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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 20 NUMBER 17

September 6, 1988 Indexed 20 N.J.R. 2123-2350

(Includes adopted rules filed through August 15, 1988)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JUNE 20, 1988
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JULY 18, 1988

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **October 6, 1988.** 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

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

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The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $75 ($150 by First Class Mail); back issues when available, $8 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in Trenton, New Jersey and additional mailing offices.

The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 41-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to four volumes depending on the Department coverage desired.

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF MARKETS

Agricultural Fairs

Proposed Repeal and New Rules: N.J.A.C. 2:33

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

Authority: N.J.S.A. 5:8-121 et seq.

Proposal Number: PRN 1988-452.

Submit comments by October 6, 1988 to:
John J. Repko, Director
Division of Markets
State Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5536

The agency proposal follows:

Summary

A number of promoters have requested official "agricultural" status for their fairs in the past two years. The chief reason appears to be to obtain a games of chance license. It has become clear that a revised procedure to designate "agricultural fair" status is necessary for the orderly promotion of agricultural fairs.

The Department of Agriculture has determined that the current rules are outdated and inadequate, due to changed circumstances, law suits, and the unnecessary time and paperwork involved in the processing of new applications.

The new rules proposed define what is an "agricultural fair" and the process for obtaining that official designation.

The 23 existing fairs and any potential new fairs will now have time restrictions to file their request for official "agricultural fair" status. Unless complied with, the fair will not be authorized as an official agricultural fair. Additionally, the proposed rules set a limit of one fair per county. The primary purpose of the fair will be agriculture and/or agri-business.

Social Impact

The proposed rules will have a positive social impact by streamlining the procedures and designating responsibility. This will lead to better fairs to showcase New Jersey agriculture.

Economic Impact

Limiting official agricultural fairs to one per county will insure a reasonable distribution of state funds for prizes and awards. These rules may tend to discourage new promoters from engaging in agricultural fairs, because without the Department of Agriculture's approval, it would be slightly more expensive to operate a fair without games of chance or pay a differential in fees for such games under an alternative licensing procedure.

Regulatory Flexibility Statement

Some carnival operators or fair promoters are small businesses, as defined in the Regulatory Flexibility Act. The proposed rules will have an economic impact on such businesses depending upon the certification they receive from the Department. There is no cost associated with the application process. The Department knows of no less restrictive system to comply with the legislative mandates of N.J.S.A. 5:8-121, et seq. than is expressed in the proposed rules. It would be inappropriate to differentiate between small and large businesses in these rules, due to statutory requirements.

Full text of the repeal can be found in the New Jersey Administrative Code at N.J.A.C. 2:33.

Full text of the proposal follows.

CHAPTER 33
AGRICULTURAL FAIRS

SUBCHAPTER 1. CERTIFICATION

2:33-1.1 Agricultural fairs: qualifications

(a) Each person, corporation or association certified as an "Official Agricultural Fair" shall hold, at one site, an agricultural exhibition, whose primary purpose is the development and promotion of several, or many phases of agriculture or agri-business in and of that county, by conducting educational programs, activities, demonstrations, contests, and exhibitions. In addition, the fairs shall have two or more of the following other purposes:

1. Manufacturing, commerce and industry;
2. Community development and improvement;
3. Promotion of products and services;
4. Public service events and projects;
5. County interest projects;
6. Cultural works and collections of art;
7. Any activity approved by the entire association for the benefit of the community; and/or
8. Recreational activities.

(b) No person, corporation or association shall operate a fair or exhibition in any county under the designation "Official Agricultural Fair" without obtaining a certificate to operate from the New Jersey Department of Agriculture.

(c) No fair, unless it is certified an "Official Agricultural Fair", shall be eligible to receive funds from the New Jersey Department of Agriculture, or be designated for games of chance pursuant to N.J.S.A. 5:8-121 et seq.

(d) No more than one "Official Agricultural Fair" shall be certified per county, except for the one "Official Agricultural Fair" designated "The State Fair", which may be held once per year. The purpose of this fair is to promote Statewide New Jersey agriculture.

2:33-1.2 Responsibilities of certified fair

(a) Each person, corporation, or association certified as an official agricultural fair shall:

1. Furnish annually a copy of an audit and reports on forms prescribed by the Department of Agriculture.
2. Comply with all county and municipal health, fire, police and sanitation regulations.

(b) The New Jersey Secretary of Agriculture, or his designee, may enter the premises of any "Official Agricultural Fair" at reasonable times to determine compliance with this chapter.

