi. Add new Sec. R-221 "Height and Area Limitations"

"The provisions of this subcode are limited to Use Group R-4 (detached one and two-family dwellings), 5B construction, with no more than 2 stories or 35 feet in height and 4,800 square feet in area per floor."

3. Chapter 3 is amended as follows:

i. (No change.)

4. Chapter 4 is amended as follows:
- i. Sec. R-402.8, in the second paragraph, third line, delete "1,000 square feet" and substitute in lieu thereof, "500 square feet";
  - ii. Sec. R-404.2, in second paragraph, fourth line, delete "one third" and substitute in lieu thereof, "one half";
  - iii. Sec. R-404.13 in the second line, change "3 inches" to "4 inches."
5. Chapter 9 is amended as follows:
- i. Sec. R-902.6 is amended to add the following phrase after 1800°F., "and embedded in medium duty refractory mortar complying with ASTM C105." Delete the "EXCEPTION";
  - ii. Sec. R-904.2, in the last line, change "10 inches" to "12 inches";
  - iii. Sec. R-904.5, in the second line, change "3/8 inches . . . all imposed loads" to "4 inches solid masonry or equivalent";
  - iv. Sec. R-904.7, in the second and fourth lines, change "2 inches" to "4 inches";
  - v. Sec. R-905.1 item #4, is amended to add after the word "opening" the following: "for a fireplace having an opening of less than 6 square feet. The hearth of a fireplace with a larger opening shall extend a minimum of 20 inches beyond the face of the fireplace opening and a minimum of 12 inches on each side of the fireplace opening." Also, Sec. R-905 is amended to add the following item #6: Factory Built Fireplaces shall be listed, labeled and tested according to UL 127;
  - vi. Sec. R-906.1—At the end of the section, add "Factory-built fire-place stoves shall be tested according to UL 737."
6. Part IV—Mechanical is amended as follows:
- i. (No change.)
  - ii. Sec. M-1112—At the end of the section, add "Solid fuel burning room heaters shall be tested and labeled in accordance with UL 1482";
  - iii. Sec. M-1905.2—Add the following new paragraph "No piping shall be installed in supply air ducts, clothes chutes, chimneys, vents or shafts";
  - iv. Sec. M-1909.3—Delete second paragraph;
  - v. Sec. M-1917.1—Add after the first sentence "All pumps shall be listed and labeled by an approved agency."
- 7.-8. (No change.)
- 5:23-4.16 (Reserved)

## NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

### (a)

#### Return on Equity

#### Adopted New Rules: N.J.A.C. 5:80-3

Proposed: July 6, 1987 at 19 N.J.R. 1125(a).

Adopted: August 27, 1987 by the New Jersey Housing and Mortgage Finance Agency, James L. Logue, III, Executive Director/Secretary.

Filed: August 28, 1987 as R.1987 d.384, **without change**.

Authority: N.J.S.A. 55:14k-5g and 55:14k-7a(6).

Effective Date: September 21, 1987.

Expiration Date: May 20, 1990.

#### Summary of Public Comments and Agency Responses:

COMMENT: There were four comments regarding N.J.A.C. 5:80-3.2, which concerns projects financed prior to January 17, 1984. Those comments sought clarification of this section and/or an increase in the allowable rate on return for such projects.

RESPONSE: The Agency believes the section is self-explanatory and that there currently are no reasons which would justify modifying the maximum eight percent per year limitation imposed by prior law (in effect when these projects received their mortgage commitments).

COMMENT: One comment suggested using a standard other than HUD to calculate area median income.

RESPONSE: The Agency disagrees and believes that HUD is the appropriate standard.

COMMENT: One comment expressed the belief that "too much discretion" was given to the Agency in matters such as determining the investment, the base rate and the increase in project value. The same comment suggested adjusting the rate of return on a yearly basis.

RESPONSE: The Agency believes that Agency determinations under the rules are those necessitated by our statute and that the exercise of discretion is sufficiently limited by the rules. The Agency also believes

that it would be inappropriate (and perhaps legally impossible) to adjust rates on a yearly basis since the "investment" is by its nature a long term one.

COMMENT: One comment suggested that the term "surplus cash" be defined and that the consent of non-profit partners be obtained prior to any return on equity.

RESPONSE: The Agency believes that "surplus cash" is just that—actual cash in excess of actual anticipated needs. The Agency does not believe that it should accept responsibility for obtaining consent of any partners to a return on equity because this is an internal partnership matter.

Full text of the adoption follows.

#### SUBCHAPTER 3. RETURN ON EQUITY

##### 5:80-3.1 Authority

This subchapter is promulgated pursuant to authority of N.J.S.A. 55:14K-5g and N.J.S.A. 55:14K-7a(6).

##### 5:80-3.2 Housing projects prior to January 17, 1984

For all eligible loans for Housing Projects made by the Agency prior to January 17, 1984, the rate of return on its investment in the housing project, as determined by the Agency ("stated equity"), which can be paid or earned by the Housing Sponsor of the property and improvements or its principals or stockholders shall not exceed eight percent per year on a cumulative but not compounded basis. This restriction shall apply for the full term of the Agency's loan and shall apply to return on investment earned or received upon construction and rehabilitation of the housing or from the operations of the housing or upon the sale, assignment or lease of the housing subject only to the applicable provisions, if any, of the Agency's regulations concerning the sale of projects owned by nonprofit sponsors and transfer of ownership interests.

##### 5:80-3.3 Housing projects on or after January 17, 1984

(a) For each eligible loan made by the Agency on or after January 17, 1984 for a Housing Project, the Agency shall determine, at the time of initial mortgage closing, the investment made by the Housing Sponsor.

###### 1. Investment shall include:

- i. Actual cash or cash equivalent as determined by the Agency;
- ii. Professional fees pledged toward approved project cost;
- iii. Any grants and/or loans procured by the Sponsor to the extent they are applied to Agency approved project costs and to the extent they are not repayable from project funds;
- iv. Any additional cash contributions made by the Housing Sponsor subsequent to initial closing if such contributions were utilized for project costs approved by the Agency.

2. Increases in project value, as determined by an Agency approved appraisal, may also be recognized as part of this investment.

3. The Housing Sponsor shall be entitled to return on its investment except for funds procured through grants or loans at rates established in accordance with (b) below. It shall earn a return on any cash portion of its investment from the date it is actually contributed and on the non-cash portion of its investment from the date it is utilized towards approved project costs.

(b) For Housing Projects which receive a loan from the Agency on or after January 17, 1984, the Agency shall fix, at the time of the making of the loan, the rate of return which may be earned or received by the Housing Sponsor on its investment on a cumulative but not compounded annual basis from the development, operation, sale, assignment or lease of the Housing Project according to the following schedule:

1. The Base Rate to be used in calculating the return on equity pursuant to 2 through 6 below, shall be equal to the rate being paid on 30-year treasury bonds at the time of the mortgage closing. This Base Rate will be determined by the Agency in its sole discretion using any reasonable source of information;

2. For units occupied by individuals or families who at the time of occupancy have a household income which is less than 50 percent of the median income for the area in which the project is located, the annual rate of return on investment may not exceed the then applicable base rate plus six percent;

3. For units occupied by families or individuals who at the time of occupancy had a total household income of less than 80 percent of the median income for the area, the annual rate of return on investment may not exceed the base rate plus four percent;

4. For all other units financed by the Agency, the annual rate of return on investment may not exceed the base rate plus two percent;

5. For developments which have a mix of units serving populations with an assortment of income ranges, the Agency shall determine the limit

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on the rate of return which may be earned by the Housing Sponsor by pro-rating the rate of return based upon the number of units devoted to the various income levels;

6. If the Agency determines that as a result of restrictions on development costs, rents or other factors, that the actual amount of return on equity which can be paid in any year will be significantly below that allowed by the Agency pursuant to 2 through 5 above, the Agency may set a return on equity limit which may be paid or earned on an annual, cumulative but not compounded basis, not to exceed the base rate plus 10 percent.

#### 5:80-3.4 Conditions required for distribution

(a) The following conditions must be met before a return on equity will be authorized by the Agency:

1. A final mortgage closing must be held, unless a waiver is granted in accordance with (b) below;
2. The project must be current in all financial obligations including debt service, repair and replacement reserve, tax and insurance escrows;
3. All required reports and statements must be submitted by the Housing Sponsor;
4. Surplus cash must be available at the time of the request;
5. The Housing Sponsor must utilize forms as required by the Agency when requesting a return on equity;

(b) The requirement of a final mortgage closing prior to receiving a return on equity may be waived by the Executive Director of the Agency if it is determined that the closing is being delayed due to circumstances beyond the control of the Housing Sponsor, (for example, construction litigation). In addition to the need for such a determination, in order to have such requirement waived, the Housing Sponsor must complete the following to the satisfaction of the Executive Director of the Agency.

1. Submission of Development Cost Certification.
2. Submission of Bank Statements on the Construction Loan Account.
3. Execution of a Memorandum of Understanding setting forth agreement as to the final mortgage amount including any funds necessary for final construction payment and any additional development costs which are approved by the Agency; and agreement, if applicable, regarding a reduction in the original mortgage loan amount.

#### 5:80-3.5 Waiver

If the Agency grants any waiver pursuant to N.J.A.C. 5:80-19 which by its nature affects a rate of return established by this subchapter, then the Agency in granting such waiver will establish a revised rate of return for any affected project.

## (a)

### Affirmative Fair Housing Marketing

#### Adopted New Rules: N.J.A.C. 5:80-22

Proposed: May 18, 1987 at 19 N.J.R. 798(a).

Adopted: August 27, 1987 by the New Jersey Housing and Mortgage Finance Agency, James L. Logue III, Executive Director, Secretary.

Filed: August 28, 1987 as R.1987 d.385, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:14K-5g and 55:14K-8e.

Effective Date: September 21, 1987.

Expiration Date: May 20, 1990.

#### Summary of Public Comments and Agency Responses:

COMMENT: Two of the commentors requested clarification as to the applicability of N.J.A.C. 5:80-22 to projects receiving HUD subsidies and thereby following HUD's Affirmative Fair Housing Marketing (AFHM) procedures.

RESPONSE: The Agency's AFHM rule was not intended to supersede HUD's AFHM procedures but to apply to housing financed by the Agency in which HUD procedures are not applicable. This distinction is noted in Section 5:80-22.3(b). Therefore, no changes regarding this comment were made to the proposed rule.

COMMENT: One commentor requested clarification of the circumstances under which sponsors can accept or reject applications from disabled persons.

RESPONSE: The eligibility of disabled persons is not the focus of the AFHM rule. This issue is governed by the Agency's rule on Tenant

Selection codified at N.J.A.C. 5:80-7. Therefore, no changes regarding this comment were made to the proposed rule.

COMMENT: The last comment suggested expanding the Agency's provisions regarding residency preferences.

RESPONSE: Residency preferences are limited under the rules in order to facilitate the accomplishment of affirmative fair housing marketing goals. These goals include attracting families/individuals who are least likely to apply for the housing and obtaining a balanced racial/ethnic tenancy at the project. Typically, residents of the community are most aware of the availability of the housing and are most likely to apply. Further, residents of the community are often of the same racial/ethnic group. If residency preferences were expanded, it could have an adverse effect on attracting those families/individuals who are least likely to apply and in obtaining a balanced racial/ethnic tenancy at the project. Consequently, the Agency does not support expansion of residency preferences and, therefore, no changes regarding this comment were made to the proposed rule.

The agency made the following changes to the rules upon adoption: The term "applicant pool" or "applicant" was changed in N.J.A.C. 5:80-22.2(f)2, 22.9(c), 22.10(b), 22.11, 22.13(c), 22.15, 22.20(a), 22.21(a), 22.23(a), 22.24(a) and 22.25(b) to read "prospective occupant pool" or "prospective occupant". This was necessary as the term applicant is defined in 5:80-22.1 as the entity applying for financing from the Agency. The individuals in the above referenced sections are those applying for occupancy at the housing project. The change in terminology was made to avoid confusion between the two different groups of individuals.

A technical change was made in N.J.A.C. 5:80-22.4(b) for clarity. In N.J.A.C. 5:80-22.6(a) and 22.23(a)1, the word "developer" was deleted to avoid confusion. The developer in this case is the same entity as the defined term, "applicant".

The term "managing agent" in N.J.A.C. 5:80-22.17(a) was changed to "applicant". Although applicants, as defined, may hire managing agents to perform this function, it is ultimately the applicant's responsibility to carry out the functions described in this section. In N.J.A.C. 5:80-22.6(a), 22.18, 22.21(a) and 22.22(b), the terms "he/her", "his", "himself" and "he or she" were deleted from these sections as an applicant will most often be a partnership or corporation rather than an individual. In N.J.A.C. 5:80-22.20(a) and 22.22(a)1 and 2, the word "owner" was changed to "applicant" in order to be consistent with terminology. The owner in this case is the same entity as the defined term, "applicant".

Finally, the first sentence of 5:80-22.13(b) was deleted, since it is reiterated in the second sentence of that subsection.

**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 22. AFFIRMATIVE FAIR HOUSING MARKETING

##### 5:80-22.1 Definitions

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

"Applicant" means one or more individuals, corporations, partnerships, associations, labor organizations, or public entities applying for financing or funding assistance from the New Jersey Housing and Mortgage Finance Agency.

"Disabled person" means a person who is unable, due to a physical or mental impairment, to engage in any gainful activity under a disability as defined in section 223 of the Social Security Act or a person who has a "[D]\*\*d\*developmental disability" which is mental in nature as defined by the Developmental Disabilities Amendments of 1970 (42 U.S.C. 60001).

"Displaced person" means a family or individual who has been displaced by government action or other formally recognized action pursuant to Federal disaster or otherwise has been involuntarily displaced.

"Eligible household" means \*a household whose\* eligibility requirements are determined in accordance with the program regulations under which the project is financed.

"Housing market area" means that geographic region from which it is likely that renters/purchasers would be drawn for a given multifamily rental housing project or single family sales unit. For projects financed under the Affordable Housing Program the housing market area may be considered a housing region as determined by the Council on Affordable Housing. In most instances the housing marketing area consists of the county in which the project or homes will be located.

"Initial rent-up" means that period beginning with the date on which the applicant is granted permission by the local government and the Agency to begin occupancy or rent-up and ending on the date sustaining occupancy (usually 95 percent) is attained.

"Low income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and/or rental. Certain housing programs require a portion of the units to be occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the applicable housing market area. Other housing programs require units to be affordable to the aforementioned population.

"Moderate income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and/or rental. Certain housing programs require that a portion of the units be occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the applicable housing market area. Other housing programs require units to be affordable to the aforementioned population.

"Minority" means an individual who is a member of one of the following racial or ethnic groups:

1. Black: An individual having origins in any of the Black Racial groups of Africa but not of Hispanic origin;
2. American Indian or Alaskan Native: An individual having origins in any of the original people of North America, and who maintains cultural identification through tribal affiliation or community recognition;
3. Hispanic: An individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race; or
4. Asian or Pacific Islander: An individual having origin in any of the original peoples of the Far East, Southeast Asia, and the Indian sub-continent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

"Target group" means identifiable segments of the eligible population identified by the applicant as least likely to apply for occupancy. An applicant undertakes special outreach to attract members of these groups to the housing being offered. Examples include specific racial/ethnic groups.

#### 5:80-22.2 Purpose of the Affirmative Fair Housing Marketing Plan

(a) The Affirmative Fair Housing Marketing Plan (the Plan) is a marketing strategy designed to attract buyers and/or renters of all majority and minority groups regardless of sex, to rental projects and sales dwellings, which are being marketed by an applicant. The Plan describes initial advertising and other marketing activities which inform potential buyers and renters of the existence of the units.

(b) More than one Plan may be required in housing developments where there is a combination of market and low and moderate income units or where there is a combination of sales and rental housing.

(c) The Plan remains in force throughout the life of a multifamily project. For single-family dwellings located in subdivisions of five or more units, the Plan remains in effect until all of the dwellings are sold.

(d) No application for Agency assistance may be funded without an approved Plan.

(e) Upon approval, the applicant is required to make good faith efforts to carry out the provisions of the Plan.

(f) In formulating the Plan the applicant shall do the following:

1. Refer to the demographic statistics for the applicable housing market area and identify the segments of the eligible population which are least likely to apply for housing without special outreach because of such factors as neighborhood customs, price, institutionalized discrimination in the housing market and other factors which have the effect of denying housing choice.
2. Design an outreach program which will have the best chance of producing \*[an applicant]\* **a prospective occupant** pool reflective of the racial/ethnic composition of the population of the housing market area and which includes special measures designed to attract those groups identified as least likely to apply and other efforts designed to attract persons from the total eligible population.
3. Establish as one indicator of marketing effectiveness the racial/ethnic composition of the low and moderate income population of the housing market area, and identify any other indicators to be used to measure the effectiveness of the marketing program.

4. Demonstrate capacity to provide training and information to sales and/or rental staff on fair housing laws and objectives.

#### 5:80-22.3 Who submits a plan

(a) The following applicants are required to submit an Affirmative Fair Housing Marketing Plan:

1. Any applicant applying for funding under the Affordable Housing Program;
2. Any applicant applying for funding under the Continuing Care Retirement Community Program;
3. Any applicant applying for funding under the Repair Loan Program;
4. Any applicant applying for funding under the Agency's Policies and Procedures for Housing Projects; and
5. Any applicant applying for funding allocations for special projects consisting of 25 or more units.

(b) Projects receiving assistance from the Federal government are subject to the Affirmative Fair Housing Marketing Guidelines established and enforced by the U.S. Department of Housing and Urban Development. However, copies of the HUD approved Affirmative Fair Housing Marketing Plan must be on file with the Agency prior to the issuance of a "firm commitment."

#### 5:80-22.4 Plan submission deadlines

(a) The Plan must be submitted as part of the application for Agency financing for those projects financed under the Agency's Policies and Procedures for Housing Projects, Repair Loan Program and Continuing Care Retirement Community Program.

(b) \*[Projects applying f]\* **F**or assistance under the Affordable Housing Program\*, the **applicant** must submit an approval Plan prior to fund reservation. The Agency will, however, defer to those procedures which are different from those procedures stated herein for projects subject to a court ordered settlement and/or consent order.

#### 5:80-22.5 Format of the Affirmative Fair Housing Marketing Plan

(a) The applicant shall provide the following information:

1. Name and address of both the applicant and the proposed project;
2. Number of units and the application number;
3. Price and/or rent of units and range of affordability by household size of prospective purchasers and/or renters;
4. Census tract or affordable housing region in which the project will be located;
5. The household types to be served by the project, for example, the elderly, non-elderly;
6. The approximate starting date for advertising to target groups and for initial occupancy; and
7. Name of managing/sales agent.

#### 5:80-22.6 Direction of marketing activity

(a) The applicant is responsible for the development and the implementation of the Affirmative Fair Housing Marketing Plan. For projects financed under the Affordable Housing Program, the municipality may work with the \*[developer]\* **applicant** to help identify those persons who are least likely to apply. However, the applicant has ultimate responsibility for the units' marketing and sales/rental transactions. Employment of a sales or management agent does not relieve the applicant of \*[his/her]\* **these** responsibilities and the applicant must assure that such agents will carry out affirmative marketing and non-discrimination requirements.

(b) The applicant shall identify the groups that are least likely to apply for housing. For these groups, special outreach is required to inform them of the upcoming housing opportunities.

(c) The applicant shall describe efforts to reach target groups that are not covered elsewhere in the Plan. Such groups may include female-headed households and the working poor.

(d) If the applicant believes that no single group will need special outreach, the applicant so indicates in the Plan and explains the reasons for such determination.

(e) In determining which groups may require special outreach, the applicant should consider, as appropriate, the following factors:

1. The possible existence of practices or policies of discrimination on the basis of race, color, creed, religion, sex, or national origin, which have historically affected the ability of members of particular groups to obtain the housing of their choice. These practices or policies can include exclusionary zoning practices which may have limited the construction of housing for lower income families; lending and/or appraisal practices and other practices which may have resulted in discrimination on the basis of race, color, creed, sex, or national origin. Information on these prac-

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tices may be found in court decisions, compliance findings, newspaper articles or other sources which illustrate patterns relating to these practices.

2. Any known fact about the effects of the language barrier upon potential homeseekers and/or renters whose native language is not English. Examples of such homeseekers include Hispanic and Vietnamese.

3. The racial/ethnic composition of defined geographic areas and comparable projects of comparable size within the housing market. Information regarding these factors may be found in the Housing Assistance Plan (HAP), US Census Reports or Regional Housing Needs Reports approved by the Affordable Housing Council. Furthermore, the applicant should consider the income of the eligible population of the housing market area including, where applicable, those persons expected to reside in the community because of planned employment and current employment.

4. Income eligibility requirements affect the selection of tenants/purchasers from the segments of the eligible population that might be targeted for special outreach and effect the marketing technique to be used in attracting such persons to the housing.

5. The racial/ethnic composition of the group of persons who are not residents, but who may reasonably be expected to reside in the community in the future because of present or planned employment.

## 5:80-22.7 Marketing program

(a) The marketing program shall include the following:

1. The applicant shall describe the marketing program and outline the methods to be used in reaching all segments of the eligible population; and

2. The marketing program must include special outreach steps which will be taken to attract the groups identified in the Plan as persons least likely to apply for housing.

(b) The applicant shall indicate the commercial media to be used, if any, to advertise the availability of housing. The use of commercial media is not required; however, the applicant should publicize the availability of housing through the type of media customarily used by the applicant, including minority publications or other minority outlets which are available in the housing market area.

(c) If the applicant does not intend to use any commercial media, the Plan should explicitly indicate that no commercial media will be used and the reasons for this decision should be attached to the Plan.

(d) The applicant shall indicate the type of media to be used, including:

1. Newspapers for general circulation;

2. Radio stations;

3. Television stations; or

4. Other types of media, including publications of limited circulation such as neighborhood-oriented weekly newspapers, religious publications, and the publications of local real estate industry groups.

(e) For each of the media selected, the applicant shall indicate:

1. The name of the media;

2. The type (for example, classified, display) and size of the newspaper advertisement and the initial date of its appearance. If copies of such advertising are available, the applicant should submit them to the Agency. If no copies are available at the time the Plan is being prepared, the applicant shall submit them as soon as possible after the \*[\*p]\*[\*P]\*lan has been approved;

3. The frequency and length of any radio and/or telephone advertising; and

4. The identity of the racial/ethnic group within the audience or readership of the commercial media to be used.

(f) Applicants are encouraged to use minority-owned and/or operated media as part of their overall marketing program to publicize the housing to both majority and minority persons. Where Blacks, Hispanics, and other racial/ethnic minority groups have been identified as special outreach groups, minority-owned media may be a particularly effective outreach mechanism. Even when such groups are not being specifically targeted for special outreach efforts, the use of minority owned media is recommended as part of the outreach to the general population. In such cases, the applicant may consider factors such as data on the racial/ethnic composition of the majority-owned medias' readership or audience and applicant's past experience in utilizing such media.

(g) The applicant should consider using brochures as part of the total marketing program. Brochures can be tailored to meet specific housing information needs of those persons who are members of groups identified as least likely to apply for the housing. The brochure can also contain a greater quantity of information about the project or subdivision than that contained in mass media advertising.

1. A brochure may include a range of information which influences decisions regarding housing choice, for example, price/rent; proximity to schools; transportation; shopping, and employment centers; the availability of medical facilities for disabled persons.

2. The brochure should communicate the applicant's equal housing opportunity policy.

(h) Signs are another means of advertising. The applicant must indicate the size of any existing or proposed permanent project site sign. This sign must include the equal opportunity housing logo. The applicant must indicate the size of the logo. A photograph of the project sign must be submitted with the Plan or be submitted as soon as possible after erection of the sign.

## 5:80-22.8 Community contact

(a) Community contacts can supplement formal communications media for the purpose of soliciting tenants/buyers. The applicant shall include only those individuals or organizations that have direct and frequent contact with those groups identified earlier in the Plan as least likely to apply. The applicant shall choose community contacts on the basis of their position of influence within the general community and the particular target groups.

(b) Examples of suitable community contacts include:

1. Fair housing organizations and local non-profit housing associations, housing counseling agencies, regional tenant referral services;

2. Minority organizations (NAACP, Urban League), women's organizations, religious institutions, civil rights groups, editors of majority-owned and minority-owned newspapers;

3. Local government agencies which are in a position to make referrals of potential homeseekers and/or renters to the project or subdivision;

4. Real estate industry related groups such as local real estate boards, Community Housing Resource Boards, organized pursuant to HUD voluntary agreements with the National Association of Realtors and the National Association of Real Estate Brokers; and

5. Local employment \*c\*enters, including large industrial and commercial employers, labor unions, hospitals, and educational institutions.

(c) The applicant shall give the following information regarding the community contacts:

1. Name of the organization or individual;

2. The racial/ethnic identification of the group or individual;

3. The approximate date the group or individual is to be contacted.

This date should be consistent with the requirements for advance marketing to those persons least likely to apply where applicable;

4. The address and telephone number of the person to be contacted; and

5. The methods of contact, for example, community meetings, briefing sessions by the applicant and community organizations brochures, walking of bus tours of the proposed housing, radio talk shows.

6. The specific functions the group will perform.

## 5:80-22.9 Future marketing activities for rental units only

(a) The applicant shall describe the types of activities to be undertaken after the completion of initial occupancy of rental units in order to fill vacancies resulting from normal turnover.

(b) The applicant may undertake the same marketing activities which were performed during the initial occupancy. A modified Plan may reflect a reduced level of marketing activity as units are available only through turnover and may reflect changes in the media, community contacts or procedures in order to continue a marketing approach that is consistent with the Affirmative Fair Housing Marketing objectives.

(c) Examples of such marketing activities which may be performed following the initial rent-up can include the use of advertising media which may be targeted to the same groups previously identified as least likely to apply for the housing without special outreach, or to different groups chosen on the basis of need to encourage their greater representation in the \*[\*applicant]\* \*prospective occupant\* pool. The media advertising can be similar in content and format to that used during the initial rent-up or can be changed by adjusting the scale of the advertising program.

(d) The applicant may use brochures and/or site signs to publicize the project after initial rent-up has been completed. The applicant may elect to eliminate community contacts altogether or may use contacts such as churches, local businesses, civic groups, the local government or individual community leaders as distributors of brochures or as information sources about the project. Participation in the regional tenant referral clearing house operated by local real estate industry, Public Housing Authorities (PHA's), fair housing groups or public agencies is also encouraged. Such services match prospective homeseekers and/or renters with vacant units of suitable size or price.

## 5:80-22.10 Assessment of marketing efforts

(a) The applicant shall describe the indicators to be used in measuring the effectiveness of the marketing efforts. Measuring effectiveness is an integral part of the applicant's Affirmative Fair Housing Marketing strategy, and the indicators selected should be consistent with other actions the applicant plans to undertake.

(b) The applicant may estimate the possible racial/ethnic composition of the \*[applicant]\* **\*prospective occupant\*** pool which may be anticipated as a result of the marketing efforts including special outreach activities undertaken in accordance with the Plan. The \*[applicant]\* **\*prospective occupant\*** pool should reflect the racial/ethnic composition of the housing market area.

(c) The applicant may estimate the distribution by race/ethnicity of the projected tenant population or owner population resulting from both the implementation of marketing activities and the tenant or homeowner selection process. Under no circumstances is this statement of anticipated occupancy results to be used as a quota in the tenant/owner selection process.

5:80-22.11 Composition of \*[applicant]\* **\*the prospective occupant\*** pool

(a) In determining the anticipated racial/ethnic composition of the \*[applicant]\* **\*prospective occupant\*** pool or tenant/homeowner population the applicant must consider any of the following factors as appropriate:

1. Physical characteristics of the proposed project or subdivision including:

- i. Project size, that is, number of units;
- ii. Distribution of units by bedroom size;
- iii. Household type to be served by the housing, that is, non-elderly families or elderly persons;
- iv. Income eligibility requirements;
- v. The demographic characteristics of the housing market area in which the project or subdivision is to be located including the racial/ethnic composition.

2. Demographic changes (social and economic) in the housing market area in which the project is to be located may result from publicly or privately financed revitalization activities which may displace lower income persons and encourage the immigration of higher income persons. Demographic changes may also result from housing practices which are illegal such as racial "redlining" by financial institutions, residential appraisals based on the racial composition of the neighborhood or the offering of financial incentives to sell homes because of racial or ethnic groups moving into the neighborhood (blockbusting).

## 5:80-22.12 Demographic characteristics of income eligible population in need

Applicants shall include data on any newly assisted project that may also be available at the time of occupancy of the proposed project. Such data should include project size and location, stage of construction, and anticipated dates of initial marketing activity and initial occupancy.

## 5:80-22.13 Residency preferences

(a) Residency preferences are generally prohibited in housing financially assisted by the Agency. The use of residency preferences as part of a project tenant selection and assignment procedure may be permitted under certain circumstances such as a court ordered settlement and/or consent order with prior approval of the Agency. In these instances, prior approval of the Agency is required, and the residency preferences may be used in such a manner that housing opportunity will not be denied to any particular group.

(b) \*[In connection with housing assisted under the Fair Housing Act, residency preferences shall be limited to the indigenous need portion of the community's housing obligation.]\* In connection with housing assisted under the Fair Housing Act, residency preferences shall be limited to the indigenous need portion of the community's housing obligation, but not more than 50 percent in any one project.

(c) In formulating the request for a residency preference, the applicant should calculate the size of the potential population of households eligible for the proposed housing and should also indicate the potential population of eligible households or families identified as expected to reside in the housing area because of present or planned employment. Using the results of this calculation, the applicant should then determine whether an eligible population of residents exist\*s\* which contain\*s\* sufficient numbers of households from both majority and minority groups to yield \*[an applicant]\* **\*a prospective occupant\*** or tenant/homeowner pool. If such a population does exist, the owner may confine the marketing to that jurisdiction and all the units in the project can be subject to

the preference. If, however, an insufficient number of one or more categories of eligible households exist\*s\* within the jurisdiction the applicant should open marketing to the entire market area.

(d) In formulating the request for residency preference the applicant may use data on the housing assistance needs of particular segments of the eligible population contained in the local Housing Assistance Plan, the Census Bureau's census of population and housing reports which gives statistics on income for each SMSA by race, and other locally compiled data sources such as regional planning agency reports and locally performed census counts.

## 5:80-22.14 Staff experience and instructions for fair housing training

(a) The applicant shall indicate whether it has had any experience in marketing housing to the group(s) identified as least likely to apply.

(b) The applicant is responsible for instructing all employees and agents in writing and verbally concerning non-discrimination in housing. Instructions regarding fair housing requirements and objectives should also be a continuing part of the agenda of staff meetings or other regular orientation activities carried on for sales and rental staff.

(c) The applicant shall submit a copy of the instructions given to sub-management staff on fair housing concerns such as Federal, State, or local housing laws, and the applicant's Affirmative Fair Housing Marketing Plan. These materials should indicate the date established for conducting such training and the name and title of the person responsible for developing the fair housing training program.

## 5:80-22.15 Other indicators of successful implementation

The applicant may describe indicators other than the projected racial/ethnic composition of the \*[applicant]\* **\*prospective occupant\*** pool or the tenant population. These indicators can measure the effectiveness of various components of the Plan such as the advertising methods, the outreach activities targeted toward the group identified as least likely to apply or the use of community contacts.

## 5:80-22.16 Approval of the Affirmative Fair Housing Marketing Plan

(a) In the event that the Plan is deficient, the Agency will notify the applicant of the nature of the deficiencies and request any additional information. Copies of approved plans will be distributed as follows:

1. Original to the applicant;
2. A copy to be maintained by the Agency's Minority Affairs Coordinator;
3. A copy to be maintained in the Management Division; and
4. For projects financed under the Affordable Housing Program, a copy to the respective community and the designated developer.

(b) The letter of approval to the applicant will include the following information:

1. The procedure to follow in notifying the Agency of intent to market;
2. Submission to the Agency of copies of the advertisements, project signs, brochures and letters used during the marketing period and developed as part of the marketing program; and
3. Submission of required occupancy reports, monthly sales reports, **\*and\*** monthly rental reports.

## 5:80-22.17 The Management Plan

(a) The applicant shall submit a Management Plan setting forth roles, responsibilities, policies and procedures regarding all aspects of **\*[M]\*\*management\***, including but not limited to parking and tenant selection. The **\*Management\*** Plan shall contain the applicant's plan for implementing the Affirmative Fair Housing Marketing Plan and for equal employment opportunities. The agency will review the Management Plan to determine consistency with the approved Affirmative Fair Housing Marketing Plan. Particular attention will be paid to the following in determining consistency with the Plan:

1. Advertising of units\*[.]\* **\*; and\***
2. Tenant selection and assignment methods. Although the Affirmative Fair Housing Marketing requirements apply to advertising the availability of the housing, the selection procedures adapted by the **\*[managing agent]\* **\*applicant\***** affect the opportunity of eligible persons to exercise their housing choice. These selection procedures and methods of administration should not directly or indirectly discriminate against any person on the basis of race, color, religion, creed, sex, or national origin or **\*have\*** the effect of hindering the achievement\*[s]\* of the purposes of the plan objectives. Applicants are encouraged to adopt the Agency's Tenant/Owner Selection Guidelines as their own.

## 5:80-22.18 Notification of intent to begin marketing

The applicant shall notify the agency no later than 90 days prior to the commencement of any sales or rental marketing activities of **\*[his]\* **\*the applicant's\***** intent to begin sales or rental activities.

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## 5:80-22.19 Preoccupancy conference

Upon receipt of the \*[N]\*\*n\*otification of \*[I]\*\*i\*ntent to begin marketing, the Agency may schedule a preoccupancy conference with the applicant's advertising firm, rental and/or sales agent.

## 5:80-22.20 Marketing for initial sales or rent-up

(a) In carrying out the provisions of the approved Affirmative Fair Housing Marketing Plan, the \*[owner]\* \***applicant**\* shall implement the following procedures which apply to advance marketing activities as well as marketing activities targeted to the general eligible population:

1. Prior to initiating general marketing, contact **the** \*[and]\* commercial media, fair housing groups, employment centers and civil rights organizations which have been identified as resources for attracting persons who are "least likely to apply" for the housing.

2. Establish a system for documenting outreach activities and for maintaining records of \*[applicants]\* \***prospective occupants**\* and approved eligible families which provide racial, ethnic and gender data.

3. Prior to the commencement of application taking or sales, provide training to all management or sales staff in Federal, State and local fair housing laws and with respect to the plan objectives.

4. Submit materials to the agency which document activities taken to implement the approved Plan; that is, copies of advertisements, brochures, leaflets, and letters to community organizations, fair housing groups, major employment centers, referral services, and other contacts utilized as part of the marketing program; photographs of project signs; a copy of the instructions used to train sales/rental staff in fair housing laws; anticipated dates of advertising and occupancy.

5. Prior to initiation of marketing, the applicant may compile a list of those persons who indicated an interest in applying for the housing. Such persons shall not be considered \*[applicants]\* \***prospective occupants**\* and placed in the \*[applicant]\* \***prospective occupant**\* pool until they have filed a formal application during the regular, publicized application-taking period. Application forms should not be provided to such persons in advance of other persons to whom the marketing program is directed.

## 5:80-22.21 Assessment of the Plan's implementation

(a) The applicant shall monitor and carefully evaluate the results of the special outreach and general marketing activities undertaken during the initial sales or rent-up period. Through such evaluation, the applicant can determine **for himself** whether the provisions of the Plan have been successfully implemented and how effectively the Affirmative Marketing Program has helped attract buyers or tenants of majority and minority groups. Examples of factors to be examined in the population of the relevant housing market area include:

1. The actual racial/ethnic composition of either the tenant/owner population or the \*[applicant]\* \***prospective occupant**\* pool. The applicant should compare this data with the anticipated composition of \*[applicants]\* \***prospective occupants**\* or tenants/owners the applicant has projected in the Plan. If the anticipated and actual compositions are similar, then the advertising program can be considered successful. If the actual occupant or \*[applicant]\* \***prospective occupant**\* pool composition does not reflect the projected pattern, the marketing program should be carefully reviewed to determine, for example:

i. Whether outreach efforts are yielding fewer or more applicants from the target groups;

ii. Whether the **projected** \***prospective**\* occupant **pool** composition itself appears to be realistic in light of marketing experience related to the project in question;

iii. Whether adjustments in the advertising strategy or other outreach efforts are warranted;

iv. Whether tenant/owners selection criteria appear to be a factor in producing a racial/ethnic composition of occupants which is different from that of the \*[applicant]\* \***prospective occupant**\* pool.

2. Measures relating directly to special outreach and other advertising techniques used in the marketing program. For example, the applicant may keep a running tabulation of responses to questions relating to the manner in which the prospective buyer or renter had heard about housing. Through such techniques, the applicant can determine whether, for example, foreign language or minority media are effective marketing mechanisms; whether the equal housing opportunity logo effectively conveys to such buyers or renters the message that they are welcome to apply and will not encounter discrimination; whether community contacts used by the applicant are advertising the housing effectively; whether members of groups targeted for special outreach activities are learning about the housing through informal means rather than commercial media.

## 5:80-22.22 Modification of the approved Affirmative Fair Housing Marketing Plan

(a) Modification to the approved Plan may be appropriate under certain circumstances prior to initial marketing, after commencement of initial marketing, or after rent-up is completed. Circumstances which may generate modifications in the Plan include:

1. Significant changes in the parties implementing the Plan, for example, sales company, management company or \*[owner]\* \***applicant**\*. If such changes occur, the \*[owner]\* \***applicant**\* should identify the new parties and inform the Agency of such changes.

2. Significant changes in the demographic or economic characteristic of the housing marketing area in which the project is located, for example, racial/ethnic composition. Such changes can affect the direction of the outreach activities, that is, the group or groups within the eligible population which have been identified as least likely to apply. If the demographic or economic characteristics of the area in which the proposed housing is to be located have changed very significantly, the \*[owner]\* \***applicant**\* should consider changing the group(s) to be targeted for special outreach activities as well as the specific aspects of the advertising program, for example, commercial media, brochures and signs, which relate to the choice of target groups. Similarly if new information with respect to community contacts which may be helpful in reaching the target groups, for example, establishment of a Community Resources Housing Board or the dissolution of a housing referral service previously listed in the approved plan comes to light then changes might be warranted.

(b) If the applicant concludes that changes would be appropriate, **she** \***the applicant**\* should, as early in the marketing process as possible, discuss possible changes with the Agency and submit any proposed changes for Agency review and approval.

## 5:80-22.23 Record keeping and recording requirements

(a) The applicant shall collect and maintain information relating to sales and rental activities, including documentation connected with the outreach program, race and gender for both occupants and \*[applicants]\* \***prospective occupants**\*. The applicant shall maintain this data for the most recent three year period of operation or portion thereof, if the project has not been in operation for more than three years. The applicant shall submit monthly reports on occupancy to the Agency, as follows:

1. The monthly sales report is to be submitted **by all developers of** \***for all**\* single-family subdivisions and multifamily cooperative projects on or before the fifth day of the month following initial sales of any housing units and monthly thereafter until 95 percent of the units are sold. For housing units built in scattered sites, separate sales reports must be submitted for each type of area in which the units are built, that is, minority area, racially-mixed area, or non-minority area.

2. The applicant must submit monthly rental reports for rental housing programs on or before the fifth day of the month following the rental of the first unit. This report is submitted monthly until 95 percent of the units are occupied.

## 5:80-22.24 Future marketing activities for rental projects

(a) Upon completion of the initial rent-up, the applicant initiates appropriate marketing activities for filling vacancies resulting from normal turnover. The applicant may utilize the list of remaining \*[applicants]\* \***prospective occupants**\* as the waiting list for the project. The applicant is encouraged to contact the Agency for assistance in adapting the Plan to the post-initial occupancy period. The nature of this adaptation would normally depend on such factors as:

1. The size and racial/ethnic composition of the waiting list, if one is maintained;

2. The assessment by the Agency and the applicant of the effectiveness of the initial marketing Plan, especially with respect to participation by members of those groups identified as least likely to apply;

3. Any changes in the demographic and socio-economic composition of the housing market area.

## 5:80-22.25 Monitoring

(a) Monitoring will be conducted to assess the degree to which the activities undertaken pursuant to an approved Affirmative Fair Housing Marketing Plan conform with the applicable Fair Housing Laws and Regulations. In conducting monitoring, the agency will determine:

1. Whether the applicant has made a good-faith effort to carry out the provision of the approved Plan and related Affirmative Fair Housing Marketing requirements; and

2. Whether progress has been made toward the achievement of the objectives of the Plan.

(b) Agency staff will conduct on-site monitoring which will entail an examination of records, visual inspection of the project and interviews with applicants, rental/sales agent and staff, occupants and community

organizations identified in the Plan. Records which may be examined include applications (for both accepted and rejected \*[applicants]\* \***prospective occupants**\*), and documentation relating to advertising.

(c) Failure to make a "good faith effort" to comply with the Plan could result in the loss of Agency financial assistance. All complaints regarding discrimination will be forwarded to the New Jersey Division on Civil Rights for formal criminal investigation.

## ENVIRONMENTAL PROTECTION

### (a)

#### DIVISION OF SOLID WASTE MANAGEMENT DIVISION OF WATER RESOURCES DIVISION OF ENVIRONMENTAL QUALITY

#### Master Performance Permits for Transfer Station Facilities

#### Readoption of Concurrent Proposal: N.J.A.C. 7:26-1.10

Proposed: July 6, 1987 at 19 N.J.R. 1242(a).

Adopted: August 21, 1987 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: August 21, 1987 as R.1987 d.372, **without change**.

Authority: N.J.S.A. 13:1B-3, 13:1D-9(k), 13:1E-4, 13:1E-6,

13:1E-26, 13:1E-126 et seq., 26:2C-1 et seq., 58:10A-4, 58:10A-6  
and 58:16A-55.

Effective Date: August 21, 1987.

Expiration Date: November 4, 1990.

DEP Docket Number: 029-87-06.

#### Summary of Public Comments and Agency Responses:

This new rule was adopted on an emergency basis pursuant to N.J.S.A. 52:14B-4(c) on June 23, 1987. Notice of the Adopted Emergency Rule and Concurrent New Proposed Rule was published on July 6, 1987 in the New Jersey Register at 19 N.J.R. 1242(a). The notice advised that a public hearing concerning the concurrent proposal was to be held on August 5, 1987 at 10:00 A.M. at the Brower Student Center of Trenton State College, Trenton, New Jersey to afford the public an opportunity to be heard on this new rule. The notice further advised that written comments concerning the proposed new rule could be submitted on or before August 5, 1987. In addition, notice of this new rule, the comment period and the August 5, 1987 public hearing was published in the Newark Star Ledger, the Trenton Times, the Asbury Park Press and the Atlantic City Press.

Three individuals attended the August 5, 1987 public hearing and only one, Mayor Sharpe James of the City of Newark, chose to testify. Two written submissions concerning the new rule were received during the comment period. These written and oral comments are summarized below:

COMMENT: Due to its time-consuming nature, the requirement that a transfer station facility first be included within a district solid waste management plan as one of the requisites for qualification for a master performance permit is inconsistent with the rule's goal to permit immediate construction of transfer stations.

RESPONSE: Pursuant to N.J.S.A. 13:1E-26, the Department is without discretion to authorize the construction of any solid waste facility which is not consistent with the district solid waste management plan of the district in which the facility is located. N.J.A.C. 7:26-1.10 simply incorporates this requirement of the Solid Waste Management Act.

COMMENT: The new rule is illegal because it does not provide for a public hearing at which to hear the concerns of affected citizens prior to issuance of a master performance permit.

RESPONSE: This new rule invokes the Commissioner's authority to exempt a class of solid waste facility from registration pursuant to N.J.S.A. 13:1E-4(a). For this reason, there is no legal requirement to conduct a public hearing concerning the master performance permit prior to its issuance. Because no facility is eligible for a master performance permit without inclusion in the district solid waste management plan and because such plan inclusion requires adequate notice and the holding of a public hearing pursuant to N.J.S.A. 13:1E-23, affected citizens are assured that at least one public hearing will be conducted to hear public comment concerning the proposed use of a site for a transfer station.

Moreover, the intention of this new rule is to quickly authorize the construction of transfer stations where their immediate development is necessary to avert a major disruption in the provision of solid waste disposal services in a district. Although the new rule does not provide for public comment, the Department is satisfied that the rule has sufficient safeguards to accomplish the required construction and operation in an environmentally safe manner. The Department further realizes that were it to schedule, provide notice of, conduct and prepare a response document for a public hearing concerning the issuance of a master performance permit it would likely be unable to avert a major disruption in the provision of solid waste disposal services.

COMMENT: The Mayor of the City of Newark expressed concern regarding the manner in which this new rule was applied to the two transfer stations in Newark which received master performance permits, including the suitability of the two sites to host transfer stations. He also questioned the mode of operations at these sites and whether there was a solid waste disposal crisis in Essex County.

RESPONSE: The purpose of the August 5, 1987 hearing was to elicit public comment concerning the proposed new rule and not concerning the alleged misapplication of the emergency rule in any particular instance. These issues raised by the Mayor concerning application of the emergency rule are currently the subject of ongoing litigation in the New Jersey Superior Court, Appellate Division. Because they involve the application of the rule rather than its facial validity, they are not considered relevant to this rule.

COMMENT: Persons should receive "A-901" (N.J.S.A. 13:1E-126) approval as a precondition for receiving a master performance permit. The two entities issued master performance permits in Newark did not.

RESPONSE: This requirement is contained at N.J.A.C. 7:26-1.10(b)3. Contrary to the assertion in the comment, the two transfer stations in Newark received temporary approvals pursuant to N.J.A.C. 7:26-16.5(c).

Full text of the adoption follows.

#### 7:26-1.10 Transfer station facility master performance permits

(a) This section shall govern transfer station facilities meeting the criteria in (b) below and shall implement the permitting and exemption authority vested in the Department under all of its enabling statutes.

(b) The Commissioner may issue a master performance permit to those transfer station facilities satisfying the following criteria:

1. The transfer station facility is consistent with the approved district solid waste management plan of the solid waste management district in which the facility is to be located;

2. The Commissioner has determined that development of the transfer station facility must commence forthwith in order to avert a major disruption in the provision of solid waste disposal services, which disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., or which would imperil public health, safety or the environment;

3. The proposed owners or operators of the facility are determined by the Commissioner, pursuant to N.J.S.A. 13:1E-135, after a preliminary review of such information as the Commissioner may require, to demonstrate sufficient reliability, expertise and competence to operate a transfer station facility in compliance with the statutes administered by the Department and with the conditions of the master performance permit; and

4. The facility will be designed, constructed and operated in a manner consistent with the protection of the public health, safety and the environment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility requirements for design, construction and operation shall be those specified as conditions in the master performance permit.

(c) The master performance permit authorizes the immediate development of a transfer station facility. The master performance permit shall include, at a minimum, the following:

1. The identity of the owners and/or operators and a procedure for providing the names of key employees of the transfer station facility;

2. The location of the facility;

3. Those waste types that may be accepted for transfer at the facility and those waste types that are prohibited for transfer at the facility;

4. Those activities and/or studies that shall be completed by the owners and/or operators of the facility and approved by the Department prior to the initiation of construction activities at the facility;

5. Those activities and/or studies that shall be completed by the owners and/or operators of the facility and approved by the Department prior to commencement of operation of the facility;

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6. Operating standards for the facility that must be complied with by the owners and/or operators, including, but not limited to, performance standards for facility staffing and training, facility housekeeping, on-site traffic control, schedules for waste delivery vehicle flow, wastewater collection, stormwater collection, emergency preparedness, vector control, odor control, noise control and notice and enforcement of traffic flow plans for waste delivery vehicles;

7. A requirement of a facility development schedule detailing milestones for timely facility development. Upon a failure to comply with the development schedule or any other provision of the permit, the master performance permit may be revoked at the discretion of the Department;

8. Conditions ensuring that the development of any land in a designated flood hazard area is consistent with the public safety, health and general welfare and the protection of the environment;

9. A condition for the registration and/or permitting of any underground storage tank in place or to be installed at the facility site consistent with P.L. 1986 c.102 (N.J.S.A. 58:10A-21 et seq.) and any applicable Federal requirements prior to actual facility operation;

10. A condition requiring the submission by the owner and/or operator and approval by the Department prior to actual facility operation of a report under the signature and seal of a licensed professional engineer that the discharge into a publicly owned sewage treatment works, if any, will be consistent with local pretreatment standards;

11. A timetable for the submission of an application for any air pollution control equipment or apparatus necessary for the facility. Upon receipt and a review of the permit application, the Commissioner may issue a temporary operating certificate pursuant to N.J.S.A. 26:2C-1 et seq.;

12. A schedule, if appropriate, for replacement of the master performance permit or any part thereof with those approvals defined elsewhere in Title 7 of the New Jersey Administrative Code;

13. A provision prescribing the duration of the master performance permit and providing for automatic expiration by its terms on the specified expiration date; and

14. Any other terms or conditions deemed necessary by the Commissioner.

(d) Except as specifically provided in a master performance permit as described in (c) above, the facility shall be exempt from:

1. Obtaining a New Jersey Pollutant Discharge Elimination System permit, if the discharge from the facility falls within any of the categories enumerated in N.J.S.A. 58:10A-6(d).

2. Any approval required by N.J.S.A. 58:16A-50 et seq.; and

3. The requirement for a registration statement, engineering design approval and other regulatory requirements incidental thereto as contained in N.J.S.A. 13:1E-1 et seq.

## HUMAN SERVICES

### (a)

#### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

##### Administration Manual

##### JerseyCare Manual (Emergency adopted as Optional Categorically Needy Eligibility Manual)

##### Adopted Concurrent Amendments and New Rules: N.J.A.C. 10:49-1.1 and 1.2 and 10:72

Proposed: July 20, 1987 at 19 N.J.R. 1324(a).

Adopted: August 26, 1987 by Drew Altman, Commissioner, Department of Human Services.

Filed: August 27, 1987 as R.1987 d.380, with **substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-3, 30:4D-6, 30:4D-7a, b and c, 30:4D-12, and §1902(1) of the Social Security Act.

Effective Date: August 27, 1987.