2:33-1.3 Procedure for certification

(a) To receive certification as an "Official Agricultural Fair", all applicants must annually file their proposals with the Department of Agriculture by February 1 of the year in which they intend to hold the fair. At the same time, a copy shall be submitted by the applicant to the County Board of Agriculture for its comment. The County Board of Agriculture shall submit any comments concerning the application to the Department of Agriculture on or before April 1 of the year of the fair.

(b) After consideration of the application, and any comments submitted by the County Board of Agriculture, the State Board of Agriculture shall either deny or approve certification of any proposed "Official Agricultural Fair".

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COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Hotels and Multiple Dwellings; Rooming and Boarding Houses Fire Safety

Proposed Readoption with Amendments: N.J.A.C. 5:10.

Proposed Amendments: N.J.A.C. 5:27-1.3 and 1.6.

Proposed Repeals: N.J.A.C. 5:10-1.17 and 25; 5:27-5.

Authorized By: Anthony M. Villane, Jr., D.D.S., Acting Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 55:13A-6(e) and 7, 55:13B-4.

Proposal Number: PRN 1988-439.

A **public hearing** concerning this proposal will be held on:
September 30, 1988 at 10:00 A.M.
Department of Community Affairs
101 South Broad Street
Trenton, New Jersey 08625

Submit written comments by October 6, 1988 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposal amends the rules for the Maintenance of Hotels and Multiple Dwellings (N.J.A.C. 5:10) and the rules governing Rooming and Boarding Houses (N.J.A.C. 5:27) to bring them into conformity with the Uniform Fire Code (N.J.A.C. 5:18). Until June 16, 1989, N.J.A.C. 5:18-4 of the Uniform Fire Code is inapplicable to multiple dwellings of six stories or less, or not more than 75 feet in height; to hotels three stories or less in height and with 100 or fewer rooms; and to rooming houses. It is applicable to all other multiple dwellings, hotels and boarding houses as of June 16, 1988, according to N.J.A.C. 5:18-4.1(c). The existing rules in N.J.A.C. 5:10 and 5:27 must therefore remain in effect for those excluded buildings until June 16, 1989, with the proviso that retrofit work, if required under the existing rules, must be done to the standards of the Uniform Fire Code (in order to avoid having to redo it in another year) and that a building in compliance with the Uniform Fire Code is deemed to be in compliance with the existing fire safety rules.

Additionally, the Department proposes to repeal the fire safety rules for hotels and multiple dwellings and for rooming and boarding houses that have been superseded by the Uniform Fire Code (N.J.A.C. 5:18). These repeals will be operative June 16, 1989, since that is the date that the Uniform Fire Code will be applicable to the theretofore excluded buildings.

With these changes, and with the repeal of N.J.A.C. 5:10-1.17 (a fee schedule operative only under a statutory authorization that has expired), the Department proposes to readopt the rules for the Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10, which are scheduled to expire on December 1, 1988, pursuant to Executive Order No. 66(1978). Under the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq., all hotels and multiple dwellings in the State are inspected periodically to ensure compliance with the standards set forth in N.J.A.C. 5:10. These standards cover such matters as general and structural maintenance, interior maintenance, waste disposal, screens and infestation, managerial and maintenance personnel, elevators, electrical service and lighting, heating, water supply, light and ventilation, storage and closet facilities, mailboxes and signs, building security, cooking and sanitary facilities, occupancy standards, parking areas and driveways, and vacant buildings. The rules proposed for readoption have been reviewed by the Department and have been determined to be necessary, reasonable and proper for the protection of public health, safety and welfare and in order to carry out the mandate of the Hotel and Multiple Dwelling Law.

Social Impact

It will be beneficial to the owners of buildings and to inspectors to have certainty as to what standards govern the maintenance of a building of a particular type, and to have rules that have been superseded, and that may be conflicting, deleted from the Administrative Code. It will be equally beneficial to have jurisdictional responsibilities clearly enunciated.

Readoption of the rules for the maintenance of hotels and multiple dwellings will ensure the continued ability of the Department, and of municipal governments serving as its inspecting agents, to require that multi-family housing be maintained in a safe and sanitary manner.

Economic Impact

To the extent that these proposed amendments and repeals eliminate confusion as to which fire safety standards apply to a given building, they may spare the owner the cost of doing work in a manner that is not acceptable under the Uniform Fire Code. These amendments and repeals recognize, but do not establish, the phasing in of the Uniform Fire Code, since that has already been done by N.J.A.C. 5:18-4.1.

Readoption of N.J.A.C. 5:10 continues the existing economic impact upon owners of hotels and multiple dwellings, the amount of which is different in each case since the amount and type of work required in each building is different.

Regulatory Flexibility Statement

Building owners who qualify as "small businesses" will benefit by the clarification provided by this rulemaking in the same manner as other owners.

With regard to the proposed readoption, it should be noted that, since virtually all multiple dwellings, and the great majority of hotels and boarding houses, are owned by "small businesses" (that is, persons or firms that are independently owned with 100 or fewer employees), there is no basis for special treatment of small businesses. However, N.J.S.A. 55:13A-11, as implemented by N.J.A.C. 5:10-1.15, allows exceptions to be granted when strict enforcement of a maintenance requirement would result in undue hardship and an alternative is available which would not adversely affect public health, safety and welfare. N.J.A.C. 5:27-1.9 makes similar provision for rooming and boarding house owners seeking exceptions.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:10.

Full text of the proposed repeals can be found in the New Jersey Administrative Code at N.J.A.C. 5:10-1.17 and 25, and 5:27-5.

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

5:10-1.3 Administration and enforcement

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

(d) The [Construction Official and Fire Prevention Subcode Official of] **local enforcing agency, as the term is defined in N.J.A.C. 5:18-1.5, authorized to enforce the Uniform Fire Code in** each municipality [are] **is** hereby designated as **the** agent[s] of the Bureau for the purpose of inspecting existing buildings in order to enforce [the provisions of P.L. 1979, c.419, including any amendments and supplements thereto, and the regulations concerning smoke detectors and smoke alarms promulgated pursuant thereto] **all provisions of the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq., and the Uniform Fire Code, N.J.A.C. 5:18, applicable to hotels and multiple dwellings; provided, however, that such provisions shall continue to be enforced by the Bureau in multiple dwellings and hotels that are not life hazard uses, as defined in N.J.A.C. 5:18-2.4A or 2.4B, until such time as the Bureau has been advised by the Bureau of Fire Safety that the local enforcing agency has agreed to accept responsibility for periodic fire safety inspections in such buildings.**

5:10-1.6 Maintenance requirements

(a) All buildings and parts thereof shall be maintained as required by this chapter **and by the Uniform Fire Code, N.J.A.C. 5:18**.

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

(d) A nonprofit corporation owning or controlling buildings of three stories or less in a retirement community, which are excluded from the definition of "multiple dwelling" pursuant to P.L. 1983, c.154, shall maintain all such buildings in compliance with the basic standards for fire safety as set forth in **the Uniform Fire Code, N.J.A.C. 5:18 and, until June 16, 1989, in** the following rules:

1.-23. (No change.)

(e) The maintenance requirements set forth in the Uniform Fire Code, N.J.A.C. 5:18, shall supersede the standards for fire safety set forth in the rules cited in (d)1 through 23 above with regard to all

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multiple dwellings seven stories or more, or over 75 feet, in height, and in all hotels four stories or more in height or having more than 100 rooms (as of the effective date of this amendment), and shall be the sole fire safety maintenance requirements applicable to all multiple dwellings and hotels on and after June 16, 1989.

1. All retrofit work required to be done in any hotel or multiple dwelling shall be done in accordance with the Uniform Fire Code, N.J.A.C. 5:18. All buildings in compliance with the Uniform Fire Code shall be deemed to be in compliance with all fire safety requirements set forth in this chapter.

5:10-1.10 Bureau inspections

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

(g) If, in the course of inspecting any hotel or multiple dwelling, any inspector performing inspections for the Bureau shall find a condition which is, or appears to be, in violation of the Uniform Fire Code, N.J.A.C. 5:18, the inspector shall give prompt notice of that condition to the Bureau, which shall promptly notify the Bureau of Fire Safety.

5:10-1.12 Certificate of inspection

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

(e) No certificate of inspection shall be issued for any hotel or multiple dwelling subject to inspection, pursuant to the Uniform Fire Safey Act, by a local enforcing agency, either as a life hazard use or pursuant to a notice given by the local enforcing agency to the Bureau of Fire Safety, unless and until the Bureau shall have received from the local enforcing agency a certification that the building does not have any outstanding violations of the Uniform Fire Code, N.J.A.C. 5:18.

5:27-1.3 Administration and enforcement

(a) (No change.)