Expiration Date: N.J.A.C. 10:49, August 12, 1990; N.J.A.C. 10:72, August 27, 1992.

#### Summary of Public Comments and Agency Responses:

Comments were submitted by Robert M. Fasanello, Director, Hunterdon County Board of Social Services. Many of the comments pertained to administrative processes which do not impact upon the basic program eligibility requirements. The Division believes that there should be a complete opportunity for public comment before undertaking any revisions. However, due to the immediate need to adopt these rules, the commentor's concerns will be considered in future amendments to the rule.

The Division did want to respond to some of the commentor's concerns regarding clarification of certain procedures. The commentor was concerned about confidentiality of information given to Medicaid providers. The Division's existing rule regarding confidentiality, (N.J.A.C. 10:49-1.22) safeguards information about applicants and recipients while still allowing providers access to necessary eligibility data.

The commentor had concerns about questions applicable to United States citizenship. The Division is planning to issue a communication with the form attached which can be used to supplement the PA-1J application.

The comments also raised some issues pertaining to eligibility. With respect to retroactive eligibility, the county welfare agencies and/or boards of social services should continue to give the form FD-74 to all applicants who are responsible for completing the form, and submit it to the Retroactive Eligibility Unit within the Division of Medical Assistance and Health Services. There were two questions regarding the income of a pregnant woman since Medicaid coverage is "guaranteed" during pregnancy. The Division does not intend that a pregnant woman, within the "guaranteed" period of eligibility, report changes in income; it does, however, require that all income changes be reported for children eligible for the program.

The Division made the following changes in the proposed rules on its own initiative.

The program to extend Medicaid coverage to pregnant women and dependent children age two and under will be identified as JerseyCare. In order to accomplish this change, additional language was added to N.J.A.C. 10:49-1.1 and 1.2 to indicate that the optional categorically needy coverage will be known as JerseyCare. The eligibility manual, N.J.A.C. 10:72, will be known as JerseyCare. The heading that was submitted with the concurrent proposal (Optional Categorically Needy Eligibility Manual) is deleted and replaced with the heading JerseyCare.

The Department is making two textual changes to correct printing errors. The Department believes these changes will clarify the rule and are both non-substantive in nature.

The first change appears at N.J.A.C. 10:72-2.1(b)5, concerning the application process. The amended language indicates that persons declared ineligible for the JerseyCare program will be promptly notified of the reason for their ineligibility.

The second change appears at N.J.A.C. 10:72-4.3(c). Additional language was added to refer the reader to N.J.A.C. 10:82-4.15, which is part of the Assistance Standards Handbook (ASH). The language indicates that persons declared ineligible as the result of the provisions of N.J.A.C. 10:82-4.15 may establish eligibility under the JerseyCare program. In other words, persons who receive a lump sum payment, and would normally lose eligibility for both AFDC and Medicaid, might retain eligibility for Medicaid under the JerseyCare program.

**Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).**

10:49-1.1 Who is eligible for Medicaid

(a) (No change.)

(b) The following groups are eligible for medical and health services covered under the New Jersey Medicaid Program when provided in conjunction with program requirements specifically outlined in the second chapter of each service manual. The groups are not all inclusive:

1.-8. (No change.)

9. Pregnant women and children up to two years of age who meet the income standards of the Optional Categorically Needy Program (OCN)\*[\*] \*are eligible under JerseyCare.\*

i. Individuals are determined to be eligible by the county welfare agency or board of social services. They must have family income which does not exceed 100 percent of the \*F\*\*[\*] federal poverty level.

ii. Pregnant women are eligible during pregnancy and through 60 days following the last day of pregnancy.

iii. Children up to age two will be phased in as follows:

(1) Provided all other eligibility criteria are met, effective July 1, 1987, children up to age one are eligible and effective October 1, 1987, children up to the age of two are eligible. A child under the age of one year for whom application is made and who is eligible prior to October 1, 1987, and before his or her first birthday, will be deemed to meet the age requirements until October 1, 1987.

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

(e) If a patient has not applied for benefits, is unable to pay for services rendered and appears to meet the requirements for eligibility for the New Jersey Medicaid Program, the provider should encourage the patient or his/her representative to apply for benefits through the county welfare agency or board of social services for the Aid to Families with Dependent Children program, the Optional Categorically Needy Program **\*(JerseyCare)\*** or for the Medically Needy Program, to the Social Security Administration for Supplemental Security Income Benefits, or in certain cases to the New Jersey Division of Youth and Family Services. The agency will process the application and notify the patient of the resulting determination.

1. (No change.)

(f)-(g) (No change.)

#### 10:49-1.2 How to identify a covered person

Note: All eligible persons as described below have an HSP (Medicaid) Case Number, which includes a two-digit individual Person Number. This identification number appears on the validation of eligibility form which must be presented to providers of services as proof of eligibility.

(a) An HSP (Medicaid) Case Number, as currently assigned, consists of 12 digits.

1.-2. (No change.)

3. The third and fourth digits of the 12-digit HSP (Medicaid) Case Number designate the category under which a person is determined eligible for the New Jersey Medicaid Program.

10—Aged—SSI related (65 years of age or older)

15—Aged—Medically Needy related

20—Disabled—SSI related (under 65 years of age)

25—Disabled—Medically Needy related

30—Aid to Families with Dependent Children (AFDC) **\*and\*** **\*(Optional Categorically Needy [eligible individuals] \*JerseyCare pregnant women and children.)\*** **[are included in this category.]\***

35—AFDC—Medically Needy related

50—Blind—SSI related

55—Blind—Medically Needy related

60—Children in Foster Care

70—Medical Assistance for Aged—A New Jersey State Program

80—Refugee Program

4.-6. (No change.)

(b) There are four forms used for validation of eligibility: A New Jersey Medicaid provider may verify the client's Medicaid eligibility by means of the Department of Human Services "Medicaid-ID" (FD-152), "Medicaid Eligibility Identification Card" (FD-73/178), "DYFS 16-36", or "Validation of Eligibility" (FD-34).

1. (No change.)

2. "Medicaid Eligibility Identification Card" (MEI Card) (FD-73/178) (See Exhibit II for the regular Medicaid Program MEI Card and Exhibit V for the Medically Needy Program MEI Card at the end of this section): This card is issued monthly or quarterly depending on the basis of the recipient's eligibility. The MEI Card is issued monthly to individuals (aged, blind and disabled) determined by the Social Security Administration to be eligible for Supplemental Security Income (SSI), monthly to individuals determined by the county welfare agency or board of social services to be eligible in the Optional Categorically Needy Program **\*(JerseyCare)\***, monthly to individuals in the Special Status Program (see (b)2v below) and monthly to individuals determined by the county welfare agency or board of social services to be eligible in the Medically Needy Program (see (b)2vi below). It is issued quarterly for Medicaid eligible children under the supervision of the Division of Youth and Family Services (DYFS).

i. The MEI Card usually identifies eligibility for only one person; however, the Optional Categorically Needy Program **\*(JerseyCare)\*** identifies all eligible persons in the family on the MEI Card and the Special Status Program identifies all eligible persons in the family and restrictions apply to all eligible persons listed on the MEI Card when issued as a Medicaid Special Status Card. Also, when the MEI Card is issued to the Medically Needy, more than one eligible person may be listed and a service code is indicated next to each name (see (b)2vi below).

ii.-vi. (No change.)

3. (No change.)

## CHAPTER 72

### \*[OPTIONAL CATEGORICALLY NEEDED ELIGIBILITY MANUAL]\* **\*JERSEY CARE MANUAL\***

#### SUBCHAPTER 1. INTRODUCTION

##### 10:72-1.1 Program scope

(a) This chapter contains the criteria for Medicaid eligibility for certain pregnant women and children not eligible under the provisions of N.J.A.C. 10:81 and 82. The provisions of this chapter are effective July 1, 1987.

1. Because the eligibility criteria established by the rules contained within this chapter are more liberal than those applicable under AFDC-related Medicaid, children (of the applicable ages) and pregnant women losing Medicaid eligibility because of financial reasons should be evaluated under the provisions of this chapter for the possibility of continuing Medicaid eligibility.

2. Children and pregnant women financially ineligible for Medicaid under the provisions of N.J.A.C. 10:81 and 82 and who are income ineligible for Medicaid under the provisions of this chapter shall be evaluated for eligibility as Medically Needy under the provisions of N.J.A.C. 10:70.

(b) Medicaid eligibility under the provisions of this chapter is limited to:

1. Pregnant women; and

2. Children of the following ages (see N.J.A.C. 10:72-3.4(a)4 and 5 for protected eligibility for children reaching the age limits):

i. Through September 30, 1987, children under the age of one year; and

ii. Effective October 1, 1987, children under the age of two years.

(c) Retroactive Medicaid eligibility is available beginning with the third month prior to the month of application for Medicaid for any month during which the applicant meets all eligibility criteria and during which the applicant has unpaid medical expenses for covered services. In order to qualify for retroactive coverage, an individual need not be determined eligible at the time of application for Medicaid benefits. Application for retroactive Medicaid coverage may be made on behalf of a deceased person so long as the person was alive during a portion of the three-month period immediately prior to the month of application and he or she has unpaid medical expenses for Medicaid covered services.

i. Retroactive Medicaid coverage is not available under the provisions of this chapter for any period prior to July 1, 1987.

##### 10:72-1.2 Purpose

(a) The purpose of the rules contained within this chapter is to:

1. Set forth eligibility criteria for the Medicaid program; and

2. Specify the rights and responsibilities of program applicants and eligible persons.

(b) Circumstances which are neither specifically nor generally addressed in these regulations shall be referred to designated staff of the Division of Medical Assistance and Health Services for resolution.

(c) The director of the county welfare agency shall assign copies of this chapter to administrative staff, all staff responsible for the determination of Medicaid eligibility for pregnant women and children, and to social service staff as appropriate and shall ensure that each staff member is thoroughly familiar with its requirements in order to apply the policy and procedures consistently.

(d) The Division of Medical Assistance and Health Services will issue revisions to this chapter as they are promulgated in accordance with New Jersey Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

i. At least one administrative copy of all obsolete pages of this chapter must be maintained by the county welfare agency.

(e) This chapter is a public document. All copies in use must be updated accurately as revisions are issued. The chapter is available as follows:

1. Copies are available in the State offices of the Division of Medical Assistance and Health Services and in each county welfare office for examination and review during regular office hours.

2. Specific policy material necessary for an applicant or recipient or his or her representative to determine whether a fair hearing is to be requested or to prepare for a fair hearing shall be provided to such persons without charge.

3. All public and university libraries which have agreed to maintain the chapter up-to-date will have a copy available under their regulations.

4. Welfare, social service, and other nonprofit organizations will be furnished with a copy of this chapter at no cost upon an official written request on agency letterhead to the Division of Medical Assistance and Health Services.

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5. A current up-to-date copy of this chapter is available from the Division of Medical Assistance and Health Services at the cost of printing and mailing to anyone who requests it in writing.

## 10:72-1.3 Administrative organization

Financial eligibility for the Medicaid program is administered by the county welfare agencies under the supervision of the Division of Medical Assistance and Health Services.

## 10:72-1.4 Principles of administration

(a) The following principles of administration apply in the Medicaid program.

1. Opportunity to make application: Any individual who believes he or she is eligible shall be afforded an opportunity to make application (or reapplication) for the Medicaid program without delay.

2. Primary source of information: Program applicants or eligible persons are the primary source of information concerning program eligibility. The county welfare agency shall, when necessary, in the process of determining eligibility, use secondary sources of information with the knowledge and consent of the applicant or eligible person.

3. Adherence to law and administrative policy: There shall be strict adherence to law and complete conformity with rules and administrative policy. Requirements other than those established by law or rule shall not be imposed as a condition of receiving assistance under the Medicaid program.

## 10:72-1.5 Confidentiality of information

(a) No member, officer, or employee of the county welfare agency shall produce or disclose any confidential information to any person except as authorized below.

1. Information considered confidential includes, but is not limited to, the following:

- i. Names and addresses;
- ii. Medical services provided;
- iii. Social and economic conditions and circumstances;
- iv. County welfare agency evaluation of personal information; and
- v. Medical data, including diagnosis and past history of disease or disability.

2. The county welfare agency may disclose information concerning an applicant or eligible person to persons and agencies directly related to the administration of the Medicaid program. Persons and agencies directly related to program administration are those who are properly authorized to be involved in the following:

- i. The establishment of eligibility;
- ii. The determination of the amount and scope of medical assistance;
- iii. The provision of services for recipients; and
- iv. The conduct or assisting in the conduct of an investigation, prosecution, or civil or criminal proceeding related to the Medicaid program.

3. The county welfare agency may release information whenever the applicant or eligible person waives confidentiality, but only to the extent authorized by the waiver.

4. If a court issues a subpoena for a case record or any other confidential information or for any agency representative to testify concerning an applicant or eligible person the county welfare agency shall make a statement substantially as follows:

i. "Under provisions of the Social Security Act, information concerning applicants and recipients of medical assistance must be restricted to persons directly connected to the administration of such assistance. Officials of the Federal government have advised that this includes a requirement of nondisclosure of such information in response to a subpoena. If a disclosure is made of this information, either by personal testimony or by the protection of records, this is considered nonconformance with Federal requirements and may subject the State to loss of Federal financial participation in the medical assistance program."

5. In no instance is it intended that any officer or employee of the county welfare agency place him or herself in contempt of court through the refusal to follow orders of the court. In any instance of a subpoena for case record information or for agency testimony, a complete report of the disposition of the court's request shall be entered into the case record.

6. Pertinent information and records may be released in conjunction with an administrative hearing conducted by the Office of Administrative Law regarding action or inaction of the county welfare agency affecting an applicant's or eligible person's eligibility or entitlement under the Medicaid program.

## 10:72-1.6 Materials distributed to Medicaid applicants or eligible persons

(a) All materials distributed to program applicants or eligible persons must:

1. Directly relate to the administration of the Medicaid program;
2. Have no political implications;
3. Contain names only of individuals directly connected with the administration of the Medicaid program; and
4. Identify those individuals only in their capacity with the State or the county welfare agency.

(b) The county welfare agency shall not distribute materials such as "holiday" greetings, general public announcements, voting information, or alien registration notices.

(c) The county welfare agency may distribute materials directly related to the health and welfare of program applicants and eligible persons, such as announcements of free medical examinations, availability of surplus food, and consumer protection information.

## 10:72-1.7 Nondiscrimination

(a) Title VI of the Federal Civil Rights Act of 1964 (P.L. 88-352) and section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the ground of race, color, national origin, or handicap in the administration of any program for which Federal funds are received. Strict compliance with the provisions of these Acts and any regulations based thereon is required as a condition to receive Federal funds for the assistance programs administered by the county welfare agencies. These principles apply to the Medicaid program in New Jersey.

1. The county welfare agency shall inform all staff members of their obligations in regard to the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act of 1973.

2. All persons seeking medical assistance shall be informed of Title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act of 1973.

3. All persons seeking or receiving medical assistance shall be afforded an opportunity to file a complaint alleging discrimination on the ground of race, color, nation origin, or handicap. Such complaints may be filed directly with the Regional Manager, U.S. Department of Health and Human Services, Office of Civil Rights, Federal Plaza, New York, New York 10007, or with the Director, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625.

4. In any instance in which a complaint of alleged discrimination is filed with a State or county agency, the complaint shall be forwarded immediately to the Director, Division of Medical Assistance and Health Services. The Director, upon receipt of any such complaint, will take any such action he or she deems appropriate to the situation. This action may include, but is not limited to, the securing of reports from whatever sources have knowledge pertinent to the situation and referral to the Division of Civil Rights of the New Jersey Department of Law and Public Safety, for investigation, evaluation, and recommendation by that agency.

5. The county welfare agency shall afford full cooperation in the investigation of complaints of discrimination as may be requested by the Federal Department of Health and Human Services, the State Division of Medical Assistance and Health Services, or the State Division of Civil Rights.

## 10:72-1.8 Assignment of medical support rights

(a) Any person who applies for Medicaid, by virtue of the application for benefits, is deemed to have assigned to the Commissioner of the Department of Human Services any rights to support for the purpose of medical care as determined by a court or administrative order and any rights to payment for care from any third party. Program applicants and recipients are required to cooperate in the identification of and the obtainment of any such rights.

1. The county welfare agency shall advise program applicants and recipients of the terms of the assignment and the consequences thereto.

## SUBCHAPTER 2. CASE PROCESSING

## 10:72-2.1 Application

(a) Application for Medicaid benefits for pregnant women and children shall be accomplished by the completion and signing of Form PA-IJ as well as any addenda to that form as prescribed by the Division of Medical Assistance and Health Services.

1. The application for the program shall be executed by:

- i. The pregnant women (regardless of age); or
- ii. The parent, guardian, or caretaker relative of a child for whom Medicaid is sought;

2. For cases in which, because of confinement, illness, incapacity, disability, or lack of competence of a person specified in (a)1 above, the application may be executed on behalf of such person by:

- i. A relative by blood or marriage;
  - ii. A staff member of a public or private welfare or social service agency of which the person seeking assistance is a client and who has been designated by the agency to so act;
  - iii. An attorney or physician of the person seeking Medicaid benefits;
- or
- iv. A staff member of an institution or facility in which the individual is receiving care and who has been designated by the institution or facility to so act.

3. A legal guardian shall be recognized as an authorized agent to execute an application on behalf of a pregnant woman or child.

(b) The county welfare agency, under policies and procedures established by the Division of Medical Assistance and Health Services, has the direct responsibility in the application process to:

1. Inform applicants of the purpose of and the eligibility requirements for the Medicaid program, including their rights to a fair hearing;
2. Receive applications and review them for completeness, consistency, and reasonableness;
3. Assist program applicants in exploring their eligibility for program benefits;
4. Make known to program applicants the appropriate resources and services both within the agency and in the community; and
5. Assure the prompt and accurate submission of eligibility data to the Medicaid Status File for eligible persons **\*and prompt notification to ineligible persons\*** of the reason for their ineligibility.

(c) As part of the application process, an applicant for Medicaid has the responsibility to:

1. Complete, with the assistance of the county welfare agency as required, any forms required as part of the application process;
2. Assist the county welfare agency in securing evidence that verifies his or her statements regarding eligibility; and
3. Provide medical confirmation of pregnancy when Medicaid benefits are sought on that basis.

(d) For any application for Medicaid benefits under the provisions of this chapter, the county welfare agency must accomplish disposition of the application as soon as all factors of eligibility are met and verified but not later than 30 days from the date of application (or from the date of the inquiry form Pa-1C, if applicable). Exceptions to the timeliness standard appear in (d)2 below.

1. "Disposition of the application" means the official determination by the county welfare agency of eligibility or ineligibility of the applicant(s) for Medicaid.

2. Disposition of the application may exceed the 30-day processing standard when substantially reliable evidence of eligibility or entitlement for benefits is lacking at the end of the processing period. In such circumstances, the application may be continued in pending status. The county welfare agency shall fully document in the case record the circumstances of the delayed application processing. The processing standard may be exceeded for any of the following:

- i. Circumstances wholly within the control of the applicant;
- ii. A determination by the county welfare agency, when evidence of eligibility or entitlement is incomplete or inconclusive, to afford the applicant additional time to provide evidence of eligibility before final action on the application;
- iii. An administrative or other emergency that could not reasonably have been avoided;
- iv. Circumstances wholly beyond the control of both the applicant and the county welfare agency.

3. When disposition of the application is delayed beyond the processing standard, the county welfare agency shall provide the applicant written notification prior to the expiration of the processing period setting forth the specific reasons for the delay.

4. Each county welfare agency director shall establish appropriate operational controls to expedite the processing of applications and to assure maximum compliance with the processing standard.

i. The county welfare agency shall maintain control records which identify all pending applications which have exceeded the processing standard and the reason therefore. The record shall be adequate to make possible the preparation of reports of such information as may be requested by the Division of Medical Assistance and Health Services.

(e) The following actions on an application qualify as disposition of an application for purposes of the processing standard:

1. Approved: The applicant has been determined eligible for Medicaid;

2. Denied: The applicant has been determined ineligible for Medicaid;

3. Dismissed: A decision by the county welfare agency that the application process need not be completed because:

- i. The applicant has died (the application process must be completed if there are unpaid medical bills for covered services in the retroactive coverage period or subsequent to program application);
- ii. The applicant cannot be located;
- iii. The application was registered in error;
- iv. The applicant has moved out of the State during the application process.

4. Withdrawn: The applicant requests that eligibility for the Medicaid program be no longer considered.

#### 10:72-2.2 Interview

The county welfare agency is required to conduct a personal face-to-face interview with the program applicant or the authorized agents as part of the process of determining program eligibility.

#### 10:72-2.3 Verification requirements

(a) The county welfare agency is required to verify all factors related to eligibility for the Medicaid program. Factors subject to verification include:

1. Pregnancy: For women seeking benefits under the provisions of this chapter, pregnancy must be medically verified. The medical verification must include the estimated dates of conception and delivery.
2. Birth date: The birth date of any person for whom benefits are sought must be verified.
3. Alien status: The status of any alien seeking benefits must be verified to establish entitlement for Medicaid benefits.

4. Citizenship: When an applicant's or recipient's statements of U.S. citizenship are questionable, citizenship must be verified.

5. Household composition: The county welfare agency must verify the household composition in order to ascertain which persons will be included in the determination of eligibility for Medicaid benefits.

6. Social Security number: The Social Security number of any person seeking Medicaid benefits must be verified.

7. The county welfare agency must verify all sources of income of any person whose income must be counted in the determination of program eligibility. While resources are not a factor of eligibility for benefits under this chapter, resources must be identified and verified to determine if income is derived from the resources.

(b) The county welfare agency shall use documentary evidence as the primary source of verification. Documentary evidence is written confirmation of the family's circumstances. It is the responsibility of the applicant to obtain or to assist the county welfare agency in obtaining any required documentation.

(c) In circumstances in which the documentary evidence is questionable or is not available, the county welfare agency may use collateral contact to confirm the family's circumstances. A collateral contact is a verbal confirmation of a family's circumstances by a person outside the family. In order to be acceptable as verification, a collateral contact must be in a position to provide accurate information about the family and the circumstance in question.

(d) Subsequent to the initial application, verification is required for only those factors of eligibility which are subject to change or for those factors for which the original verification has become questionable.

(e) In the absence of credible verification of all eligibility factors, eligibility for the Medicaid program may not be established.

#### 10:72-2.4 Case transfer

(a) When individuals move permanently to another county within the State, responsibility for the case shall be transferred in accordance with the provisions of this section. The case transfer shall be accomplished in a manner so as not to adversely affect the rights of any individual to program entitlement.

1. A temporary visit out-of-county shall not be considered to be a change of county residence until the visit has continued for longer than three calendar months.

(b) The county of origin shall initiate and the receiving county shall, on request, immediately undertake an investigation of the circumstances surrounding the move. If the move is permanent, each county shall execute its respective responsibilities in accordance with (c) and (d) below.

(c) Applicant cases: For persons who move from the county in which application for Medicaid is made prior to the determination of eligibility or ineligibility:

1. The county in which the application was made has the responsibility to:

- i. Complete the eligibility determination process;

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ii. If determined eligible for the Medicaid program, accrete the eligible person(s) to the Medicaid Status File with the correct effective date of Medicaid eligibility and the new address in the receiving county; and

iii. If the case is determined eligible, within five working days of that determination, transfer the case record material to the receiving county in accordance with (d)1i through iv below.

2. The receiving county has the responsibility to:

i. Communicate promptly with the client upon the receipt of the case material to advise of continued program entitlement; and

ii. Immediately notify the county of origin, in writing, of the date the case material was received.

(d) Eligible cases: For cases which are determined eligible for the Medicaid program:

1. The county of origin has the responsibility to:

i. Transfer, within five working days from the date it is notified of the actual move, a copy of pertinent case material to the receiving county. Such material shall include, at a minimum, a copy of the first application and most recent application form (including all verification), Social Security numbers, and the new address in the receiving county;

ii. Send with the above case material, a cover letter specifying that the case is being transferred and requesting written acknowledgement of receipt;

iii. Forward promptly to the receiving county, copies of any other material mutually identified as necessary for case administration; and

iv. Notify the receiving county if there will be a delay in providing any of the case material.

2. The receiving county has the responsibility to:

i. Communicate promptly with the client upon receipt of the case material;

ii. Immediately notify the county of origin, in writing, of the date the initial case material was received;

iii. Review eligibility for the case. If questions regarding case eligibility exist because of information provided by the county of origin, that county shall be consulted for resolution of the issues;

iv. Accept responsibility for the case (provided application to transfer has been made) effective with the next month if the initial case material has been received before the 10th of the month;

v. Accept responsibility for the case (provided application to transfer has been made) for the second month after the month of receipt of initial case material when such material is received on or after the 10th of the month;

vi. Update the Medicaid Status File as necessary including entry of a new case number. If the case is determined eligible for Medicaid in the receiving county, there shall be no interruption of entitlement. If the case is determined ineligible for Medicaid in the receiving county, eligibility shall be terminated, subject to timely and adequate notice, and the previously eligible persons deleted from the Medicaid Status File; and

vii. Notify the county of origin of the date eligibility for Medicaid will begin or will be terminated in the receiving county.