(b) The Bureau may authorize any municipality or county, through its appropriate housing, health[, fire prevention] or social services agencies, to perform inspections for the Bureau. Any authorization to perform inspections given to any municipality or county shall contain such terms and conditions as the Bureau may deem necessary and proper.

(c) The local enforcing agency, as the term is defined in N.J.A.C. 5:18, authorized to enforce the Uniform Code in each municipality is hereby designated as the agent of the Bureau for the purpose of inspecting existing buildings in order to enforce all provisions of the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq., and the Uniform Fire Code, N.J.A.C. 5:18, applicable to rooming and boarding houses.

1. If, in the course of inspecting any rooming or boarding house, any inspector performing inspections for the Bureau finds any condition which is, or appears to be, in violation of the Uniform Fire Code, the inspector shall promptly give notice of such condition to the Bureau, which shall notify the Bureau of Fire Safety.

2. The maintenance requirements set forth in the Uniform Fire Code, N.J.A.C. 5:18, shall supersede the standards for fire safety set forth in N.J.A.C. 5:27-5, with regard to all boarding houses (as of the effective date of this amendment), and shall be the sole fire safety maintenance requirements applicable to all rooming and boarding houses on and after June 16, 1989.

3. Any retrofit work required to be done in any rooming or boarding house shall be done in accordance with the Uniform Fire Code, N.J.A.C. 5:18. All buildings in compliance with the Uniform Fire Code shall be deemed to be in compliance with the fire safety standards set forth in this chapter.

5:27-1.6 Licenses

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

(l) No license to operate a rooming or boarding house shall be issued by the Bureau prior to receipt from the local enforcing agency responsible for enforcement of the Uniform Fire Code in the municipality in which the rooming or boarding house to be operated by the applicant is located of certification that the building does not have any outstanding violations of the Uniform Fire Code N.J.A.C. 5:18.

EDUCATION

(a)

STATE BOARD OF EDUCATION

School Facility Lease Purchase Agreements; Approval

Proposed New Rules: N.J.A.C. 6:22A-1

Authorized By: Saul Cooperman, Commissioner, Department of Education and Secretary, State Board of Education.

Authority: N.J.S.A. 18A:4-15 and 18A:20-4.2(f).

Proposal Number: PRN 1988-349.

Submit comments by October 6, 1988 to:
Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules will allow a district board of education to enter into a lease purchase agreement for school facilities. Under the provisions of N.J.S.A. 18A:20-4.2(f), a district board of education is authorized to utilize lease purchase agreements to finance the acquisition of sites, the construction of new school facilities, and renovations or additions to existing school facilities. Voter approval is not required for a district board of education to enter into a lease purchase agreement, but a resolution approved by a majority vote of all members of the board is required.

A lease purchase agreement refers to any agreement which gives a district board of education, as lessee, the option of purchasing the leased premises during or upon termination of the lease. Credit is given toward the purchase price of all or part of the rental payments which have been made by the district board of education in accordance with the lease. The option price declines over the term as rentals are paid. At the final option date, the option price is usually a nominal amount.

The lease purchase agreement does not constitute debt since the rental payments are subject to the annual appropriation of funds sufficient to meet the required payments. The rental payments are appropriated annually by the district board of education as part of the current expense budget.

All lease purchase agreements in excess of five years must be approved by the Commissioner of the Department of Education and the Local Finance Board in the Department of Community Affairs.

A district board of education may transfer or lease land or rights in land, including any building thereon, as part of the lease purchase agreement.

Social Impact

These proposed new rules will benefit district boards of education that want to improve or construct new facilities. District boards of education will have a new method to consider when developing financing for school facilities. Prior to the lease purchase agreement authority, district boards of education had one method of financing facility costs—bond referenda, the issuance of bonds and the payment of debt service. A lease purchase arrangement should be carefully considered with professional assistance by any district board of education planning a financing of facility costs.

Economic Impact

The proposed new rules can have a positive or negative impact on district boards of education that need to finance facility improvements. Whether fixed or variable, the interest rates of lease purchase transactions could be slightly higher than for general obligation debt or bonds. The difference is primarily caused by the fact that a lease is not considered debt, since it is subject to an annual appropriation. The payment of higher interest may be warranted in circumstances where delays in obtaining voter approval for bonded debt might cause an inflationary increase in the cost of construction.

School bonds are rated. Lease purchase financing may or may not be rated. Lease purchase agreements may be insured, which usually results in a triple A rating. The lease purchase transactions afford the district boards of education flexibility in drawing the legal documents connected with the lease purchase transactions compared to the structured documents available for bonding. Recent sales in the financial market of

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certificates of participation have resulted in rates comparable to bonded debt for district boards of education who have received a triple A rating on proposed financing.