## 10:72-2.5 Redetermination of eligibility

(a) Eligibility for Medicaid under this chapter shall be redetermined, including a face-to-face interview and the completion of a new application form, as follows:

1. For a pregnant woman, eligibility need not be redetermined until the birth of her child. Upon the birth of the child, eligibility should be redetermined prior to the expiration of the 60-day period following the birth to determine on-going eligibility for the newborn.

2. For the eligibility of children, eligibility must be redetermined no later than six months following the month of initial eligibility or the last redetermination.

(b) The county welfare agency shall reassess program eligibility as follows:

1. When required on the basis of information the county welfare agency has obtained previously about anticipated change in the case situation or when additional information is needed to ascertain income eligibility for the program.

2. Promptly after information is obtained by the county welfare agency which indicates changes in the case circumstances that may affect program eligibility.

## 10:72-2.6 Post-application client responsibilities

(a) Upon a determination of eligibility for the Medicaid program, eligible persons have the on-going responsibility for the reporting of changes in family circumstances and for the provision of information as delineated at N.J.A.C. 10:72-2.1(c). Further, as requested by the county welfare agency, additional information must be provided. At any time

that the county welfare agency lacks sufficient information to confirm continuing program eligibility because of the unwillingness of an eligible person to provide necessary information, the agency shall commence action to terminate the case.

## 10:72-2.7 Retroactive eligibility

(a) Persons may be eligible under the provisions of this chapter for retroactive Medicaid eligibility for the three months preceding the month of application. In order to be entitled for retroactive Medicaid, the applicant(s) must have been eligible during any of the three months prior to the month of application and have unpaid medical bills during a month of eligibility. In the case of a pregnant woman, in order to be eligible for a retroactive month, the medical verification of pregnancy must have occurred in the retroactive month or in a previous month.

(b) Determination of retroactive eligibility is the responsibility of the Division of Medical Assistance and Health Services. If the applicant has unpaid medical bills from the retroactive eligibility period, the county welfare agency shall provide the applicant with the appropriate forms and instruct the applicant to send them to the Division of Medical Assistance and Health Services, Retroactive Eligibility Unit, CN-712, Trenton, New Jersey 08625. An application for retroactive eligibility must be received by the Retroactive Eligibility Unit within six months of the date of application for Medicaid at the county welfare agency.

## SUBCHAPTER 3. NONFINANCIAL ELIGIBILITY FACTORS

## 10:72-3.1 General provisions

(a) Eligibility for the Medicaid program must be established in relation to each requirement of the Medicaid program to provide a valid basis for the granting or denying of Medicaid assistance.

(b) The applicant's statements regarding his or her eligibility, as set forth in the application form, are evidence. The statements must be consistent and meet prudent tests of credibility. Incomplete or questionable statements shall be supplemented and substantiated by corroborative evidence from other pertinent sources.

## 10:72-3.2 Citizenship

(a) In order to be eligible for the Medicaid program, an individual must be a citizen of the United States, an alien lawfully admitted for permanent residence, or an alien approved for temporary residence.

1. The term "citizen of the United States" includes persons born in Puerto Rico, Guam, the Virgin Islands, Swains Island, American Samoa, and the Northern Mariana Islands.

2. The following aliens shall be considered lawfully admitted for permanent residence for purposes of establishing eligibility for the Medicaid program:

i. Immigrant: An alien lawfully admitted for permanent residence pursuant to sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act;

ii. Continuous residence: An alien who entered the United States prior to June 30, 1948, or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the United States Attorney General pursuant to section 249 of the Immigration and Nationality Act;

iii. Conditional entry after March 31, 1980: An alien qualified for conditional entry after March 31, 1980 because of persecution or fear of persecution on account of race, religion, or political belief pursuant to section 207 (formerly section 203(a)(7)) of the Immigration and Nationality Act;

iv. Conditional entry prior to April 1, 1980: An alien who qualifies for conditional entry prior to April 1, 1980 pursuant to former section 203(l)(7) of the Immigration and Nationality Act;

v. Granted asylum: An alien granted asylum through an exercise of discretion by the United States Attorney General pursuant to section 208 of the Immigration and Nationality Act;

vi. Emergent reasons: An alien lawfully present in the United States as a result of an exercise of discretion by the United States Attorney General for emergent reasons or for reasons deemed strictly to be in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a grant of parole by the United States Attorney General;

vii. Deportation withheld: An alien living in the United States to whom the United States Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act because of the judgement of the United States Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion.

(CITE 19 N.J.R. 1736)

COMMERCE AND ECONOMIC DEVELOPMENT

ADOPTIONS

3. Aliens granted the status of lawfully admitted for temporary residence by the Immigration and Naturalization Service are, if otherwise eligible, entitled to Medicaid under the provisions of this chapter.

10:72-3.3 State residency

(a) In order to be eligible for the Medicaid program, an individual must be a resident of the State of New Jersey. The term "resident" shall be interpreted to mean a person who is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom.

1. If an individual leaves New Jersey with the intent to establish permanent residence elsewhere, or for an indefinite period for purposes other than a temporary visit, he or she ceases to be eligible to receive Medicaid from this State.

2. When an individual enters this State in order to receive medical care and applies for Medicaid to meet all or a portion of the costs of such care, the fact that the immediate purpose of the move was to secure medical care does not, in and of itself, have the effect of making the person ineligible for the Medicaid program. It is the responsibility of the county welfare agency to evaluate all such cases and to make an eligibility determination, considering carefully all the following criteria:

- i. Whether the move is a temporary one, being solely for the purpose of receiving medical care for a limited time;
- ii. Whether there is clear expression of intent on the part of the individual to remain permanently in this State;
- iii. Whether there is objective evidence that the individual has, in fact, abandoned or not abandoned residence in the State from which he or she came;
- iv. Whether the state in which the individual previously resided recognizes him or her as having continuing eligibility under the Medicaid program (or other program providing payment for medical care) of that jurisdiction.

3. If, after full consideration of the above factors, the county welfare agency is satisfied that the individual has become a resident of this State, Medicaid eligibility may be established.

10:72-3.4 Eligible persons

(a) The following persons who meet all eligibility criteria of this chapter are eligible for Medicaid benefits:

1. Pregnant women: Needy women of any age during the term of a medically verified pregnancy.

i. A woman who is determined eligible under the criteria of this chapter will, for purposes of eligibility, be considered to be a pregnant woman until the end of the 60-day period beginning with the last day of her pregnancy.

2. Children of the following ages:

i. Through September 30, 1987, children under the age of one year; and

ii. Effective October 1, 1987, children under the age of two years;

3. The child resulting from the pregnancy of a woman eligible for Medicaid under the provisions of this chapter shall remain eligible so long as the mother of (a)1i above and the child lives with his or her mother. Eligibility of the child resulting from the pregnancy will be made without regard to income for the 60-day period following the child's birth.

4. A child under the age of one year for whom application is made and who is eligible prior to October 1, 1987 and before his or her first birthday will be deemed to meet the age requirement until October 1, 1987.

5. Any child receiving Medicaid under the provisions of this chapter who but for the age limits in (a)2 above would be eligible for Medicaid under the provisions of this chapter and who is receiving inpatient services covered by Medicaid at the time he or she reaches the age limit, will continue to be eligible for Medicaid until the end of the stay for which the inpatient services are furnished.

10:72-3.5 Household unit

(a) The term "Household unit" means those persons whose income is counted in the determination of eligibility of pregnant women and children under the provisions of this chapter. The following persons, if they reside with a pregnant woman or a child shall be considered members of the household unit:

- 1. In the case of a pregnant woman:
  - i. The pregnant woman and the unborn child;
  - ii. The pregnant woman's spouse;
  - iii. The pregnant woman's natural or adoptive children under the age of 21; and
  - iv. The blood-related siblings (including those of half blood) of the pregnant woman's children who are under the age of 21.

2. In the case of a child:

- i. The child;
- ii. The child's natural or adoptive parents;
- iii. The child's blood-related (including half-blood) and adoptive siblings under the age of 21; and
- iv. At the option of the applicant, the child's stepparent. If the applicant elects not to include the stepparent in the household unit, his or her income will not be included in the determination of eligibility except to the extent that he or she makes it available to the eligible members.

3. Any person who is in receipt of AFDC or SSI or who has applied for and been found eligible for Medicaid based on eligibility for those cash assistance programs will not be included in the household unit. Any person whose income and resources have been deemed to be an eligible SSI recipient shall likewise not be included in the household unit.

4. Any person in (a)1 and 2 above shall be included in the household unit even if he or she is in a Medically Needy budget unit in accordance with N.J.A.C. 10:70-3.5. Likewise, any person required by that rule to be included in a Medically Needy budget unit, shall be included in that budget unit even if he or she is included in a household unit under the provisions of this section.

10:72-3.6 Third party liability

Program applicants and recipients are required to identify to the county welfare agency any third party (individual, entity, or program) that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient.

10:72-3.7 Persons sanctioned under AFDC rules

Persons who are ineligible for AFDC due to the imposition of a sanction of ineligibility for a factor of AFDC eligibility that does not apply in Medicaid (such as noncooperation with work registration or WIN requirements) shall have eligibility determined under this chapter without regard to the sanction. (For persons ineligible for AFDC due to a period of ineligibility imposed as a result of the receipt of lump sum income, see N.J.A.C. 10:72-4.3(c)).

10:72-3.8 Application for other benefits

(a) As a condition of eligibility for the Medicaid program, applicants and recipients are required to take all necessary steps to obtain any annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Applicants and recipients must avail themselves of any health insurance coverage available to the household unit at no cost, such as coverage provided by an employer at no cost.

1. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation and pensions, Social Security benefits, and unemployment compensation. They do not include AFDC, Supplemental Security Income (SSI), or General Assistance.

10:72-3.9 Inmates of public institutions

(a) Any person who is an inmate of a public institution is ineligible for the Medicaid program.

(b) Any person who is incarcerated in a Federal, State, or local correction facility (prison, jail, detention center, reformatory, etc.) is not eligible for the Medicaid program.

SUBCHAPTER 4. FINANCIAL ELIGIBILITY

10:72-4.1 Income eligibility limits

(a) Income limits for Medicaid for persons covered under the provisions of this chapter will be based on 100 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). The monthly income standard will be one-twelfth of the poverty income guideline rounded down to the next whole dollar amount for each household unit size. The annual revision to the Federal poverty income guideline will be effective for purposes of this chapter with the first month beginning 30 days after publication of the poverty line in the Federal Register by the Department of Health and Human Services.

(b) In order to be eligible for Medicaid benefits under the provisions of this chapter, monthly household income (as determined by this chapter) must be equal to or less than the income limit established in (a) above.

1. If a pregnant woman is determined to be income eligible during any month prior to the end of her pregnancy, she, if otherwise eligible, will continue eligible without regard to changes in the household unit's income for the term of her pregnancy, including the 60-day period beginning with the last day of the pregnancy whether or not the pregnancy results in

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a live birth. If the income change results from the addition of a new household member, the new income is not considered through the 60-day period beginning with the last day of the pregnancy.

i. The child resulting from the pregnancy will likewise be eligible for Medicaid without regard to changes in the household unit's income for the 60-day period following its birth.

2. With the exception in (b)1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

#### 10:72-4.2 Prospective budgeting of income

(a) The county welfare agency shall establish the best estimate of income that will be available to the household unit.

1. The best estimate of income shall be based on an average of the household unit's income for the full two-month period preceding the date of application or redetermination. Adjustments shall be made to the estimated income to reflect changes in income that either have occurred or which are reasonably anticipated to occur which would affect the household unit's income during a period of eligibility.

#### 10:72-4.3 Countable income

(a) Except as specified below, countable income for persons under the provisions of this chapter shall be determined in accordance with regulations applicable to income in the AFDC-C program (see N.J.A.C. 10:82).

1. The maximum income limits as provided for at N.J.A.C. 10:82-1.2(d) do not apply.

2. Neither the \$30.00 nor the one-third disregard of earned income at N.J.A.C. 10:82-2.8(a)3 and 10:82-4.4(c) apply.

3. The deeming of stepparent income at N.J.A.C. 10:82-2.9(d) does not apply. (See N.J.A.C. 10:72-3.5(a)2 regarding the inclusion or exclusion of the stepparent in the household unit.)

4. The deeming of an alien's sponsor at N.J.A.C. 10:82-3.13 does not apply.

(b) Nonrecurring lump sum income received by a household unit shall be added to any other income received by the household unit in that month. The total shall be divided by the income eligibility limit applicable to the household. The result will be the number of months the eligible members of the household unit shall be ineligible to receive Medicaid under the provisions of this chapter. Any remaining income from this calculation is treated as if it were unearned income in the first month following the period of ineligibility. No period of ineligibility shall apply to a pregnant woman eligible under the provisions of this chapter.

1. The period of ineligibility shall begin the first month subsequent to the month the nonrecurring income is received or, if there is insufficient time to provide timely adverse action notice, the following month.

2. Once established, the period of ineligibility may be reduced only in accordance with the AFDC provisions for shortening a period of ineligibility as found at N.J.A.C. 10:82-4.15(a)5. The basis for a determination to shorten the period of ineligibility shall be fully documented in the case record.

(c) Any person who received AFDC or Medicaid based on AFDC rules and became ineligible for such assistance because of a period of ineligibility imposed as a result of the provisions of **\*N.J.A.C. 10:82-4.15 may establish eligibility under the provisions of\*** this chapter. The amount of lump sum used to determine the original period of ineligibility shall be divided by the applicable income eligibility limit to determine the period of ineligibility for Medicaid under this chapter. If that period has already expired, eligibility for benefits under this chapter may be established so long as all other eligibility criteria are met.

(d) The parents of children and the spouse of a pregnant woman are legally responsible relatives to persons applying for or eligible for benefits under the provisions of this chapter. When a legally responsible relative resides in the same household, his or her income is considered in the determination of eligibility and no further action is required. When a legally responsible relative does not reside in the same household, the county welfare agency shall pursue support from that relative in accordance with the provisions of N.J.A.C. 10:82-3.8 et seq.

1. Except when the legally responsible relative resides in the same household, income of the relative shall be counted only to the extent that the income is actually made available to the household unit.

#### 10:72-4.4 Resource eligibility

Persons seeking Medicaid benefits under the provisions of this chapter are eligible without regard to the value of the household unit's resources. The county welfare agency shall inquire about the household unit's resources only in order to establish income that may result from the household unit's resources.

## SUBCHAPTER 5. ADMINISTRATIVE REQUIREMENTS

### 10:72-5.1 Notice of the county welfare agency decision

(a) The county welfare agency shall promptly notify any applicant for, or recipient of, the Medicaid program in writing of any agency decision affecting the applicant or recipient. When a decision relates to any adverse action which may entitle a recipient to a fair hearing, the action may not be implemented until at least 10 days after the mailing of the notice (see (e) below for exceptions to the ten-day notice requirement).

1. For notices of action adverse to a recipient, the date of mailing of the notice must appear on the notice.

2. Notices of any county welfare agency action must contain the name, address, and telephone number of the legal services agency serving that county.

3. In the case of an applicant or recipient who cannot be located, the notice shall be mailed to his or her last known address.

(b) All notices of agency decision shall state in clear and simple language, the nature of the agency decision and an accurate and factual legal basis for the decision.

1. All notices of the agency decision shall include an explanation of the right to a fair hearing.

2. Notices of agency decisions adverse to the applicant or recipient shall include the citation and title of the regulations upon which the agency decision is based.

(c) All notices of denial or termination shall include an explicit statement of the reason for program ineligibility and (except in the case of the death of an applicant or recipient) advise of the right to reapply whenever the applicant or recipient believes that circumstances have changed such that the reason for program ineligibility no longer exists.

(d) When the processing of an application will be delayed beyond the standards for disposition of an application as set forth in N.J.A.C. 10:72-2.1(d), notice shall be mailed prior to the expiration of the disposition period notifying the applicant of the delay and the reasons for it.

(e) The 10-day notice requirement for actions adverse to a program recipient need not be adhered to when:

1. The county welfare agency has factual information confirming the death of a recipient;

2. The county welfare agency receives a clear written statement, signed by the recipient, that he or she no longer wishes to receive program benefits, or which gives information indicating a change in circumstances which requires a termination or reduction in benefits, and the recipient has indicated in writing that he or she understands that this must be the consequence of supplying such information;

3. The recipient's whereabouts are unknown and agency mail directed to him or her has been returned by the postal service indicating no forwarding address;

4. The recipient has been accepted for public or medical assistance in another state and that fact has been confirmed by the county welfare agency; or

5. A recipient child has been removed from the home as a result of a judicial determination or voluntarily placed in foster care by his or her legal guardian.

### 10:72-5.2 Fair hearings

(a) It is the right of every applicant for or recipient of the Medicaid program to be afforded the opportunity for a fair hearing in the manner set forth in N.J.A.C. 10:49-5.1 et seq., including, when applicable, continuation of program benefits pending the results of the fair hearing.

(b) Any request for a fair hearing shall be forwarded to the Division of Medical Assistance and Health Services, Bureau of Research and Development, CN-712, Trenton, New Jersey 08625.

### 10:72-5.3 Case records

(a) The purpose of the case record is to provide a complete documentary record of county welfare agency actions and the reasons therefor.

(b) The case record shall include:

1. A record of all county welfare agency actions and decisions relating to the case, as well as documentary evidence relating to such actions and decisions, including application forms.

2. All forms relating to financial eligibility.

3. All case-related correspondence, memorandum, and documents except those required by law or regulation to be maintained elsewhere.

(c) No case record, or part thereof, shall be removed from its file location without a record identifying the person who has custody of it.

(d) No case record, or part thereof, shall be removed from the county welfare agency offices except upon the specific authorization of the agency director, deputy director, or other person specifically designated by the agency director to authorize such removal.

(e) All case records shall be filed in a secure and fire-resistant location.

**DIVISION OF PUBLIC WELFARE**

**(a)**

**Public Assistance Manual  
Parent-Minor in AFDC-C, -F and -N  
Adopted Amendment: N.J.A.C. 10:81-3.12**

Proposed: January 5, 1987 at 19 N.J.R. 31(a).  
Adopted: August 26, 1987 by Drew Altman, Commissioner,  
Department of Human Services.  
Filed: August 26, 1987 as R.1987 d.379, **with technical changes**  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-4.3).  
Authority: N.J.S.A. 44:7-6 and 44:10-3; Section 2640 of the  
Deficit Reduction Act of 1984 (Public Law 98-369); 45 CFR  
206.10(a)(1)(vii).

Effective Date: September 21, 1987.  
Expiration Date: October 15, 1989.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Summary of Changes to Proposal:**  
The term "family" has been changed to "unit", a technical change  
which has no impact on the client population.

**Full text** of the adoption follows (additions to proposal indicated in  
boldface with asterisks **\*thus\***; deletions from proposal indicated in  
brackets with asterisks **\*[thus]\***).

10:81-3.12 Parent-minor in AFDC-C, -F and -N  
(a) For purposes of this section, the term parent-minor refers to a  
parent under age 18. (Special income deeming rules apply to a parent  
under the age of 19 residing in the same home as his or her parent(s)  
or guardian(s); see N.J.A.C. 10:82-3.14.) When application is made for  
AFDC-C by a parent who is under age 18 or for -F or -N where both  
parents are under age 18, the following action shall be taken in specific  
situations:

1. (No change.)
  2. When a parent-minor and his or her child(ren) are living in the home  
of one or both of the parent-minor's natural or adoptive parents, or  
relative(s) who qualify as parent-person(s) of the parent-minor, and such  
parent(s) or parent-person(s) are themselves eligible for AFDC-C or -F,  
the eligible **\*[unit]\* \*family\*** shall consist of the following persons:
    - i. The parent-minor, brothers and sisters of the parent-minor described  
at N.J.A.C. 10:82-1.3(a)1, and the parent(s) or parent-person(s).
    - ii. There is no requirement that assistance be sought for the child(ren)  
of the parent-minor. However, if application is made for such children,  
then they must be included in the eligible **\*[unit]\* \*family\*** in **\*(a)2\*i\*[\*]**  
above.
  3. (No change.)
- (b)-(f) (No change.)

**(b)**

**Food Stamp Program  
Revised Maximum Income Eligibility Limits  
Readoption of Concurrent Proposal: N.J.A.C.  
10:87-12.3, 12.4, and 12.7**

Proposed: July 20, 1987 at 19 N.J.R. 1331(a).  
Adopted: August 20, 1987 by Drew Altman, Commissioner,  
Department of Human Services.  
Filed: August 24, 1987 as R.1987 d.375, **without change**.  
Authority: N.J.S.A. 30:4B-2, the Food Stamp Act of 1977, as  
amended (7 USC 2014), and 7 CFR 273.9(a).  
Effective Date: August 24, 1987.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

10:87-12.3 Maximum allowable net income standards

**TABLE III**  
Maximum Allowable Net Income

Household Size	Maximum Allowable Income
1	\$ 459
2	617
3	775
4	934
5	1092
6	1250
7	1409
8	1567
9	1726
10	1885
Each Additional Member	+159

10:87-12.4 Maximum allowable gross income standards

**TABLE IV**  
Maximum Allowable Gross Income

Household Size	Maximum Allowable Income
1	\$ 596
2	802
3	1008
4	1214
5	1420
6	1625
7	1831
8	2037
9	2243
10	2449
Each Additional Member	+206

10:87-12.7 165 percent of poverty level  
(a) The following table is to be used when determining separate house-  
hold status for elderly and disabled individuals in accordance with  
N.J.A.C. 10:87-2.2(a)4.

**TABLE VII**  
165 Percent of Poverty Level

Household Size	Maximum Allowable Income
1	\$ 757
2	1018
3	1279
4	1540
5	1802
6	2063
7	2324
8	2585
9	2847
10	3109
Each Additional Member	+262

**CORRECTIONS**

**(c)**

**THE COMMISSIONER  
Inmate Discipline  
Aid in Presentation of Inmate's Case  
Adopted Amendment: N.J.A.C. 10A:4-9.12**

Proposed: June 1, 1987 at 19 N.J.R. 913(b).  
Adopted: August 28, 1987 by William H. Fauver, Commissioner,  
Department of Corrections.  
Filed: August 28, 1987 as R.1987 d.383, **without change**.  
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.  
Effective Date: September 21, 1987.  
Expiration Date: July 21, 1991.

**Summary of Public Comments and Agency Responses:**

The Department of Corrections received two comments in response to the proposed amendment.

COMMENT: A commenter stated that it should not be mandatory that a staff member be assigned to represent an inmate at a disciplinary hearing, and that a staff member given such an assignment should have the right to decline in appropriate circumstances.

RESPONSE: The Department agrees that representation by staff is voluntary, not mandatory. There is an assigned inmate paralegal who is trained and is available at disciplinary hearings to assist those inmates who require such services. Since representation by staff is rarely sought, it can be provided where needed by voluntary action.

COMMENT: One commenter objected to the change in language from "shall" to "may". He believes that such services will be denied if not mandated.

RESPONSE: The Department disagrees. The change in language does not preclude the Superintendent from assigning a staff member to represent an inmate. It provides the Superintendent with the option of designating another counsel substitute if the designation of a staff member is impractical for any reason. It is not likely that a staff person who has been ordered to represent an inmate, against the staff person's wishes, will feel comfortable in this role. Nor would the staff person inspire the confidence of the inmate being represented. The intention of this amendment is to provide the inmate with effective representation, whether by an inmate paralegal or by a staff person.

Full text of the adoption follows.

10A:4-9.12 Aid in presentation of inmate's case

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

(c) Where an inmate requests the services of a staff member, the Superintendent or his or her designee may appoint a staff member to provide representation.

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

## COMMERCE AND ECONOMIC DEVELOPMENT

### (a)

#### Certification of Women-Owned and Minority-Owned Businesses

##### Adopted New Rules: N.J.A.C. 12A:11-1

Proposed: July 6, 1987 at 19 N.J.R. 1176(a).

Adopted: August 24, 1987 by Borden R. Putnam, Commissioner, Department of Commerce and Economic Development.

Filed: August 24, 1987 as R.1987 d.376, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27H-6F (P.L. 1986 c.195).

Effective Date: September 21, 1987.

Expiration Date: September 21, 1992.

**Summary of Public Comments and Agency Responses:**

Letters of comment were received from several State departments, a State agency and a municipality which are addressed individually as follows.

COMMENT: The Division of Building and Construction, Department of Treasury, submitted a letter of comment which stated that they found the proposed new rules acceptable. The Division further stated that they had reviewed prior drafts of the proposed new rules and made their suggestions at that time.

RESPONSE: The Department of Commerce and Economic Development sought and received input from numerous State agencies and departments in the drafting of these new rules. The Department has attempted to make the certification program as adaptable as possible for all State agencies and departments which will utilize the program.

COMMENT: The Division of Purchase and Property, Department of Treasury, submitted a letter of comment which addressed four issues concerning the proposed new rules.

1. N.J.A.C. 12A:11-1.2 defines the word "control" with the use of the phrase "not reasonably judged". The Division believes that reasonableness should have clearly identifiable definitions or challenges as to

the subjective standard will arise. The Division also believes that a clear and concise operations manual should be created for the Certification program to address this matter.

2. N.J.A.C. 12A:11-1.4 requires that businesses seeking certification submit a representative list of current and prior clients. The Division feels that this type of evaluation need not necessarily be known to the Department of Commerce and Economic Development at the time a firm applies for certification, but that this information is relevant in the context of the procurement contract evaluation stage performed by the Division.

The Division also notes that payroll information is not required from an applicant firm seeking certification and that this information is essential in determining control of a company.

3. N.J.A.C. 12A:11-1.8 requires that when the certification of a minority- or women-owned firm is challenged, any pending contract awards in which the challenged firm is involved be suspended for a period of 20 days so that the Department of Commerce and Economic Development may conduct an investigation and hold a hearing if warranted. The Division believes that this challenge delay will be used as a stalling tactic when other procurement protest actions are dismissed.

4. N.J.A.C. 12A:11-1.11 requires the applicant to reimburse the State for any reasonable cost incurred in providing a site visit to an applicant firm when travel will take a State employee to a site over 150 miles from the city of Trenton. The Division feels that this section is discriminatory and should be removed.

RESPONSE: 1. The aspect of reasonable judgement in determining "control", that is verifying a firm is averment that it is a minority- or women-owned business, is a necessary aspect of the certification process. Specifically, reasonable judgement is needed, as reflected in the definition, to determine if the applicant firm, by the standards of the industry, is a legitimate enterprise in the certification context or is a front company. The Department of Commerce and Economic Development has established a procedure manual to provide for specific criteria and tests to be used in properly ascertaining the nature of a business and on judging who maintains control over the business.

2. Applicant businesses are required to submit a list of current and prior clients because of the specific requirements of the Certification Act (see N.J.S.A. 52:27H-21.11). Regarding payroll information from the applicant business, this area is dealt with through a required complete financial disclosure of the business, pursuant to N.J.S.A. 52:27H-21.22, and is specifically required by the Uniform Certification Application.

3. Suspension of contract awards occurring when there is a challenge to a certified business, in the term of 20 days, is necessary to give the Department of Commerce sufficient time to investigate and adjudicate the matter if necessary.

4. Reimbursement of State funds expended for the purpose of providing a site visit is permissible under the Uniform Certification Act pursuant to N.J.S.A. 52:27H-21.20. The Department of Commerce and Economic Development feels that reimbursement for extensive travel, over 150 miles from the City of Trenton, is a reasonable insurance that the State will not incur a heavy financial burden in conducting the program. It is entirely possible that site visits under this program would require travel to other parts of the country and the world.

COMMENT: The Department of Transportation submitted a letter of comment which addressed 17 issues concerning the proposed new rules.

1. That N.J.A.C. 12A:11-1.4, which requires businesses to comply with any pre-approvals or eligibility requirements legitimately established by other departments or agencies, should also require the Department of Commerce and Economic Development to notify the relevant department of an applicant's intent to seek certification and provide the applicant business with the eligibility requirement.

2. That N.J.A.C. 12A:11-1.5 which provides for the acceptance of certified businesses does not specify the procedure for the removal of a business from the certification register.

3. That N.J.A.C. 12A:11-1.6 which deals with the time when a business may apply for certification should be clarified and changed to read "certification procedures".

4. That N.J.A.C. 12A:11-1.7 dealing with the denial of certification does not address the need for annual certification verification statements.

5. That N.J.A.C. 12A:11-1.7 states that 10 days is the period for appeal of a denial of Certification. The Department of Transportation believes that this section should be changed to read working days.

6. That N.J.A.C. 12A:11-1.8 appears to exclude third parties, such as private citizens, other firms, etc., from challenging certified businesses pursuant to 49 CFR 23.69.

(CITE 19 N.J.R. 1740)

## COMMERCE AND ECONOMIC DEVELOPMENT

## ADOPTIONS

7. That N.J.A.C. 12A:11-1.8 provides for the suspension of contract awards in the event of a challenge. The Department of Commerce should immediately inform the State agency in question once a determination of the firm's status is made.

8. That N.J.A.C. 12A:11-1.8 does not clearly establish a difference between "unsuccessfully challenged firms" and "not disqualified firms".

9. That N.J.A.C. 12A:11-1.8 should require, in the interest of meeting time constraints, that copies of the challenges of a firm should also be sent to State agencies.

10. That N.J.A.C. 12A:11-1.8 permits the filing of written exceptions to a hearing officer's report to the Commissioner but is unclear as to whether it is another appeal step and what personnel are involved.

11. That N.J.A.C. 12A:11-1.8 should require that State agencies be included as the parties receiving the final decision from the Commissioner.

12. That N.J.A.C. 12A:11-1.10 requiring the submittal of an annual Verification Statement submitted by the business does not currently require that the statement be notarized.

RESPONSE: 1. The Department of Commerce and Economic Development is authorized by the Uniform Certification Act to deal with the issue of the authentication of claims of ownership and control by applicant minorities or women and is not empowered nor qualified to deal with legitimate pre-qualification requirements of other State departments or agencies.

2. The removal of a business from the certification register is not a matter for regulation. Removal of a business from the Certification register is a departmental bookkeeping aspect of the Uniform Certification Program and thus will be handled in that manner. Businesses losing certification through a successful challenge pursuant to N.J.A.C. 12A:11-1.8 or for intentional falsification or failure to report changed circumstances pursuant to N.J.A.C. 12A:11-1.9 are, as no longer certified, automatically dropped from the Register.

3. N.J.A.C. 12A:11-1.6 deals with both the time to apply for certification and addresses general certification procedures. The more specific aspects of certification procedures are addressed in the Uniform Certification Manual.

4. The need for a business wishing to continue its status as a certified State vendor in terms of providing annual verification statements is addressed in N.J.A.C. 12A:11-1.10.

5. Throughout these rules there is no differentiation, nor is there a need for differentiation, between working days and calendar days because days are defined in N.J.A.C. 12A:11-1.2 for purposes of these rules.

6. Third parties eligible to challenge certified businesses are not excluded pursuant to 49 CFR 23.69. Where required, the Department of Commerce will certify vendors pursuant to Federal requirements. Aspects relating to this matter will appear in rules pursuant to P.L. 1987, c.55, to be published in the near future.

7. N.J.A.C. 12A:11-1.8(c)1 provides for informing State agencies when a particular business is being challenged.

8. In the context of these rules there is no reason for distinguishing between an "unsuccessfully challenged firm" and "not disqualified firms". Under the Uniform Certification Act, these terms basically mean the same.

9. In the interest of efficiency and reduction of paperwork, the Department of Commerce will only supply a copy of a challenge to a certified business when a hearing is warranted. Any release of information regarding a challenge to a business would be premature and possibly prejudicial.

10. N.J.A.C. 12A:11-1.8 is clear as it relates to the right of a challenged party to submit written exceptions to the hearing officer's report to the Commissioner. The personnel involved at this level of the appeal proceeding are the Commissioner and the hearing officer, through his report.

11. There is no need for these rules to require that departments and agencies receive copies of a Commissioner's decision relating to a challenge procedure. A department or agency shall receive the information as, if applicable, an interested party, or through update changes of the Business Certification Register pursuant to these rules.

12. The Department of Commerce chose not to require the notarization of the annual verification statement because its value as to verifying the authenticity of ownership of a particular business was limited in scope such that it would be an unnecessary burden for certified businesses.

COMMENT: The Casino Control Commission submitted a letter of comment that the proposed rules seem to apply only to minority and women businesses doing business with State agencies exclusively. However, under the Casino Set-Aside Law, N.J.S.A. 5:12-188, the Department of Commerce and Economic Development is obliged to certify minority and female vendors under that program.

RESPONSE: The Unified Certification program applies to the Casino Set-Aside Act and it is these rules that will be utilized to certify the casino vendors. These rules have been amended in N.J.A.C. 12A:11-1.1(a), (b) and (d) to note the inclusion of the Casino Set-Aside program pursuant to N.J.S.A. 5:12-188.

COMMENT: The City of Atlantic City submitted a letter of comment that N.J.A.C. 12A:11-1.12, regarding the formation of reciprocal agreements with other public or certifying agencies to perform certifications, requires that those other agencies have a program which is the equal of the Department of Commerce and Economic Development. The city believes that this aspect of the rules tends to limit the scope of participation by public agencies in this regard.

RESPONSE: The ability of the Department of Commerce and Economic Development is not restricted as to the formation of reciprocal agreements except as is required by law. Rules for the Division of Development for Small Businesses and Women and Minority Businesses (P.L. 1987 c.55), to be published in the future, specifically deal with the requirements of certification reciprocal agreements with municipalities.

Full text of the adopted new rules follows (additions indicated in boldface with asterisks \*thus\*; deletions indicated in brackets with asterisks \*[thus]\*).

## CHAPTER 11

## WOMEN-OWNED AND MINORITY-OWNED BUSINESSES

## SUBCHAPTER 1. CERTIFICATION

## 12A:11-1.1 Application and scope

(a) The rules in this subchapter are promulgated by the Department of Commerce and Economic Development to implement the Unified Certification Act, P.L. 1986, c\*[h]\*.195. The Act establishes a unified procedure for the certification of women-owned and minority-owned firms, which firms are seeking to qualify for certain government programs **\*and firms doing business with casino licensees pursuant to P.L. 1987, c.137\***.

(b) The Act requires the Department of Commerce and Economic Development to establish and implement standards and procedures for certifying women-owned and minority-owned businesses for certain government programs **\*and firms doing business with casino licensees pursuant to P.L. 1987, c.137\***.

(c) Applications and questions regarding certification of women-owned and minority-owned businesses should be addressed to:

N.J. Department of Commerce and Economic Development  
Certification and Approvals Unit  
CN 835  
One West State Street  
Trenton, New Jersey 08625

(d) The Act applies to every women-owned and minority-owned firm that wishes to do business with any department or agency of the State of New Jersey which department or agency has specific programs which require the certification of authenticity of ownership for women-owned and minority-owned businesses **\*and for businesses wishing to do business with casino licensees pursuant to P.L. 1987, c.137\***.

## 12A:11-1.2 Definitions

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

"Administrator" means the administrator for the Certification and Approvals Unit.

"Broker" means a person who for all or part of his time is in the business of buying and/or selling of tangible and/or non-tangible property in the capacity of but not limited to a manufacturers representative, distributor, or agent (non-employees of the business) and who does not exercise dominion or possess title over the items or things for sale.

"Certification" means that a minority-owned or women-owned business has been authenticated as being at least 51 percent owned and controlled either by minorities or females for participation in **\*[s]\*\*S\*tate programs requiring certification, as judged and determined by the Certification and Approvals \*[u]\*\*U\*nit of the Department of Commerce and Economic Development.**

"Certification and Approvals Unit" (CAU) means the unit in the Department of Commerce and Economic Development which is given sole authority over certification of minority and women businesses for **\*[s]\*\*S\*tate programs or which may provide certification for \*[f]\*\*F\*ederally mandated programs.**

"Control" means authority over the affairs of a business, including\*,\* but not limited to\*,\* capital investment, property acquisition, employee hiring, contract negotiations, legal matters, officer and director selection,

operating responsibility, financial transactions and the rights of other shareholders or joint partners; except that control shall not include absentee ownership, nor shall it be deemed to exist where an owner or employee who is not a minority, in the case of a minority business, or a male owner or employee, in the case of \*a\* women\*[s]\* business, is disproportionately responsible for the operation of the business or for policy and contractual decision. Control will also not be deemed to exist if in the judgement of the Administrator of the Certification and Approvals Unit and by normal industry standards, minority or women are not reasonably judged to be in control of that business.

"Commissioner" means the Commissioner of the Department of Commerce and Economic Development.

"Days" means the normal operating business days of the state.

\*"Department" means the Department of Commerce and Economic Development.\*

"Director" means the Director of the Division of Development for Small Businesses and Women and Minority Businesses in the Department of Commerce and Economic Development.

"Division" means the Division of Development for Small Businesses and Women and Minority Businesses in the Department of Commerce and Economic Development.

"Minority" means a person who is:

1. Black, which is a person having origins in any of the black racial groups in Africa; or
2. Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race; or
3. Asian American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian Subcontinent, Hawaii or the Pacific Islands; or
4. American Indian or Alaskan native, which is a person having origins in any \*[or]\* \*of\* the original peoples of North America.

"Minority \*[B]\*\*b\*business" means a business which is:

1. A sole proprietorship, partnership or joint venture owned and controlled by minorities in which at least 51 percent of the ownership interest is held by minorities and the management and daily business operation are controlled by one or more of the minorities who own it; or
2. A corporation or other business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more minorities who own it, and which is at least 51 percent owned by one or more minorities or, if stock is issued, at least 51 percent of the stock is owned by one or more minorities.

"Principal" means any officer, director, or individual who directly or indirectly holds any beneficial interest in or ownership of the securities of the business and/or any employee of the business who is empowered by title or by explicit assignment to authorize the procurement, purchase, or contracting of equipment, goods, services, or supplies whatsoever involving an expenditure of \$1,000.00 or greater.

"Public agency" means the State or any department, division, agency, authority, board, commission or committee thereof.

"Woman or women" means a female or females, regardless of race.

"Women\*[s]\* business" means a business which is:

1. A sole proprietorship owned and controlled by a woman; or
2. A partnership or joint venture owned and controlled by women in which at least 51 percent of the ownership is held by women and the management and daily business operations of which are controlled by one or more women who own it; or
3. A corporation or other business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more women who own it, and which is at least 51 percent owned by women or, if stock is issued, at least 51 percent of the stock is owned by one or more women.

#### 12A:11-1.3 Standards of certification for minority businesses and women businesses

(a) A business may be eligible to be certified as a minority business, a women business, or both.

(b) In order to be eligible to be certified under the Act a minority or women business must be independently owned, operated, and controlled.

1. For purposes of these rules a business shall be deemed to be independently owned, operated, and controlled, if its management is responsible for both its daily and long term operation, and that management owns at least 51 percent interest in the business.

(c) In order to be eligible as a minority business, a business must be a sole proprietorship, partnership, joint venture, corporation, or other

business entity authorized under the laws of the United States, which is at least 51 percent owned, operated and controlled by persons who are Black, Hispanic, Asian American, American Indian or Alaskan native.

(d) In order to be eligible as a \*[female]\* \*women\* business, a business must be a sole proprietorship, partnership, joint venture, corporation, or other business entity authorized under the laws of the United States, which is at least 51 percent owned, operated, and controlled by persons who are women, without regard to race.

#### 12A:11-1.4 Certification procedures for minority businesses and \*[female]\* \*women\* businesses

(a) Any business which seeks to be certified under the Act as a minority business and/or \*[female]\* \*women\* business must apply to the Certification and Approvals Unit of the Department of Commerce and Economic Development. For this purpose, the Department shall prepare a New Jersey Uniform Certification Application. This form shall be available from the Department, and other agencies and departments of the \*[s]\*\*S\*tate which maintain programs which require certification of minority and women businesses.

(b) As part of its application to the Department a business shall provide all information and documents requested by the Uniform Certification Application and any additional information requested by the Certification and Approvals Unit. The information to be submitted for review shall include:

1. Place of business;
2. Names and addresses of the owners, partners, or shareholders as applicable, and their representative shares of ownership;
3. Names and addresses of members of the board of directors in the case of corporations;
4. Names and addresses of the officers of the business;
5. Names and addresses of capital investors and the amount of capital contributed;
6. Numbers of shares of all classes of stock issued, and stock outstanding in the case of a corporation;
7. The bonding capacity and history of the business;
8. The affiliation of the business or any of its owners, officers or directors with any other business entity;
9. A representative list of current and prior clients for the past two years where applicable;
10. A complete list of major real and personal property holdings of the business;
11. A complete disclosure of financial statements and balance sheets;
12. A complete listing of banking institutions with which the business is affiliated; and
13. A complete listing of previously attained certifications and a listing of all legal entities which denied certification.

(c) An applicant must fully and accurately complete, where directed in writing, all relevant parts of the Uniform Certification Application.

(d) The application may be delayed or rejected if an applicant fails to fully complete, as directed, the Uniform Certification Application, fully document specifically requested information, or comply with \*an\* additional request for information or documentation.

(e) If the applicant knowingly supplies incomplete or inaccurate information the applicant shall be disqualified under these rules, barred from reapplying for certification for a period of up to 18 months from the date of notice of disqualification, and may be subject to other penalties described in N.J.A.C. 12A:11-1.8.

(f) In order to be certified under the Act, a business must also comply with any pre-approvals or other eligibility requirements legitimately established by the contracting agency in whose program the business wishes to participate.

#### 12A:11-1.5 Acceptance as a certified minority business or \*[female]\* \*women\* business

(a) When a business is determined by the Certification and Approvals Unit to be \*a\* minority and/or women business, the business will be added by the Department \*[of Commerce]\* to the Certified Business Register. The businesses on this register shall be eligible for all appropriate \*[s]\*\*S\*tate programs which require certification as a criteria for participation in a specific program. There shall be no limit to the number of businesses on the register. Each business shall be placed on the register denoting its status as minority and/or women-owned.

(b) When a business is placed on the Certified Business Register that business shall be eligible for all appropriate \*[s]\*\*S\*tate programs which require certification as a criteria for participation. Once a business is placed on the \*[R]\*\*r\*register it cannot be denied an opportunity to participate in the various \*[s]\*\*S\*tate programs until it is removed from the register.

(c) When a business is placed on the Certified Business Register it shall be informed by CAU by mail of its certification status. The CAU shall also issue an individual certification number exclusive to the business as a part of the certification procedure.

12A:11-1.6 Time for application to be certified as a minority business and/or women business

(a) A business may apply to be certified by the Department \*[of Commerce]\*, Certification and Approvals Unit, at any time, whenever \*[s]\*\*S\*ate programs require certification of the control and ownership of a business under the Act as a minority business and/or women business.

(b) A business wishing to participate in a specific \*[s]\*\*S\*ate program which requires certification must apply at least 30 days prior to its intended entry into the program. The 30 day period may be reasonably extended by the administrator when:

1. The business fails to provide all information requested by the Uniform Certification Application; or
2. Additional information is requested from the business to authenticate its status; or
3. The business, through no fault of its own, is delayed or prevented from forwarding any requested information or documentation.

12A:11-1.7 Denial of certification as a minority or women business

(a) When a business has been denied certification based upon the information provided by that business in its submitted Uniform Certification Application or its annual Certification Verification Statement the business may appeal the decision of the CAU.

(b) A business that is being denied certification shall have 10 days from the date of notification to request a hearing with the CAU Administrator for his first level appeal.

(c) The procedure for appeal of a denial of certification shall be executed in the same manner as hearings for a challenge to a certified business as provided by N.J.A.C. 12A:11-1.8. The CAU shall be considered as the challenger pursuant to N.J.A.C. 12A:11-1.8.

12A:11-1.8 Procedure for challenging a business certified as a minority business and/or women business

(a) The qualifications under these rules of a business on the Certified Business Register may be challenged by any other business on the \*[s]\*\*S\*ate bidder\*[']\*s list or the \*[s]\*\*S\*ate set-aside bidders list, businesses approved as an Inter-Agency Procurement Committee vendor\*[s]\*\* (Ex. Order 46), and any \*[s]\*\*S\*ate department or agency. The Commissioner shall have the discretion to dismiss a challenge for insufficient evidence.

1. A certification challenge shall be made in writing to the Department \*[of Commerce]\*, with copies to the challenged business and to the appropriate contracting agency where a specific contract is at issue.

2. A certification challenge to the Department \*[of Commerce]\* must be concerned with the authenticity of a business under these rules as a minority business or women business. Challenges of any other kind must be directed to the \*[s]\*\*S\*ate department or agency which requires those other qualifications.

3. The written challenge shall be accompanied by supporting documentation of the charges.

(b) In the case of a challenge to a certified minority or women business, the \*[s]\*\*S\*ate agency or department making a contract award under a specific program\*[s]\*\* shall be notified within three days of receipt of the challenge and shall immediately suspend any further awards under the contract for a period not to exceed 20 days so the Department may conduct a hearing if warranted.

1. In the event that a currently certified minority and/or women business is unsuccessfully challenged under these rules by the Department, the State agency or department shall proceed to award the contract as otherwise authorized by \*[s]\*\*S\*ate statute.

2. In the event that a currently certified minority and/or women business is not disqualified by the Department within 20 days, any contract awards suspended at the time due to the challenge shall be allowed to be awarded without prejudice.

3. The right to challenge a currently certified minority and/or women business is in addition to and is independent of any protest hearing rights which are afforded by any \*[s]\*\*S\*ate agency or department.

(c) When the Department \*[of Commerce]\* receives a challenge, upon the request of the business whose certification is at issue, the Department shall conduct a hearing on the matter as follows. The business must request the hearing within five days of the suspension of a contract award or in the case when no contract award is involved, within five days from receipt of notice that the business is subject to a challenge proceeding.

1. The Department shall notify all interested parties of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger. However, the department may use its own resources to ascertain the viability of a challenge and the status of a business.

3. The hearing will be conducted by the designee of the \*[c]\*\*C\*ommissioner. This designee shall issue a written report to the Commissioner of the Department \*[of Commerce]\* within five days of the close of the hearing.

4. A participant at the hearing who is a party to the challenge procedures will be permitted to file written exceptions to the hearing officer's report no later than three days from the issuance of the report.

5. Thereafter, the \*[c]\*\*C\*ommissioner shall issue a final decision on the challenge and notify the parties by certified letter.

6. The entire hearing challenge procedure shall take no more than 20 days to complete; time shall not be considered to run until a contract award is suspended. In the case where no contract award is in question, time will run from the date of the notification to the business by certified mail that it is the subject of a challenge proceeding.

12A:11-1.9 Obligations to provide information and penalties for failure to provide complete and accurate information

(a) Applicants fo\*r\* certification under these rules shall accurately and honestly supply all information required by the Department \*[of Commerce]\*.

(b) When a business has been certified as a minority and/or women business on the basis of false information knowingly supplied, the Commissioner of the Department \*[of Commerce]\*, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1-1.1 et seq., may:

1. Assess the business a penalty in the amount of not more than 10 percent of the total dollar amount of all contracts and/or purchase awarded by the \*[s]\*\*S\*ate to that business in reliance of its business representation of owners\*h\*ip and/or control, for the duration of the period of the misrepresentation.

2. Order the business ineligible to transact any business with the \*[s]\*\*S\*ate, for a period of not less than 12 months and not more than 60 months.

(c) Any business certified by the Department \*[of Commerce]\* as a minority and/or women business shall immediately apprise the Department of any circumstances which in any way affect the ownership composition of the business, or the control over the business.

(d) The failure of a business to report any such changed circumstances, or the intentional falsification shall disqualify the business for inclusion on any Certified Business Register under these rules and may subject the business to other sanctions provided for by other \*[s]\*\*S\*ate agencies or departments, as they so relate.

12:11-1.10 Period and terms of certification

(a) A business once duly certified by CAU shall not be required to submit a Uniform Certification Application for a period of five years after the effective date of the certification, providing that the firm:

1. Submits on an annual basis not more than 20 days before or 10 days after the date of initial certification notice a Verification Statement, which shall attest that the ownership and control of that business on which certification was granted has not changed; and

2. Submits within 20 days notice of any material change in the business, whether it affects the status of the business under the \*[a]\*\*A\*ct or not.

12A:11-1.11 Fees for certification

(a) The applicant will be responsible for reimbursing the State for costs associated with providing a site visit when necessary. The applicant business will not be issued certification until it has satisfied this obligation. Associated costs shall include but will not be limited to:

1. Cost of travel to the location of the site visit which is outside a 150 miles radius from the city of Trenton; and

2. Out of pocket per diem expenses of the \*[s]\*\*S\*ate employee performing \*a\* site visit when required.

12A:11-1.12 Certification reciprocity

(a) The Commissioner may form reciprocal agreements with other public or private certifying entities as he deems appropriate to facilitate minority and women business development and growth.

(b) All reciprocal agreements must provide that:

1. The quality of the program of the other certifying agency is the relative equal of the \*[d]\*\*D\*epartment\*'s program\*; and

2. The Department shall have the right to review all relevant \*[I]\*\*i\*nfornation possessed by the other public or private entity

pertaining to the certification of any business seeking to be certified by the Department \*[of Commerce]\*.

#### 12A:11-1.13 Information confidentiality

(a) All information and documents submitted to the Department as part of the certification application shall be confidential and used only for purposes of determining certification, except that information provided for the Certified Business Register.

(b) All submitted information and documents shall be handled on a strict need to know basis.

(c) Information and documents provided to CAU may be shared with other entities who need the information respective of reciprocal agreements authorized by the Commissioner pursuant to N.J.A.C. 12A:11-1.12.

(d) Information and documents provided to CAU may be made available in a public manner where required during a challenge or appeal proceedings under this subchapter.

## (a)

### **Financial Assistance to Counties and Municipalities: Programs for Small Businesses, Minority-Owned and Women-Owned Businesses**

#### **Adopted New Rules: N.J.A.C. 12A:12-1**

Proposed: July 20, 1987 at 19 N.J.R. 1286(b).

Adopted: August 27, 1987 by Borden R. Putnam, Commissioner,  
Department of Commerce and Economic Development.

Filed: August 28, 1987 as R.1987 d.382, **without change**.

Authority: N.J.S.A. 52:27H-6F and P.L. 1987, c.56.

Effective Date: September 21, 1987.

Expiration Date: September 21, 1992.

#### **Summary of Public Comments and Agency Responses:**

Three letters of comment were received from two counties and one Chamber of Commerce and are addressed as follows.

COMMENT: The County of Cumberland, Department of Planning and Development submitted a letter of comment which addressed five issues concerning these rules.

1. That the proposed rules do not specify as to whether an applicant must have a pre-existing program in order to apply for a grant.

2. That the rules should specify a maximum dollar limit on grants in order to guide an applicant in developing their proposed program and budget.

3. That the rules should identify eligible versus ineligible uses of funds.

4. That the criteria for evaluating the grant applications is "somewhat subjective." That the rule should include more specific benchmarks and/or a point system for the evaluation of the grant proposals.

5. That if in kind services are eligible as a match this should be stated in the rules.

RESPONSE: Upon analysis of P.L. 1987, c.56, which created this grant program, the Department of Commerce and Economic Development determined that the aim of this Act was to facilitate the creation of unique and varying county and municipal programs for small businesses, minority and women businesses. While the commentator's points are appropriate, the Department prefers not to impose the limiting factor suggested so that the program can be as open and flexible as possible. The Department also believed, that because of differences throughout the State of the potential businesses to be involved in this type of program, it was necessary for counties and municipalities applying for grants funds to have maximum flexibility in designing their programs to meet their local needs.

COMMENT: The County of Camden, Economic Development Committee, submitted a letter of comment which addressed three issues concerning these rules.

1. That the funding level for this program of \$95,000 is grossly inadequate based on the need for the services involved.

2. That the time period between comments on these rules and the application deadline is not long enough. The Committee suggested that the application period be extended to November 1, to afford potential applicants the opportunity to respond to program and rules changes resulting from comments received.

3. That reporting requirements should be reduced considering the low level of funding for the program. The Committee suggests reports be limited to two per year with one financial audit per year.

RESPONSE: 1. The legislature established the program funding level at \$95,000; thus, the Department must abide by that requirement.

2. The Department of Commerce and Economic Development is currently considering extension of the grant application deadline pursuant to these rules. Under these rules, the grant application deadline may be extended as deemed necessary by the Commissioner pursuant to N.J.A.C. 12A:12-1.4(c).

3. The Committee's suggestion regarding reports is actually more than is minimally required under these rules. The Department believes that two reports from a grant recipient will suffice; however, the Department reserves the right to require additional reports as deemed necessary.

COMMENT: The Greater Newark Chamber of Commerce submitted a letter of comment which addressed one issue concerning these rules, that the eligible grantees be expanded to include organizations such as county economic development corporations, public and private partnerships and other organizations.

RESPONSE: P.L. 1987, c.56, section (1), subsection (e) specified this program to be for counties and municipalities in that they "have a unique opportunity and responsibility in encouraging the development of such businesses within their jurisdiction." The Department's rulemaking authority does not extend beyond the statutory county and municipality eligibility limitation.

Full text of the adopted new rules follows.

#### CHAPTER 12

#### FINANCIAL ASSISTANCE GRANTS

#### SUBCHAPTER 1. GRANTS TO COUNTIES AND MUNICIPALITIES FOR SMALL BUSINESSES, MINORITY AND WOMEN-OWNED BUSINESS PROGRAMS

##### 12A:12-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Department of Commerce and Economic Development to implement P.L. 1987, c.56. The Act authorizes the Department of Commerce and Economic Development to make grants of financial assistance to County and Municipal units of government. These grants are for the purpose of establishing pilot projects within the jurisdiction of the grantee county or municipality to provide certification, development, and coordination assistance to small, minority, and women businesses.

(b) The Act requires the Department of Commerce and Economic Development to establish and implement standards and procedures for distribution of the awarding of grants.

(c) Applications and questions regarding participation in this program should be addressed to:

Division of the Development of Small Businesses and  
Minority and Women Businesses  
Department of Commerce and Economic Development  
1 West State Street  
CN 825  
Trenton, NJ 08625

(d) The Act applies to all counties and municipalities in the State. All applications for the grant program shall be given due consideration as long as all requirements are met, however not all applicants are guaranteed to be awarded a grant.

##### 12A:12-1.2 Definitions

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

"Business" means a sole proprietorship, partnership, joint venture, corporation, and any other business entity authorized under the laws of the United States.

"Certification" means the designation of a business by the Certification and Approvals Unit of the Department of Commerce and Economic Development as provided for under the Uniform Certification Act, P.L. 1986, c.195, or a business certified by a county or municipality as provided under P.L. 1987, Ch. 55.

"Certification assistance" means aiding a minority and/or women's business within the grantee's jurisdiction in becoming certified, under state regulations, to be eligible to bid on specific public contracts. This assistance also covers the cost to the grantee of integrating and standardizing existing local government certification procedures with state certification standards and procedures.

"Commissioner" means the Commissioner of the Department of Commerce and Economic Development, or his designated representative.

"DCED" means the Department of Commerce and Economic Development.

"Director" means the Director of the Division for the Development of Small Businesses and Minority and Women Businesses.

"Division" means the Division for the Development of Small Businesses and Minority and Women Businesses.

"Grantee" means a county or municipality incorporated under the laws of New Jersey who has received a grant under this Act.

"Minority" means a person who is:

1. Black American, a person having origins in any of the black racial groups of Africa; or

2. Hispanic American, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race; or

3. Asian American, a person having origin in any of the original people of the Far East, Southeast Asia, Indian Subcontinent, and Hawaii, or the Pacific Islands; or

4. American Indian or Alaskan Natives, a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition.

"Minority businesses" means a business which is at least 51 percent owned and controlled by a minority or group of minorities who are responsible for the long term and daily management of the business.

"Small businesses" means a business which is independently owned and operated, has its principal place of business in New Jersey, and has 100 or fewer employees.

"Technical assistance" means aiding the establishment, development, and promotion of small, minority, and women businesses operating within the grantee's jurisdiction.

"Women" means a female or females regardless of race.

"Women businesses" means a business which is at least 51 percent owned and controlled by a woman or group of women who are responsible for the long term and daily management of the business.

#### 12A:12-1.3 Standards of eligibility of municipalities and counties to receive financial assistance grants

(a) To be eligible for consideration to receive a financial assistance grant for development and promotion programs, the applicant must forward to the Department a grant proposal which shall include:

1. A description of that applicant's current programs for development and promotion of small businesses, minority and/or women businesses;

2. The budget of the applicant's current programs for development and promotion of small businesses, minority and/or women businesses;

3. A proposal for new and/or additional programs for development and promotion of small businesses, minority and/or women businesses in the applicant's jurisdiction, which shall include:

i. A statement of the objectives of the proposal; and

ii. A schedule of completion of the objectives of the proposal;

4. A proposal budget for the new and/or additional programs for development and promotion of small businesses, minority and/or women businesses in the applicant's jurisdiction, which shall include:

i. The total expenditures needed for the entire program as proposed;

ii. The total amount of funds dedicated to the program by the applicant;

iii. The amount of grant money requested from the department not exceeding 50 percent of the total cost of the program;

iv. The amount of funds received or applied for by the applicant from other sources or levels of government;

v. Positions and salaries of current staff or future staff for current or proposed programs;

vi. A resume of all current employees with clear explanations of their position and duties, and what their position and duties will be under the proposed program;

vii. A report, where applicable to the applicant, regarding the Set-Aside Program under N.J.S.A. 52:32-17 et seq.; and

viii. Evidence of the availability to the applicant of otherwise unencumbered and/or uncommitted funds sufficient to finance that portion of the services which is not to be funded by the grant.

(b) Where applicable to a county or municipality when applying for the grant, it shall enclose its proposal for certification assistance and technical assistance. This part of the application for the grant is subject to all requirements of N.J.A.C. 12:A12-1.3(a) but shall be independent of proposals under that subsection.

(c) An applicant may submit a proposal under either subsection 12A:12-1.3(a), (b), or both.

#### 12A:12-1.4 Time for application for a grant

(a) An applicant for a grant award shall submit the application to the department no later than September 1 for that current fiscal year.

(b) Any application not postmarked on or before September 1 shall not be considered for a possible award.

(c) The Commissioner may for administrative purposes change the September 1 application date as he deems necessary.

1. When the Commissioner changes the date for the receipt of the grant application he must forward by registered mail a notice of such intent to all current grantees and pending grant applicants, to all county governments, and all municipal governments with a population of 50,000 or more.

2. Such notice shall announce to all parties designated in (a)1 above the new deadline date for receipt of grant applications and the address to which the application should be sent.

#### 12A:12-1.5 Evaluation of grant applications

(a) The director shall designate appropriate division staff for the purpose of evaluating and making recommendations to the grant advisory committee.

(b) The grant advisory committee shall consist of:

1. The Director;

2. The Chiefs of:

i. The Office of Small Businesses Assistance, and/or his designee;

ii. The Office of Minority Businesses Enterprise, and/or his designee; and

iii. The Office of Women Business Enterprise, and/or his designee; and

3. The Administrators of the Bureau of Hispanic Enterprise and the Certification Unit, and/or their designees.

(c) Upon receipt of the division staff recommendations as to possible grantees and the amount to be received, the advisory committee shall consider the following factors:

1. The innovation and uniqueness of the proposed program;

2. The assimilation of the program into the overall multiple State Set-Aside Programs;

3. The potential for the success of the program;

4. The need for the program in that jurisdiction versus the need in other jurisdictions in the State;

5. If applicable under the proposal, the assimilation of the proposed program into the State Certification Program under P.L. 1986 Ch. 195;

6. Whether the grants for the programs will compliment State programs to directly assist small, minority and women's businesses.

(d) The advisory committee shall then prepare a report for the Commissioner which shall include:

1. A prioritized listing for recommended recipients of the grant;

2. A recommended amount for each grantee to receive; and

3. The amount requested by the applicants.

(e) The Commissioner shall then issue a final decision as to recipients of the grants and the amounts of such grants.

(f) Unless otherwise provided in these rules, announcement and distribution of grant funds under this program shall take place no later than November 1 of each year.

(g) The Commissioner may award grants on an incremental basis, such that the grantee may be required to produce specific documents or periodic reports at certain periods during the term of the grant.

(h) All grants shall be for a term of one year.

#### 12A:12-1.6 Reports and compliance

(a) Upon the receipt of a grant the grantee shall submit to the department a minimum of two reports, which are:

1. A six month evaluation and progress report; and

2. A final evaluation and progress report.

(b) The Commissioner, as a condition to award a grant, may require additional reports from the jurisdiction.

(c) The nature of the report will be determined by the accepted or amended proposal and the terms set forth by the Commissioner.

(d) Failure of a grantee to file a required report in a timely fashion may result in that jurisdiction being dropped from the grant program for that program year of the grant and all further payments of grants may be suspended or rescinded.

1. The Commissioner may also bar that jurisdiction from receiving a grant under this program for a period of up to two years.

(e) The Commissioner, upon award of the grant to a jurisdiction, shall specify the terms of compliance for that grant for the jurisdiction.

#### 12A:12-1.7 Grant rejection or rescission

(a) Any grants rejected in whole or part by a grantee shall be returned to the general grant pool and shall be available for award to other applicants or to increase the awards of other grantees.

(b) Any grant rescinded by the Commissioner for noncompliance by the grantee shall be returned to the general grant fund and may be used for other applicants or to increase the awards to other grantees.

## LAW AND PUBLIC SAFETY

### (a)

#### STATE ATHLETIC CONTROL BOARD

#### Compensation of Physicians Assigned to Boxing and Wrestling Shows

##### Adopted New Rule: N.J.A.C. 13:46-12.12

Proposed: July 6, 1987 at 19 N.J.R. 1179(b).

Adopted: August 25, 1987, by State Athletic Control Board,  
Larry Hazzard, Commissioner.

Filed: August 28, 1987 as R.1987 d.386, **without change.**

Authority: N.J.S.A. 5:2A-7(c).

Effective Date: September 21, 1987.

Expiration Date: June 3, 1990.

#### Summary of Public Comments and Agency Responses:

The Board received one letter of comment from a Board-appointed physician, which was responded to. The comment consisted of two matters. The first mentioned funding of physicians' payments by promoters and expressed concern that such a rule would create additional contact with promoters during the payment process.

In response, the Board noted an apparent misunderstanding of the payment process for assigned officials. The promoter of a particular boxing or wrestling show provides the Board with a single check covering the total of compensation payments to assigned referees, judges, time-keepers and announcers. The Board then issues an individual check to each assigned official for that show. Payments to physicians will be incorporated into this process, without creating contact between the promoter and physicians. Show assignments for physicians will continue to be made by the Commissioner.

The other comment addressed compensation for ringside duties, and indicated that expanded ringside duties of physicians in New Jersey warranted a larger amount than the proposed \$150.00.

In response, the Board identified the proposed 50 percent increase from \$100.00 to \$150.00 as a significant change, and a necessary first step that was long overdue. The Board also noted that its Medical Advisory Council will be developing an agenda that should include compensation to physicians.

Full text of the adoption follows.

13:46-12.12 Compensation for physicians

(a) The compensation to physicians shall be paid by the promoter conducting the show and shall be on the following basis:

1. Each physician assigned by the Commissioner to perform duties at the pre-fight weigh-in at a boxing show shall receive a fee of \$100.00.

2. Each physician assigned by the Commissioner to perform ringside duties at a boxing or wrestling show shall receive a fee of \$150.00.

(b) The compensation schedule set forth in (a) above shall not apply in a sanctioned championship boxing bout. The Commissioner shall set the compensation to be paid to physicians assigned to perform pre-fight or ringside duties at sanctioned championship boxing bouts. In making this determination, the Commissioner may consider any determinations, standards or recommendations made by a nationally recognized boxing association whose voting membership is composed of representatives of governmental agencies regulating boxing. A nationally recognized boxing association shall include, but not be limited to, the World Boxing Council, the North American Boxing Federation and the United States Boxing Association. Nevertheless, the Commissioner shall retain full authority to set the compensation schedule for physicians in championship boxing bouts irrespective of a determination or a recommendation by such an association.

## TRANSPORTATION

### TRANSPORTATION OPERATIONS

### (b)

#### Speed Limits

#### Route 94 in Warren County

##### Adopted Amendment: N.J.A.C. 16:28-1.79

Proposed: July 20, 1987 at 19 N.J.R. 1288(a).

Adopted: August 20, 1987 by John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Local Road Design.

Filed: August 24, 1987 as R.1987 d.378, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Effective Date: September 21, 1987.

Expiration Date: November 7, 1988.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows.

16:28-1.79 Route 94

(a) The rate of speed designated for the certain parts of State highway Route 94 described in this section shall be designated and adopted as the maximum legal rate of speed thereat:

1.-2. (No change.)

3. In Frelinghuysen Township, Warren County:

i. 35 miles per hour School speed zone in Zone 6, within Frelinghuysen Township School Zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.

### (c)

#### Lane Usage

#### Route 35 in Ocean County

##### Readoption of Concurrent Proposal: N.J.A.C.

##### 16:30-3.1

Proposed: July 20, 1987 at 19 N.J.R. 1332(a).

Adopted: August 21, 1987 by John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Local Road Design.

Filed: August 24, 1987 as R.1987 d.377, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 27:7-21(i),  
39:4-6.

Effective Date: September 21, 1987.

Expiration Date: November 7, 1988.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows.

16:30-3.1 Route 35

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

(c) The northbound shoulder of Route 35 may be used by buses and is reserved therefor on Saturdays, Sundays, and holidays from 3:00 P.M. to 10:00 P.M. from Faber Lane (milepost 7.9) in the Township of Brick, north to Herbert Street (milepost 10.0) in the Borough of Mantoloking, County of Ocean.

(d) (No change.)

**(a)**

**NEW JERSEY TRANSIT CORPORATION  
Reduced Fare Transportation Program for the  
Elderly and Handicapped**

**Adopted Amendments: N.J.A.C. 16:73-1.1, 2.1, 2.2,  
2.3, 2.4 and 3.2**

Proposed: July 20, 1987 at 19 N.J.R. 1289(a).  
Adopted: August 27, 1987 by New Jersey Transit Corporation,  
Jerome C. Premo, Executive Director.  
Filed: August 28, 1987 as R.1987 d.381, **without change**.  
Authority: N.J.S.A. 27:25-5(e), (h) and (k).  
Effective Date: September 21, 1987.  
Expiration Date: January 30, 1992.

**Summary of Public Comments and Agency Responses:**

Comments were received from one interstate private carrier which objected to the elimination of reduced fare tickets and the use of historical data as a basis for payment reimbursement. NJ TRANSIT advised the carrier, in writing, that, pursuant to prior discussions between NJ TRANSIT and the interstate and intrastate members of the Private Carrier Advisory Committee, the amended rules do not, in fact, require the elimination of reduced fare tickets on all carriers. Accordingly, pursuant to N.J.A.C. 16:73-2.3(b), NJ TRANSIT may, upon consultation with certain carriers, continue to require presentation of such tickets. In addition, with regard to reimbursement, NJ TRANSIT advised the carrier that the amended rules (N.J.A.C. 16:73-3.2) do not require the use of historical data, but permit the use of that method or such other reasonable method as shall be determined by NJ TRANSIT. Accordingly, the carrier submitted a subsequent letter indicating no objection to implementation of the rules while seeking consideration of continued billing based upon collected tickets rather than historical data.

No other comments were received.

Full text of the adoption follows.

16:73-1.1 Definitions

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

"Off-peak times" means the hours from 9:30 A.M. to 4:00 P.M. and from 7:00 P.M. to 6:00 A.M. during the weekdays, and all day on Saturdays, Sundays and State holidays.

16:73-2.1 Registration of senior citizens for NJ TRANSIT reduced fare Identification Cards

- (a) (No change.)
- (b) A senior citizen who does not have a Medicare Card will need an Identification Card. Applications for the Identification Card are available

at most banks, savings and loan associations, County Offices on Aging and State offices providing services for elderly and disabled persons. The applicant should bring proof of age to the application center. Any valid legal document will serve as proof of age. Examples are: driver's license, birth certificate, passport, military discharge papers (DD214), etc.

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

16:73-2.2 Registration of handicapped persons for NJ TRANSIT reduced fare Identification Cards

(a) (No change.)  
(b) Applicants will fill out the first part of the application form and give it to a registered physician, doctor of osteopathy or other designee of NJ TRANSIT who will complete the application and mail it to NJ TRANSIT. The final decision on eligibility will be made by NJ TRANSIT.

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

16:73-2.3 Use of Medicare and Identification Cards

(a) (No change.)  
(b) Presentation of a validated Medicare or Identification Card together with the proper Reduced Fare is all that is required for rail passenger travel and all motorbus passenger travel; provided, however, that on motorbus routes run by certain carriers, NJ TRANSIT may, upon consultation with such carriers, continue to require presentation of Reduced Fare Tickets.

(c) The Identification Card, which is not transferable, may be used only by the person to whom it is issued, and must be kept in that person's possession during the entire ride.

- (d) (No change in text.)

16:73-2.4 Reduced fare tickets

(a) To obtain a book of Reduced Fare Tickets, the handicapped or senior citizen will present a valid Medicare or Identification Card at an application center. An authorized person will examine the Medicare or Identification Card and issue a book of Reduced Fare Tickets.

- (b) (No change.)

16:73-3.2 Method of payments to carriers

Reimbursement to the participating carriers shall be an amount equal to the difference between the regular adult fare and the handicapped/senior citizen reduced fare, multiplied by the number of eligible trips by handicapped or senior citizens participating in the Reduced Fare Transportation Program, provided that the total payments to the carrier do not exceed the total appropriation for this program. For bus service, eligible trips may be determined by the number of reduced fare tickets submitted by bus carriers, or such other reasonable method as shall be determined by NJ TRANSIT, including, but not limited to the use of historical payment data. For rail service, eligible trips are determined by special tickets provided by the rail carriers under their existing tariff rules.

# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION

### DIVISION OF WATER RESOURCES

(a)

#### Amendment to the Upper Raritan Water Quality Management Plan

##### Public Notice

Take notice that on July 30, 1987, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment is to adopt a Wastewater Management Plan (WMP) for Union Township, Hunterdon County. The WMP will allow for several new or expanded treatment facilities in the Township, in which the Township will serve as co-permittee. The Township is designated as the Wastewater Management Agency for all facilities in the Township.

(b)

#### Amendment to the Tri-County Water Quality Management Plan

##### Public Notice

Take notice that on July 29, 1987, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment will allow the expansion of Mt. Laurel Township Municipal Authority's sewer service area to include the Rudderow/Cinelli Tracts located in Mt. Laurel, Burlington County. This amendment is conditioned on the filing of a wetlands conservation easement with the title to the property as instructed by the Department.

(c)

#### Amendment to the Tri-County Water Quality Management Plan

##### Public Notice

Take notice that on July 29, 1987, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment will allow for new discharges to surface water and groundwater for the new Gloucester County Resource Recovery Facility in West Deptford. In addition, the amendment will allow the new facility to convey process and sanitary wastewater to the Coastal Eagle Point Refinery Wastewater Treatment Plant while expanding the sewer service area of the Gloucester County Utilities Authority (GCUA) to include the project site, to allow for a future sewer extension to GCUA if necessary. The plan amendment would also allow for the filling of less than one acre of wetlands for a minor road crossing and for discharge outfalls.

(d)

#### Surface Water Quality Standards Lower Cuckels Brook

Take notice that the Somerset Raritan Valley Sewerage Authority (SRVSA) has petitioned the Department of Environmental Protection to reclassify Lower Cuckels Brook for less restrictive uses in accordance with N.J.A.C. 7:9-4.10. In a notice published on October 6, 1986 in the New Jersey Register at 18 N.J.R. 2061(a), the Department solicited comments from the public regarding SRVSA's petition. A public hearing on the petition was held at the Somerset County Administration Building on October 27, 1986 from 5:00 P.M. to the close of testimony. At the request of the Township of Bridgewater Environmental Commission and the South Branch Watershed Association, the Department published a second notice, at 18 N.J.R. 2462(c) on December 15, 1986, extending the public comment period through January 14, 1987.

This notice is being given to inform the public that the Department has denied SRVSA's petition to reclassify Lower Cuckels Brook for less restrictive uses and that the classification of Lower Cuckels Brook shall remain FW2-NT. The Department's decision was based on an evaluation of the documentation submitted by SRVSA in support of their petition and comments received by the Department as part of the public participation on this petition.

The details of the Department's decision, its basis, and the Department's response to public comments are contained in a document prepared by the Department entitled "Statement of Decision and Response to Public Comments on the Lower Cuckels Brook Re-classification Petition", dated May, 1987. A copy of this document is being sent to SRVSA, and all individuals and organizations which commented on the petition. Others may request a copy from:

Bureau of Water Quality Standards and Analysis  
Division of Water Resources  
Department of Environmental Protection  
CN 029  
Trenton, NJ 08625  
(609) 633-7020

(e)

### DIVISION OF ENVIRONMENTAL QUALITY Reporting Requirements for SARA, Title III, Section 311

#### Public Notice

Take notice that, pursuant to Section 311 of the Federal Superfund Amendments and Reauthorization Act of 1986 (SARA), signed into law by President Reagan on October 17, 1986, facilities subject to inventory reporting requirements under the OSHA Hazard Communication Standard shall submit material safety data sheets or inventory lists to the State Emergency Response Commission (SERC), their local emergency planning committee (LEPC), and their local fire department on or before October 17, 1987. These submissions will serve as an initial planning tool to develop an understanding of the scope of hazardous substances that are present in New Jersey.

The N.J. State Emergency Response Commission, established February 13, 1987, pursuant to SARA requirements, has delegated the implementation of the Title III, Subtitle B reporting requirements to the N.J. Department of Environmental Protection. The State encourages affected facilities to submit inventory lists instead of individual material safety data sheets, because list reporting will reduce the information management burden on recipients of the information. The inventory lists will be more useful and affected facilities will only have to supply material safety data sheets upon specific request from the local committees or the SERC. Further, preparing an inventory list for Section 311 will facilitate the reporting requirements that will soon have to be met under Section 312. Also, under Section 303(d), the local emergency planning committee may require submission of such a list where necessary for developing and implementing an emergency plan.

The Department recommends that covered facilities review their Emergency Services Information Survey and their Environmental Survey—Part I, developed pursuant to the New Jersey Worker and Community Right to Know Act (N.J.S.A. 34:5A-1 et seq.), as a first step in preparing the inventory list.

The list should be organized as follows:

SUBSTANCE NAME (listed alphabetically)	CAS NUMBER (if applicable)	HAZARD CATEGORY(IES)* (all that apply)
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A facility may meet the reporting requirements for mixtures by either listing each hazardous component in the mixture or including the mixture itself on the list.

The U.S. Environmental Protection Agency has established a 1987 reporting threshold of 10,000 pounds for all substances and materials covered by the OSHA Hazard Communication Standard. However, all the substances on the Extremely Hazardous Substance List (40 CFR 355, Appendices A & B; Federal Register, April 22, 1987) are exceptions to the 10,000 pound threshold. For these compounds any quantity greater than zero is reportable.

Facilities subject to the provisions of Section 311 should send their inventory lists to each of the following:

1. New Jersey Department of Environmental Protection  
Division of Environmental Quality  
Bureau of Hazardous Substance Information  
ATTN: SARA, Section 311  
CN 405  
Trenton, New Jersey 08625
2. Local Emergency Planning Committee  
(If a facility doesn't know who their  
LEPC coordinator is, contact:  
Sergeant Thomas Davies  
New Jersey State Police  
Office of Emergency Management  
609/882-2000 ext 2858
3. Local fire department

Any questions regarding this notice or compliance with Section 311 requirements should be directed to NJDEP, Bureau of Hazardous Substance Information, at (609) 292-6714. Additional information about SARA, Title III requirements will be included in future editions of the New Jersey Register.

\*The U.S. Environmental Protection Agency is considering five Hazard Categories, three physical and two health. They are: 1) Fire, 2) Sudden Release of Pressure, 3) Reactivity, 4) Immediate (acute), and 5) Delayed (chronic). EPA will be publishing its final rule in the Federal Register, in September.

(a)

**RADIUM/RADON ADVISORY BOARD**  
**Study Grants to Communities for Evaluating the**  
**Possibility of Volunteering a Temporary Storage**  
**Site for Containerized Radium-Tainted Soils**  
**Public Notice**

Take notice that, on December 15, 1986, Commissioner Richard T. Dewling of the Department of Environmental Protection (DEP) created a ten-member citizens' New Jersey Radium/Radon Advisory Board (RRAB). A part of the RRAB's charge was to recommend the technical, institutional and financial criteria and the public process to be followed for the temporary storage of approximately 15,000 containers of radium-tainted soil excavated from the New Jersey communities of Montclair, Glen Ridge and West Orange. These criteria were finalized on July 31, 1987. Presently, the containerized soils are located at a residential site in Montclair and two industrial sites in Kearny.

Given the history and notoriety of these containerized soils, the RRAB recognized the difficulty that a community might face in even studying the possibility of hosting their storage. To encourage such study by a community without commitment on its part, the RRAB criteria provide that study grants be made available to any community wishing to evaluate for itself the health and environmental risks, and that any community that executes such a good faith study effort be exempt from any later mandatory siting even if it rejects the idea of storage within its borders.

Such community self-study is a prerequisite to consideration of the temporary soil storage and the benefits that can accrue to the community from the financial incentives involved in hosting a storage site. Such incentives were estimated at between \$60,000 to \$75,000 per month for both host community benefits and land rental costs, and could be for a broad range of uses including libraries, health care, natural resource preservation, and economic development.

The purpose of the study grant is to provide funding to interested communities for the resources necessary to support its own local Radium/Radon Advisory Board, interpret the siting criteria, and independently assess site selection and health and environmental implications. It is believed that grants on the order of \$10,000 to \$20,000 per community are sufficient for this purpose. Application for a grant must be made by the local governing body. Use of such a grant by a community does not obligate it to accept the soils or to take any further action beyond a good faith study. However, a final report is required documenting the study results and conclusions.

In order for a local governing body to qualify for a grant, it should have appointed a local Radium/Radon Advisory Board (local RRAB) following a petition by local individuals, groups or officials expressing community support to undertake the study. The local RRAB should have a minimum of seven members and be configured as follows:

No more than 1/3 of its members representing private or other businesses;

No more than 1/3 representing local government; and

No more than 1/2 representing local community groups.

The members should be from within the local affected area. The owner of the property or a potential operator of the facility should not be a local RRAB member. Private individuals shall include at least one owner, renter or other person living adjacent to the proposed storage site, if a site has been identified. Local community groups represented on the local RRAB may include groups designated as having environmental, civic or religious affiliations. Local RRAB meetings shall be public with advance notice. All information developed by the local RRAB shall be made available promptly to the public.

Applications for a local RRAB grant shall be submitted by a local government to the Department of Environmental Protection (DEP). The application shall include:

A letter from the local governing body listing the local RRAB members and their affiliations, and an estimated budget for the funding requested.

Letters of support from local public and private groups upon which the local government based its formation of the local RRAB.

Requests for applications or more information can be made by calling the DEP at (609) 984-0980 or by writing to: Dr. Robert Stern, Division of Hazardous Site Mitigation, New Jersey Department of Environmental Protection, 401 East State Street, 6th Floor, CN 413, Trenton, NJ 08625.

The DEP has previously notified all New Jersey communities of the availability of these grants by means of a letter to each Mayor in early September. In addition, previous notification was made to the same communities through a bulletin (#3) prepared by the State RRAB.

Applications were requested within 45 days from the date of the DEP letter notification. All applicants are to be notified as to the determination of their grant application within 60 days from the date of the DEP letter notification.

**HUMAN SERVICES**

(b)

**DIVISION OF PUBLIC WELFARE**  
**General Assistance Manual**  
**Emergency Assistance**  
**Proposed Amendments: N.J.A.C. 10:85-4.6**  
**Public Hearing**

Take notice that the Department of Human Services will conduct a public hearing concerning proposed amendments to Emergency Assistance (EA) provisions in the General Assistance (GA) program.

The proposed amendments address the critical situation of homelessness among low income individuals and childless couples. By broadening the eligibility criteria for EA, the proposal will result in more effective services being provided to a greater number of persons in need and the direction of efforts toward permanent rather than short-term solutions to the problems of homelessness.

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 21, 1987

Establishment of permanent solutions to such problems was one of the priorities addressed by Governor Kean in his January 13, 1987 State of the State message. In addition, on June 26, 1987, the Superior Court, Appellate Division, issued a decision in *Rodgers, et al. v. Gibson, et al.*, Docket No. A-3076-86T5, concerning the emergency assistance provisions in the GA program. That decision was consistent in many respects with the Department's position. It expanded the definition of "control or opportunity to plan in advance" to encompass not only the applicants' obligation but also their capacity to avert the emergency situation. The decision went further, however, by suspending the time limit on the provision of EA for emergency temporary shelter at N.J.A.C. 10:85-4.6(b)1. In addition, the court suspended the time limitation between the occurrence of the emergency and the application for EA at N.J.A.C. 10:85-4.6(a). The court also ordered the Department of Human Services to conduct a rulemaking hearing on those issues.

On July 23, 1987, the Department conducted public hearings in the north, central and southern regions of the State concerning proposed amendments to EA provisions in the Aid to Families with Dependent Children (AFDC) program, in compliance with the court's directive in *Maticka, et al. v. Atlantic City, et al.*, Docket No. A-91-856T. At the same time, the public was afforded the opportunity to comment on emergency assistance provisions in the GA program in order to assist the Department in determining the magnitude of the problems surrounding EA in that program and to assess which sections of N.J.A.C. 10:85-4.6 should be changed to respond to those problems.

Pursuant to the review and analysis of testimony presented at those hearings concerning EA provisions in the GA program, proposed amendments to N.J.A.C. 10:85-4.6 were developed. The amendments are proposed in this issue of the Register. Specifically, the proposed amendments expand the provision of EA for individuals and childless couples served under the terms of the GA program by extending the time limit for filing for benefits following the onset of homelessness from seven to 30 days, and by including a broader definition of "lack of realistic capacity to plan." They also authorize rent or mortgage payments, subject to certain limitations, to prevent eviction or foreclosure, and payments for moving expenses and security deposits to assist in establishing permanent living arrangements. In certain circumstances in which emergency situations remain unresolved despite the best efforts of both the municipal welfare agency and the client, the proposal allows for the extension of EA beyond the 90-day limit for two additional months (a total of up to five months) in limited circumstances. Those circumstances include, but are not limited to, the inability of the client to seek permanent shelter because of the illness or incapacity of the client or of another person which requires the presence of the client at home, or a delay in the availability of permanent shelter which has been located. The proposal stresses mutual responsibility on the part of both the agency and the client in seeking permanent shelter and mandates the provision of support services to assist clients in locating housing and in dealing with concurrent psycho-social problems.

A public hearing concerning the proposed amendments to N.J.A.C. 10:85-4.6 will be held on Tuesday, October 6, 1987 at the following location and times:

War Memorial Ballroom  
West Lafayette Street Entrance  
Trenton, New Jersey  
12:00 noon—4:30 P.M.  
6:00 P.M.—8:00 P.M.

**Individuals interested** in testifying at the hearing must advise the Division of Public Welfare, Mercerville, New Jersey by telephone at (609) 588-2296 no later than noon October 5, 1987, and provide their name(s), organization represented, and telephone number. Interested speakers will be limited to 10 minutes of oral testimony.

**Interested parties** may submit written testimony at the hearing or by mail until October 21, 1987. Those comments should be addressed to:

Marion E. Reitz, Acting Director  
Division of Public Welfare  
CN 716  
Trenton, N.J. 08625

## TRANSPORTATION

### (a)

#### THE COMMISSIONER

#### Airport Safety Improvement Aid Classification Classification of State Aid

#### Notice of Correction: N.J.A.C. 16:56-4.1

**Take notice** that an error appears in the New Jersey Administrative Code at N.J.A.C. 16:56-4.1, concerning Classification of State Aid. N.J.A.C. 16:56-4.1, as adopted effective July 15, 1985 and published at 17 N.J.R. 1779(a), should read as follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

16:56-4.1 Classification of State aid

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

(d) State airport safety improvement loans are two percent annual interest loans given or offered to an eligible local sponsor for the purpose of assisting local sponsors in funding the improvement of the air transportation infrastructure. Loans for this purpose may be given or offered subject to the following parameters:

1. (No change.)

2. Airport safety improvement loans are limited to [an annual] \$90,000 maximum disbursements to any eligible local sponsor (airports).

3.-6. (No change.)

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

AGENCY NOTE: See the September 8, 1987 issue of the Register at 19 N.J.R. 1634(b) for proposed amendments to N.J.A.C. 16:56-4.1 and 11.2.

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the August 3, 1987 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1987 d.1 means the first rule adopted in 1987.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A number and date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: JULY 20, 1987.**

**NEXT UPDATE WILL BE DATED AUGUST 17, 1987.**

**Note:** If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

## N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
18 N.J.R. 1863 and 1978	September 22, 1986	19 N.J.R. 477 and 586	April 6, 1987
18 N.J.R. 1979 and 2078	October 6, 1986	19 N.J.R. 587 and 672	April 20, 1987
18 N.J.R. 2069 and 2148	October 20, 1986	19 N.J.R. 673 and 794	May 4, 1987
18 N.J.R. 2149 and 2234	November 3, 1986	19 N.J.R. 795 and 898	May 18, 1987
18 N.J.R. 2235 and 2344	November 17, 1986	19 N.J.R. 899 and 1006	June 1, 1987
18 N.J.R. 2345 and 2408	December 1, 1986	19 N.J.R. 1007 and 1120	June 15, 1987
18 N.J.R. 2409 and 2472	December 15, 1986	19 N.J.R. 1121 and 1258	July 6, 1987
19 N.J.R. 1 and 164	January 5, 1987	19 N.J.R. 1259 and 1352	July 20, 1987
19 N.J.R. 165 and 260	January 20, 1987	19 N.J.R. 1353 and 1474	August 3, 1987
19 N.J.R. 261 and 324	February 2, 1987	19 N.J.R. 1475 and 1588	August 17, 1987
19 N.J.R. 325 and 392	February 17, 1987	19 N.J.R. 1589 and 1676	September 8, 1987
19 N.J.R. 393 and 430	March 2, 1987	19 N.J.R. 1677 and 1758	September 21, 1987
19 N.J.R. 431 and 476	March 16, 1987		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>			
1:1-9.1	Scheduling of prehearing conferences	19 N.J.R. 1591(a)	
1:1-14.4	Failure to appear at proceeding	19 N.J.R. 1591(b)	
1:1-14.10	Decision to grant requests for interlocutory review where agency head is board or commission	19 N.J.R. 1591(c)	
1:1-14.10, 18.1, 18.4	Interlocutory review of certain issues	19 N.J.R. 1592(a)	
1:1-18.4	Filing of exceptions to factual findings: submittal of transcripts	19 N.J.R. 1123(a)	
1:1-19.1	Settlement terms and consent of agency head	19 N.J.R. 1593(a)	
1:1-21.6	Exceptions in uncontested cases	19 N.J.R. 1593(b)	
1:30-1.2, 2.8	Use of appendices	19 N.J.R. 675(a)	
1:30-3.1	Additional notice of proposed rulemaking	19 N.J.R. 675(b)	R.1987 d.345 19 N.J.R. 1543(a)
1:30-4.1, 4.5	Filing of adopted rules: emergency rule adoptions	19 N.J.R. 676(a)	R.1987 d.346 19 N.J.R. 1544(a)

(TRANSMITTAL 1987-2, dated July 20, 1987)

<b>AGRICULTURE—TITLE 2</b>			
2:71-2.4, 2.5, 2.6	"Jersey Fresh" raspberry standards	19 N.J.R. 1593(c)	
2:71-2.28	Fees for grading of fruits and vegetables	19 N.J.R. 901(a)	R.1987 d.354 19 N.J.R. 1641(a)
2:76-5.3, 5.8	Cost-share funding of soil and water conservation projects	19 N.J.R. 1123(b)	
2:76-7	Review of nonagricultural development projects in agricultural areas	19 N.J.R. 1009(a)	

(TRANSMITTAL 1987-5, dated July 20, 1987)

<b>BANKING—TITLE 3</b>			
3:1-2.16	Population: administrative correction to text		19 N.J.R. 1572(a)
3:1-14	Revolving credit equity loans	19 N.J.R. 1594(a)	
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	19 N.J.R. 1355(a)	
3:6-4	Banks and savings banks: action upon detection or discovery of crime	19 N.J.R. 1595(a)	
3:10-8, 9	Banks and savings banks: mortgage loan practices	19 N.J.R. 1356(a)	
3:11-7.10	Borrowing limitation of director or executive officer	19 N.J.R. 1124(a)	R.1987 d.369 19 N.J.R. 1641(b)
3:25-1	Debt adjustment and credit counseling fees	19 N.J.R. 901(b)	R.1987 d.334 19 N.J.R. 1544(b)
3:27-6, 7	Savings and loan associations: mortgage loan practices	19 N.J.R. 1358(a)	
3:38	Mortgage bankers and brokers	19 N.J.R. 1261(a)	
3:38-4, 5, 7	Mortgage bankers and brokers: loan practices	19 N.J.R. 1360(a)	

(TRANSMITTAL 1987-3, dated July 20, 1987)

<b>PERSONNEL (CIVIL SERVICE)—TITLE 4</b>			
4:1-1, 2, 3, 4	Repeal (see 4A:1)	19 N.J.R. 1011(a)	
4:1-5, 13.6, 13.7, 16.7-16.12, 16.14,	Repeal (see 4A:2)	19 N.J.R. 1013(a)	

(CITE 19 N.J.R. 1752)

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 21, 1987

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4:1-10.3	Repeal (see 4A:5)	19 N.J.R. 1018(a)		
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:1-19, 21.1, 21.3-21.5	Repeal (see 4A:10)	19 N.J.R. 1366(a)		
4:1-21.2, 21.6	Repeal (see 4A:7)	19 N.J.R. 1020(a)		
4:2-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:2-16.4, 16.5, 23	Repeal (see 4A:2)	19 N.J.R. 1013(a)		
4:2-21.1-21.6	Repeal (see 4A:7)	19 N.J.R. 1020(a)		
4:3-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:3-16.3, 16.4	Repeal (see 4A:2)	19 N.J.R. 1013(a)		
4:3-19	Repeal (see 4A:10)	19 N.J.R. 1366(a)		
4:3-21.1, 21.2	Repeal (see 4A:7)	19 N.J.R. 1020(a)		
4A:1	General rules and department organization	19 N.J.R. 1011(a)		
4A:2	Appeals, discipline and separations	19 N.J.R. 1013(a)		
4A:5	Veterans and disabled veterans preference	19 N.J.R. 1018(a)		
4A:7	Equal employment opportunity and affirmative action	19 N.J.R. 1020(a)		
4A:8	Layoffs	19 N.J.R. 1363(a)		
4A:9-1	Political subdivisions	19 N.J.R. 1022(a)		
4A:10	Violations and penalties	19 N.J.R. 1366(a)		

(TRANSMITTAL 1987-2, dated July 20, 1987)

**COMMUNITY AFFAIRS—TITLE 5**

5:4-2	Debarment and suspension from contracting	19 N.J.R. 1261(b)		
5:11-1.2, 2.1	Relocation assistance: lawful occupancy; eligibility	19 N.J.R. 1596(a)		
5:14-1.1-1.4, 2.1-2.3, 3.1-3.23, 4.1-4.6	Neighborhood Preservation Balanced Housing Programs	19 N.J.R. 589(a)		
5:18-4.1	Fire Safety Code: exemption of one and two family residences	19 N.J.R. 1263(b)		
5:18-4.7, 4.9	Fire safety in boarding homes, day nurseries, hotels and motels	19 N.J.R. 1023(a)	R.1987 d.373	19 N.J.R. 1720(a)
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(a)		
5:23-1.1, 3.10, 4.40, 5.2, 5.4, 5.18, 5.20, 5.21-5.26	UCC: local agency classification; appeal boards; licensing	19 N.J.R. 1264(a)		
5:23-2.38, 3.11, 7.2, 7.3, 7.100-7.116	Barrier free subcode: recreation standards	19 N.J.R. 1270(a)		
5:23-3.2, 3.4, 3.8A, 3.14, 3.15, 3.16, 3.17, 3.20, 3.21, 4.16	Uniform Construction Code: subcodes	19 N.J.R. 1024(a)	R.1987 d.374	19 N.J.R. 1720(b)
5:23-3.18, 6.1-6.3	Energy subcode; solar energy property tax exemptions	19 N.J.R. 433(b)		
5:23-4.5	UCC enforcement: conflict of interest—withdrawal of proposal	19 N.J.R. 1033(a)		
5:23-8	Asbestos Hazard Abatement Subcode	19 N.J.R. 902(a)		
5:70	Congregate Housing Services Program	19 N.J.R. 678(a)	R.1987 d.315	19 N.J.R. 1430(a)
5:80-3	Housing and Mortgage Finance: return on equity for housing sponsors	19 N.J.R. 1125(a)	R.1987 d.384	19 N.J.R. 1724(a)
5:80-21	Housing and Mortgage Finance: single family loans	18 N.J.R. 2238(a)		
5:80-22	Affirmative Fair Housing Marketing Plan	19 N.J.R. 798(a)	R.1987 d.385	19 N.J.R. 1725(a)
5:80-26	Housing resale and rental affordability control	19 N.J.R. 802(a)		
5:92-5.14, 12.11	Council on Affordable Housing: low and moderate income split; rental surcharge	19 N.J.R. 1597(a)		
5:92-7.1	Council on Affordable Housing: drastic alteration of development	19 N.J.R. 806(a)	R.1987 d.314	19 N.J.R. 1431(a)

(TRANSMITTAL 1987-5, dated July 20, 1987)

**DEFENSE—TITLE 5A**

(TRANSMITTAL 1, dated May 20, 1985)

**EDUCATION—TITLE 6**

6:8-7.1	High school proficiency standards and handicapped pupils	19 N.J.R. 1033(b)	R.1987 d.358	19 N.J.R. 1641(c)
6:20-3.1	Sending and receiving districts: determining tuition rates	19 N.J.R. 1598(a)		
6:28-3.6, 4.4	High school proficiency standards and handicapped pupils	19 N.J.R. 1033(b)	R.1987 d.358	19 N.J.R. 1641(c)
6:31-1	Bilingual education	19 N.J.R. 1126(a)		
6:39-1.5	High school proficiency standards and handicapped pupils	19 N.J.R. 1033(b)	R.1987 d.358	19 N.J.R. 1641(c)
6:46	Area Vocational Technical and Private Schools: waiver of Executive Order No. 66 (1978) sunset provision	18 N.J.R. 1996(b)		
6:46	Local area vocational school districts and private vocational schools	19 N.J.R. 1368(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:53	Vocational education safety standards	19 N.J.R. 485(b)	R.1987 d.313	19 N.J.R. 1432(a)
6:68-1.4	State library aid to municipalities	19 N.J.R. 1128(a)		
6:79-1	Child nutrition programs	19 N.J.R. 1599(a)		

## (TRANSMITTAL 1987-6, dated June 15, 1987)

## ENVIRONMENTAL PROTECTION—TITLE 7

7:1-3, 4	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:1A	Water Supply Bond Loan Program: extension of comment period	19 N.J.R. 806(b)		
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: hazardous substances and materials	19 N.J.R. 438(a)		
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: assessment of civil administrative penalties for nondisclosure of information	19 N.J.R. 703(a)		
7:2-11	Natural Areas System	18 N.J.R. 2349(b)		
7:7-2.1, 2.3	Coastal Permit Program: CAFRA exemptions; waterfront development	19 N.J.R. 807(a)		
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(a)		
7:7E-7.4, 8.11	Coastal resources and development: high rise structures; public access to Hudson River waterfront	19 N.J.R. 1034(a)		
7:8-1.3, 1.7, 2.1, 2.2, 2.6, 3.4, 3.6	Stormwater management	19 N.J.R. 488(a)		
7:9-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)	R.1987 d.320	19 N.J.R. 1433(a)
7:9-13	Sewer connection bans	18 N.J.R. 2163(a)		
7:9-13	Sewer connection ban: extension of comment period	19 N.J.R. 263(b)		
7:9-15.6	Phase II lake restoration projects: State funding level	19 N.J.R. 909(a)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	19 N.J.R. 1381(a)		
7:11-1	Use of Water Supply Authority property	19 N.J.R. 1274(a)		
7:12	Classification of shellfish growing waters	19 N.J.R. 1129(a)		
7:13-7.1(d)	Redelineation of Raritan River and Peters Brook: repropoed	19 N.J.R. 167(b)		
7:13-7.1(d)	Flood plain delineations in Passaic-Hackensack and Raritan basins	19 N.J.R. 489(a)		
7:13-7.1(d)	Flood hazard redelineation of Raritan River	19 N.J.R. 1277(a)		
7:13-7.1(d)	Redelineations along Green Brook, Union County	19 N.J.R. 1384(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System	18 N.J.R. 2085(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System: comment period extended	18 N.J.R. 2411(a)		
7:14A-1.9, 12	Sewer connection bans	18 N.J.R. 2163(a)		
7:14A-1.9, 12	Sewer connection bans: extension of comment period	19 N.J.R. 263(b)		
7:14B	Underground storage tanks	19 N.J.R. 1477(a)		
7:22-3.4, 3.6-3.11, 3.13, 3.32, 4.4, 4.6-4.11, 4.13, 4.32, 5.11	Wastewater Treatment Financing Program	19 N.J.R. 1600(a)		
7:22-9	Wastewater treatment: contract awards to small, female, and minority-owned businesses	19 N.J.R. 1604(a)		
7:25-5	1987-1988 Game Code	19 N.J.R. 808(a)	R.1987 d.321	19 N.J.R. 1434(a)
7:25-6	1988-99 Fish Code	19 N.J.R. 1385(a)		
7:25-18.5	Drifting and anchored gill net seasons; netting mesh in staked gill net fishery	19 N.J.R. 1609(a)		
7:26-1.1, 1.4, 1.6, 2.1, 7.5, 8.1, 8.2, 8.13, 8.15, 9.1, 10.7, 11.5, 11.6, 12.1, 12.3	Solid waste defined: hazardous waste recycling	19 N.J.R. 1035(a)		
7:26-1.7	Temporary certification of solid waste transfer stations	19 N.J.R. 886(a)	R.1987 d.311	19 N.J.R. 1452(a)
7:26-1.10	Master performance permits for transfer station facilities	19 N.J.R. 1242(a)	R.1987 d.372	19 N.J.R. 1730(a)
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)		
7:26-3.2, 3.4	Compliance with designated truck routes by solid waste registrants and operators	19 N.J.R. 1610(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)		
7:26-8.13, 8.15, 8.16	Hazardous waste criteria	19 N.J.R. 1278(a)		
7:26-8.19, 10.6	Hazardous waste management: approval of alternate test methods: surface impoundments	19 N.J.R. 1482(a)		
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management	18 N.J.R. 2356(a)		

(CITE 19 N.J.R. 1754)

NEW JERSEY REGISTER, MONDAY, SEPTEMBER 21, 1987

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management: extension of comment period	19 N.J.R. 263(c)		
7:26-12.2	Hazardous waste facilities: application signatories	19 N.J.R. 11(b)		
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)		
7:26-15	Recycling Grants and Loans Program	18 N.J.R. 2358(a)		
7:26B	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:27-16.1, 16.3	Air pollution control: Stage II vapor recovery	18 N.J.R. 1867(a)		
7:28-3	Registration of ionizing radiation-producing machines and radioactive materials	19 N.J.R. 836(a)		
7:28-4	Naturally-occurring and accelerator-produced radioactive materials: handling and use	19 N.J.R. 1041(a)		
7:28-5	Designation of controlled areas for use of radiation and radioactive materials	19 N.J.R. 839(a)		
7:29B	Determination of noise from stationary sources	19 N.J.R. 1483(a)		
7:30	Pesticide Control Code	19 N.J.R. 1611(a)		
7:50	Pinelands Comprehensive Management Plan	18 N.J.R. 2239(a)		
7:50	Pinelands Comprehensive Management Plan: public hearings	18 N.J.R. 2411(b)		

(TRANSMITTAL 1987-7, dated July 20, 1987)

HEALTH—TITLE 8

8:2-1	Birth certificates	18 N.J.R. 2278(a)		
8:2-1	Birth certificates: extension of comment period	19 N.J.R. 264(a)		
8:2-1	Birth certificates: proposal withdrawn	19 N.J.R. 1483(b)		
8:13	Processing and handling of shellfish; depuration of soft shell clams	19 N.J.R. 1143(a)	R.1987 d.362	19 N.J.R. 1642(a)
8:20-1.2	Reportable birth defects	19 N.J.R. 909(b)	R.1987 d.361	19 N.J.R. 1642(b)
8:31-26.3, 26.4	Home health agencies: employee physicals; child abuse and neglect	18 N.J.R. 2283(a)		
8:31B-3.7, 3.17, 3.27, 3.51, 3.55, 3.73, 4.42	Hospital reimbursement for existing capital indebtedness	19 N.J.R. 1145(a)		
8:31B-3.22, 3.31, 3.51	Hospital reimbursement: graduate medical education	19 N.J.R. 605(a)		
8:31B-3.24, 3.51, 3.71, 3.73	Hospital reimbursement: indirect costs	19 N.J.R. 1147(a)		
8:31B-3.38	Apportionment of full financial elements	19 N.J.R. 1279(a)		
8:31B-3.38, 4.62	Hospital reimbursement: outpatient dialysis	19 N.J.R. 840(a)	R.1987 d.338	19 N.J.R. 1545(a)
8:31B-3.41, 4.15, 4.38, 4.39	Hospital reimbursement: uncompensated care	18 N.J.R. 2283(b)		
8:31B-3.73, App. IX	Hospital reimbursement: cost/volume methodology	18 N.J.R. 2284(a)		
8:31B-3.73, App. IX	Hospital reimbursement: correction to cost/volume methodology	19 N.J.R. 264(b)		
8:33-1.5, 2.7, 2.8, 4.15	Certificate of Need review process: batching	19 N.J.R. 1280(a)		
8:33E-1.1, 1.2, 1.3	Certificate of Need: cardiac diagnostic facilities	19 N.J.R. 1282(a)		
8:33E-2.2, 2.3, 2.4	Certificate of Need: cardiac surgery centers	19 N.J.R. 1283(a)		
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(a)		
8:33H-2.1, 3.1, 3.3, 3.5	"Specialized" long-term care; licensure track records; location of residential health care facilities	19 N.J.R. 1149(a)		
8:33L	Home Health Agency Policy Manual: Certificate of Need review	19 N.J.R. 1483(c)		
8:42	Licensure of home health agencies	18 N.J.R. 2287(a)	R.1987 d.333	19 N.J.R. 1547(a)
8:65-7.14	Controlled substances: Schedule III and IV prescription refills	19 N.J.R. 1612(a)		
8:65-10.1, 10.2	Controlled substances: reschedule Alfentanil from Schedule I to Schedule II	19 N.J.R. 841(a)	R.1987 d.324	19 N.J.R. 1454(a)
8:65-10.2	Controlled substances: addition of Nabilone to Schedule II	19 N.J.R. 1050(a)	R.1987 d.339	19 N.J.R. 1557(a)
8:65-10.3	Controlled substances: Tiletamine-Zolazepam preparations	19 N.J.R. 497(a)	R.1987 d.337	19 N.J.R. 1557(b)
8:65-10.3, 10.4	Reassignment of CDS Codes in Schedules III and IV	19 N.J.R. 911(a)	R.1987 d.340	19 N.J.R. 1557(c)
8:71	Generic drug additions (see 19 N.J.R. 116(c), 217(a), 640(b), 881(a), 1315(a))	18 N.J.R. 1775(a)	R.1987 d.366	19 N.J.R. 1644(c)
8:71	Interchangeable drug products (see 19 N.J.R. 215(a))	18 N.J.R. 2100(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 216(a))	18 N.J.R. 2101(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 641(a), 880(a), 1314(a))	19 N.J.R. 13(a)	R.1987 d.365	19 N.J.R. 1644(b)
8:71	Interchangeable drug products (see 19 N.J.R. 1312(b))	19 N.J.R. 615(a)	R.1987 d.364	19 N.J.R. 1644(a)
8:71	Interchangeable drug products: public hearing	19 N.J.R. 1488(a)		

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(CITE 19 N.J.R. 1755)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>HIGHER EDUCATION—TITLE 9</b>				
9:1-7	Fraudulent academic degrees	19 N.J.R. 1284(a)		
9:2-3	Early retirement program for tenured faculty: rehiring as adjunct faculty	19 N.J.R. 912(a)	R.1987 d.344	19 N.J.R. 1558(a)
9:2-8	Petitions for rulemaking	19 N.J.R. 913(a)		
9:6A	State college personnel system	19 N.J.R. 1613(a)		
9:7-2.10, 2.11	Tuition Aid Grant benefits	19 N.J.R. 1153(a)		
9:7-9.9, 9.11, 9.12, 9.15	Congressional Teacher Scholarship Program	19 N.J.R. 1154(a)		
9:9-1.12, 1.13, 1.16	Repayment of student loans: nonconverted accounts	19 N.J.R. 1619(a)		
9:9-3.5	Capitalization of PLUS loan interest	19 N.J.R. 498(b)		
9:11-1.4	Educational Opportunity Fund: student dependency status defined	19 N.J.R. 266(a)		
9:11-1.5	EOF: financial eligibility for undergraduate grants	19 N.J.R. 499(a)		
9:11-1.7	Educational Opportunity Fund: undergraduate grants	19 N.J.R. 399(a)		
(TRANSMITTAL 1987-6, dated July 20, 1987)				
<b>HUMAN SERVICES—TITLE 10</b>				
10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:49-1.1 and 1.2	Administration Manual: Optional Categorically Needy program	19 N.J.R. 1324(a)	R.1987 d.380	19 N.J.R. 1731(a)
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:49-1.12	Medicaid reimbursement: timely submission of claims by service providers	19 N.J.R. 1155(a)		
10:50-2 through 10:68-2	Medicaid reimbursement: timely submission of claims by service providers	19 N.J.R. 1155(a)		
10:52-1.6, 1.8	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:53-1.5, 1.7	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:60-2.2	Personal care assistance services	19 N.J.R. 1489(a)		
10:65-1.5, 1.8	Medical day care centers: recordkeeping	19 N.J.R. 30(a)	R.1987 d.363	19 N.J.R. 1645(a)
10:66-3.2	Personal care assistance services	19 N.J.R. 1489(a)		
10:72	Optional Categorically Needy Eligibility Manual (JerseyCare Manual)	19 N.J.R. 1324(a)	R.1987 d.380	19 N.J.R. 1731(a)
10:81-2.6, 3.13	AFDC eligibility and full-time students	19 N.J.R. 618(a)	R.1987 d.349	19 N.J.R. 1559(a)
10:81-3.12	PAM: parent-minor and AFDC	19 N.J.R. 31(a)	R.1987 d.379	19 N.J.R. 1738(a)
10:81-3.38	AFDC qualification and child support orders	19 N.J.R. 618(b)	R.1987 d.348	19 N.J.R. 1558(b)
10:81-7.46	PAM: reporting criminal offenses	19 N.J.R. 1389(a)		
10:81-8.23	Medicaid Special: pregnancy examinations	19 N.J.R. 1490(a)		
10:81-11.3	AFDC: newborn child and application for Social Security number	19 N.J.R. 619(a)	R.1987 d.350	19 N.J.R. 1559(b)
10:81-11.4	PAM: recovery of child support overpayments	19 N.J.R. 1171(a)		
10:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)		
10:81-12	PAM: Newark/Camden Teen PROGRESS Demonstration	19 N.J.R. 1390(a)		
10:81-14	REACH (Realizing Economic Achievement Program)	19 N.J.R. 1491(a)		
10:82-1.3, 4.16	ASH: household defined: court-ordered support	19 N.J.R. 31(b)		
10:82-1.7, 1.8, 3.2	AFDC benefits and educational financial aid	19 N.J.R. 709(a)	R.1987 d.330	19 N.J.R. 1559(c)
10:82-5.10	Emergency Assistance in AFDC program	19 N.J.R. 1171(b)		
10:82-5.12	ASH: disregarded child support payments	19 N.J.R. 501(a)	R.1987 d.351	19 N.J.R. 1560(a)
10:85-2.7	GAM: reporting criminal offenses	19 N.J.R. 1393(a)		
10:85-3.2	GAM: exemption from work requirement and unemployability	18 N.J.R. 2183(a)		
10:85-3.3	GAM: Medically Needy eligibility	18 N.J.R. 1781(a)	Expired	
10:85-4.8	GAM: funeral and burial expenses	19 N.J.R. 1619(b)		
10:85-5.3	Personal needs allowance for GA recipients in nursing homes and intermediate care facilities	19 N.J.R. 619(b)	R.1987 d.322	19 N.J.R. 1454(b)
10:87-12.3, 12.4 and 12.7	Food Stamp Program: maximum income eligibility limits	19 N.J.R. 1331(a)	R.1987 d.375	19 N.J.R. 1738(b)
10:90	Monthly Reporting Policy Handbook	19 N.J.R. 1517(a)		
10:121A	Adoption Agencies: Manual of Standards	19 N.J.R. 1519(a)		
10:124	Children's shelter facilities and homes	19 N.J.R. 1394(a)		
10:131	Adoption Assistance and Child Welfare Act of 1980	19 N.J.R. 1285(a)		
(TRANSMITTAL 1987-6, dated July 20, 1987)				
<b>CORRECTIONS—TITLE 10A</b>				
10A:3-5.8, 5.11	Random searches of correctional facilities by canine teams	19 N.J.R. 1175(a)		
10A:4-1.2	Girl's Unit at Skillman: disciplinary process	19 N.J.R. 1531(a)		
10A:4-3.1	Inmates' rights and responsibilities: administrative correction to text	_____	_____	19 N.J.R. 1573(a)
10A:4-4.1	Inmate prohibited acts: correction to text	_____	_____	19 N.J.R. 1658(c)
10A:4-9.12	Representation of inmate in disciplinary case	19 N.J.R. 913(b)	R.1987 d.383	19 N.J.R. 1738(c)

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10A:5-5.2	Involuntary placement into protective custody	19 N.J.R. 842(a)	R.1987 d.319	19 N.J.R. 1454(c)
10A:6	Inmate access to courts	19 N.J.R. 914(a)		
10A:8	Inmate orientation and handbook	19 N.J.R. 1531(b)		
10A:9-2.1	Inmate reception classification process	19 N.J.R. 1395(a)		
10A:9-5.6	Earning work credits in county facilities	19 N.J.R. 843(a)	R.1987 d.332	19 N.J.R. 1560(b)
10A:10-6	International transfer of inmates	19 N.J.R. 916(a)	R.1987 d.331	19 N.J.R. 1560(c)
10A:10-6.3, 6.6	International transfer of inmates	19 N.J.R. 1620(a)		
10A:16-2.11	Pregnancy testing of new inmates	19 N.J.R. 1396(a)		
10A:71-3.2, 3.4, 3.18-3.23, 3.25-3.28, 3.30, 3.43, 6.9	Parole Board rules	19 N.J.R. 1396(b)		

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**INSURANCE—TITLE 11**

11:1-24	Credit cards and payment of insurance premiums	18 N.J.R. 1999(a)		
11:1-25	Official department mailing list: address information	19 N.J.R. 1050(b)		
11:4-2	Replacement of life insurance policy	19 N.J.R. 1286(a)		
11:4-18.3, 18.5, 18.10	Individual health policies: loss ratio standards	19 N.J.R. 1620(b)		
11:4-22.2, 22.4, App.	1980 CSO and 1980 CET Smoker and Nonsmoker Mortality Tables	19 N.J.R. 1399(a)		
11:4-28	Group coordination of health care benefits	19 N.J.R. 845(a)		
11:5-1.16	Real estate contracts and leases subject to attorney review	19 N.J.R. 503(b)	R.1987 d.359	19 N.J.R. 1646(a)
11:5-1.23	Full cooperation among real estate brokers and waiver of cooperation	19 N.J.R. 1621(a)		
11:5-1.27	Real estate brokers pre-licensure course	19 N.J.R. 1051(a)		
11:7-1.2, 1.3	Municipal bond insurance	19 N.J.R. 1409(a)		

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**LABOR—TITLE 12**

12:15-1.3	Unemployment compensation and temporary disability: 1988 maximum weekly benefits	19 N.J.R. 1622(a)		
12:15-1.4	Unemployment compensation: 1988 taxable wage base	19 N.J.R. 1623(a)		
12:15-1.5	Unemployment compensation: 1988 contribution rate for governmental entities	19 N.J.R. 1624(b)		
12:15-1.6	Base week earnings for claim eligibility	19 N.J.R. 1623(b)		
12:15-1.7	Alternate earnings test	19 N.J.R. 1623(c)		
12:60	Prevailing wages for public works	19 N.J.R. 345(b)		
12:100-2.1, 4.2, 5.2, 6.2	Public employees and hazardous waste operations	19 N.J.R. 1533(a)		
12:100-4.2, 5.2, 6.2, 7	Public employees and exposure to toxic and hazardous substances	19 N.J.R. 267(a)		
12:235-1.6	Workers' compensation: 1988 maximum weekly benefit	19 N.J.R. 1624(a)		

(TRANSMITTAL 1987-2, dated June 15, 1987)

**COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

12A:11-1	Certification of women and minority-owned businesses	19 N.J.R. 1176(a)	R.1987 d.376	19 N.J.R. 1739(a)
12A:12-1	Grants to local government for development of small, minority and women-owned businesses	19 N.J.R. 1286(b)	R.1987 d.382	19 N.J.R. 1743(a)

(TRANSMITTAL 1987-1, dated March 16, 1987)

**LAW AND PUBLIC SAFETY—TITLE 13**

13:2-40.1, 40.5, 40.6, 40.7	Uniform ABC identification cards	19 N.J.R. 1410(a)		
13:19-9	Designated State official for notification of out-of-state motor vehicle convictions	19 N.J.R. 621(a)	R.1987 d.342	19 N.J.R. 1562(a)
13:21-9.4	Restoration of driving privilege	19 N.J.R. 621(b)	R.1987 d.343	19 N.J.R. 1562(b)
13:21-21	Auto body repair facilities	19 N.J.R. 1624(c)		
13:27-8.14	Advertising by persons not certified as landscape architects	19 N.J.R. 400(a)		
13:30-2.1, 2.2, 2.7, 2.8, 2.9, 2.13, 2.14, 6.2, 6.5, 6.6, 6.9, 8.2	Licensure of dental hygienists: duties of dental assistants: approval of schools of oral hygiene	19 N.J.R. 849(a)		
13:30-8.6	Professional advertising by dentists	19 N.J.R. 1053(a)		
13:30-8.17	Designation of dentist of record for patient in multi-dentist facility	19 N.J.R. 1629(a)		
13:32-1	Rules of Board of Examiners of Master Plumbers	19 N.J.R. 1630(a)		
13:33-1.11, 1.13	Licensure as ophthalmic dispenser: temporary permit: apprenticeship	19 N.J.R. 917(a)	R.1987 d.323	19 N.J.R. 1455(a)
13:35-1.5	Practice by medical school graduates in hospital residency programs	18 N.J.R. 2184(a)		
13:35-3.6	Licensure of physicians as bioanalytical laboratory directors	19 N.J.R. 1179(a)	R.1987 d.368	19 N.J.R. 1647(a)

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13:35-3.11	Post-graduate training of graduates of foreign medical schools	19 N.J.R. 1534(a)		
13:35-6.13	Board of Medical Examiners: fee schedule; acupuncturist registration	19 N.J.R. 1054(a)	R.1987 d.371	19 N.J.R. 1648(a)
13:35-8.25	Biennial registration fee for hearing aid dispensers	19 N.J.R. 1055(a)	R.1987 d.370	19 N.J.R. 1649(a)
13:40-2, 3.1, 6.1	Professional engineers and land surveyors: requirements for licensure; client relationships; applicant fees	19 N.J.R. 851(a)	R.1987 d.355	19 N.J.R. 1649(b)
13:40-5.1	Corner markers and ultimate user of land survey	19 N.J.R. 1631(a)		
13:42-1.2	Board of Psychological Examiners: application, examination and licensure fees	19 N.J.R. 1639(a)		
13:44B-1	Compensation of professional and occupational licensing board members	19 N.J.R. 444(a)		
13:44C	Practice of audiology and speech-language pathology	19 N.J.R. 1412(a)		
13:45A-2	Motor vehicle advertising practices	19 N.J.R. 1056(a)	R.1987 d.341	19 N.J.R. 1562(c)
13:45A-6.2	Unlawful automobile sales practices	18 N.J.R. 2115(a)		
13:45A-12	Sale of dogs and cats	19 N.J.R. 853(a)		
13:45A-21, 22	Sale of Kosher food and food products	19 N.J.R. 1060(a)		
13:45A-24	Sale of gray market merchandise	19 N.J.R. 179(a)		
13:46-12.12	Compensation for physicians at boxing and wrestling shows	19 N.J.R. 1179(b)	R.1987 d.386	19 N.J.R. 1745(a)
3:47A-1—8, 11	Bureau of Securities rules	19 N.J.R. 1417(a)		
3:70-1.30	Thoroughbred racing: horsemen associations	19 N.J.R. 1418(a)		
3:70-12.1, 12.37	Thoroughbred racing: open claiming	19 N.J.R. 1419(a)		
3:70-20.11	Thoroughbred racing: entering or starting nerved horses	19 N.J.R. 918(a)		
3:71-1.25	Harness racing: horsemen associations	19 N.J.R. 856(a)		
3:71-14.1, 14.36	Harness racing: open claiming	19 N.J.R. 1419(b)		
3:71-20.23	Harness racing: registration of nerved horses	19 N.J.R. 919(a)		
3:77	Equitable distribution of forfeited property to law enforcement agencies	19 N.J.R. 1534(a)		

(TRANSMITTAL 1987-7, dated July 20, 1987)

**PUBLIC UTILITIES—TITLE 14**

4:1-11	Board of Public Utilities: settlement conferences	19 N.J.R. 919(b)	R.1987 d.360	19 N.J.R. 1650(a)
4:3-7.12A	Residential electric and gas service during heating season	18 N.J.R. 2315(a)		
4:17-6.21	Cable TV: petition to set aside county refusal	19 N.J.R. 504(a)	R.1987 d.316	19 N.J.R. 1455(b)
4:18-14.5, 14.6	Cable TV: notices of rate and channel line-up changes	19 N.J.R. 505(a)	R.1987 d.367	19 N.J.R. 1651(a)

(TRANSMITTAL 1987-4, dated July 20, 1987)

**ENERGY—TITLE 14A**

4A:3-4.1-4.6	Energy subcode	19 N.J.R. 433(b)		
4A:4-1.1-3.1	Solar energy property tax exemptions	19 N.J.R. 433(b)		

(TRANSMITTAL 1987-2, dated April 20, 1987)

**STATE—TITLE 15**

(TRANSMITTAL 1987-1, dated February 17, 1987)

**PUBLIC ADVOCATE—TITLE 15A**

(TRANSMITTAL 1987-1, dated April 20, 1987)

**TRANSPORTATION—TITLE 16**

6:1-2.2	NJDOT organizational structure: administrative correction to text			19 N.J.R. 1578(b)
6:25	Utility accommodation on highway rights-of-way	19 N.J.R. 1064(a)		
6:28-1.79	School zone on Route 94 in Frelinghuysen Township	19 N.J.R. 1288(a)	R.1987 d.378	19 N.J.R. 1745(b)
6:28A-1.5, 1.36, 1.38, 1.45	Parking restrictions along Routes 5, 57, 71, and 94	19 N.J.R. 1639(b)		
6:28A-1.7, 1.15, 1.18, 1.22, 1.32	Parking restrictions along U.S. 9, Routes 23, 27, 31, and U.S. 46	19 N.J.R. 1633(a)		
6:28A-1.9	No parking zones along Route 17 in Rutherford and Lyndhurst	19 N.J.R. 1420(a)		
6:28A-1.10	Bus stop zones along Route 20 in East Rutherford	19 N.J.R. 1074(a)	R.1987 d.356	19 N.J.R. 1652(a)
6:28A-1.21, 1.31, 1.68	Bus stop zones along U.S. 30 in Waterford, N.J. 45 in Mannington, and N.J. 93 in Palisades Park	19 N.J.R. 1537(a)		
6:28A-1.31	Bus stop zones on Route 45 in Woodbury	19 N.J.R. 920(a)	R.1987 d.329	19 N.J.R. 1567(a)
6:28A-1.32	Bus stop zones along U.S. 46 in Denville	19 N.J.R. 1180(a)	R.1987 d.357	19 N.J.R. 1653(a)
6:29-1.67	No passing zones along U.S. 130 in Salem and Gloucester counties	19 N.J.R. 1420(b)		
6:30	Pre-proposal: Exclusive bus lane on Routes 3 and 495	19 N.J.R. 1421(b)		
6:30-3.1	Lane usage on Route 35 in Ocean County	19 N.J.R. 1332(a)	R.1987 d.377	19 N.J.R. 1745(c)
6:30-10.4	Midblock crosswalk on Route 33 in Freehold	19 N.J.R. 857(a)	R.1987 d.328	19 N.J.R. 1567(b)
6:30-10.5	Midblock crosswalk on Route 29 in Stockton	19 N.J.R. 1421(a)		
6:41	Permits for use of or work upon highway rights-of-way	19 N.J.R. 1074(b)	R.1987 d.347	19 N.J.R. 1653(b)
6:44-1.1	Contract administration: composition of Pre-qualification Committee	19 N.J.R. 1634(a)		

(CITE 19 N.J.R. 1758)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:56-4.1	Airport safety improvement loans: correction to text			19 N.J.R. 1749(a)
16:56-4.1, 11.2	Airport safety improvement aid	19 N.J.R. 1634(b)		
16:56-14.1	Publicly funded airports and State audit policy	19 N.J.R. 921(a)	R.1987 d.327	19 N.J.R. 1567(c)
16:73-1.1, 2.1-2.4, 3.2	NJ TRANSIT: Reduced fare program for the elderly and handicapped	19 N.J.R. 1289(a)	R.1987 d.381	19 N.J.R. 1746(a)

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**TREASURY-GENERAL—TITLE 17**

17:1-1.10	Balances in withdrawn pension accounts	19 N.J.R. 446(a)	R.1987 d.317	19 N.J.R. 1456(a)
17:1-1.10	Positive and negative balances in pension accounts	19 N.J.R. 447(a)	R.1987 d.317	19 N.J.R. 1456(a)
17:2-3.3	PERS: contributory insurance rate	19 N.J.R. 1636(a)		
17:2-4.4	Public Employees' Retirement System: accrual of loan interest	19 N.J.R. 194(a)		
17:9-6.1	State Health Benefits Program: coverage after retirement	19 N.J.R. 1636(b)		
17:30	Urban Enterprise Zone Authority: comment period reopened	19 N.J.R. 354(a)		
17:32	Municipal and county cross-acceptance of State Development and Redevelopment Plan	19 N.J.R. 509(a)		

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**TREASURY-TAXATION—TITLE 18**

18:3-2.1	Tax rate on wine produced from New Jersey grapes	19 N.J.R. 1181(a)		
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18:5-3.6, 3.7, 3.8	Purchase of cigarette tax stamps	19 N.J.R. 511(a)	R.1987 d.326	19 N.J.R. 1568(a)
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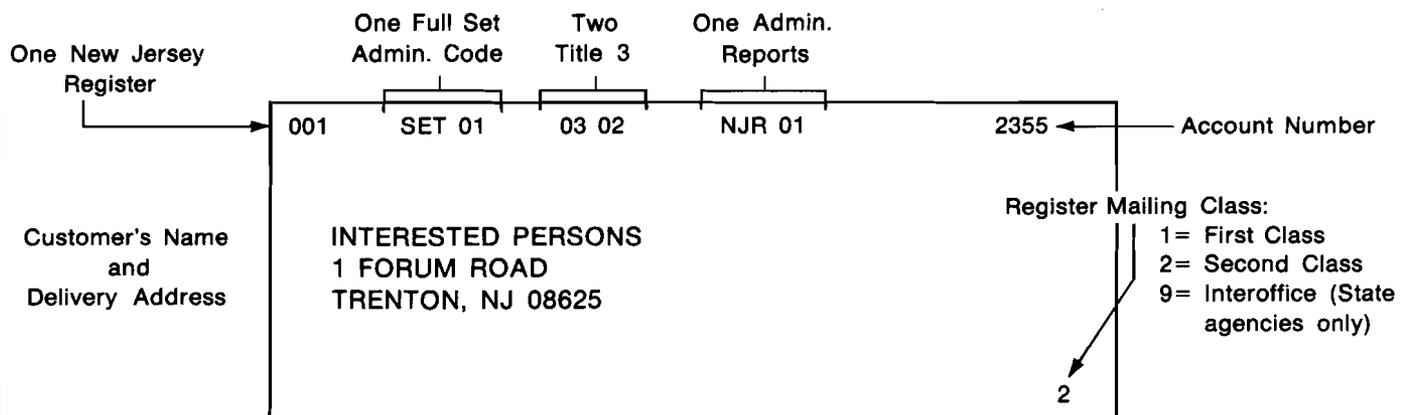
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