Regulatory Flexibility Statement

The proposed new rules will have no reporting, recording or compliance requirements for small businesses. All requirements of the rules impact upon New Jersey public school districts.

Full text of the proposal follows.

CHAPTER 22A
SCHOOL FACILITY LEASE PURCHASE AGREEMENTS

SUBCHAPTER 1. APPROVAL OF LEASE PURCHASE AGREEMENTS

6:22A-1.1 School building definition

As used in this subchapter, "school building" means any educational facility or education support facilities necessary for a local district to achieve its goals and objectives pursuant to Chapter 212, Laws of 1975.

6:22A-1.2 Approval procedures

(a) A district board of education planning to acquire a site and a new school building and/or make additions, alterations, renovations and improvements to existing buildings by lease purchase agreement shall comply with the following:

1. The district board of education shall have the site approved by the Bureau of Facility Planning Services in accordance with N.J.A.C. 6:22-1.2.

2. The district board of education shall have the educational specifications, schematic plans, preliminary plans, and final plans for a new building and/or for additions, alterations, renovations and improvements to existing buildings approved by the Bureau of Facility Planning Services in accordance with N.J.A.C. 6:22 and the State Uniform Construction Code prior to any party obtaining a construction permit.

3. The district board of education shall have the educational specifications, schematic plans and project cost estimate approved by the Bureau of Facility Planning Services prior to taking any action to obtain the Commissioner's approval of a lease purchase agreement in excess of five years.

(b) A district board of education planning to transfer or lease land or rights or interests therein, including any building thereon to any party as a part of a lease purchase transaction involving a lease purchase agreement in excess of five years, shall have such transfer or lease to a third party documented by a ground lease agreement, which shall be submitted to the Commissioner for approval. Such ground lease agreement shall follow a sample ground lease agreement prepared by the Commissioner.

(c) A district board of education shall adopt a resolution endorsing approval of the lease purchase concept and authorizing the chief school administrator and/or board secretary to advertise and solicit proposals for a lease purchase agreement and to request the approval of the Commissioner and the Local Finance Board in the Department of Community Affairs of a lease purchase agreement in excess of five years.

(d) A district board of education requesting the Commissioner's approval of a lease purchase agreement in excess of five years shall submit to the Commissioner and the Local Finance Board in the Department of Community Affairs an application on a form prepared by the Commissioner, a copy of the ground lease agreement, if applicable, a lease with an option to purchase agreement or similar document, an agent or trust agreement, if applicable, and any other relevant information which the Commissioner may request to justify the need for the proposed lease purchase agreement.

(e) The Commissioner or a designee shall hold a conference prior to the Commissioner approving any request for approval of a lease purchase agreement in excess of five years. All documents required and the application must be submitted in duplicate and in final form and received at least 15 days prior to the scheduled conference. At the conference the district board of education shall be required to document and discuss at a minimum the following:

1. A copy of the newspaper advertisement for the request for proposals;

2. The list of persons and/or firms to which the request for proposals was sent;

3. The responses to the request for proposals;

4. The comparative analysis of proposals showing the following:

i. The construction costs;

ii. The financing costs;

iii. The underwriting fees, legal fees and issuance expenses;

iv. If appropriate, the cost of financial insurance or a rating for the proposed issue;

v. The guaranteed interest rate or methodology for calculating the interest rate at the time of issuance;

vi. The proposal selected; and

vii. The proposed documents with any changes noted from the sample agreements.

(f) Within 15 days after the conference for approval of a lease purchase agreement in excess of five years, the Commissioner shall endorse his or her consent upon the application, if the Commissioner shall be satisfied that the lease purchase agreement is in the best interest of the school district, that the present educational facilities are less than 80 percent adequate, and that the planned educational facilities will be fully utilized within 10 years, or when the relationship of the proposed lease purchase project to the district goals and objectives pursuant to Chapter 212, Laws of 1975 has clearly been established and the documents and information presented at the conference support the request of the district board of education for the proposed lease purchase agreement.

(g) Lease purchase agreements in excess of five years shall be submitted to the Local Finance Board in the Department of Community Affairs for approval subsequent to approval by the Commissioner.

(h) A district board of education having entered into a lease purchase agreement shall include in its annual current expense budget the full rental payment attributable to a lease purchase agreement. The county superintendent of schools shall not approve such budget in accordance with N.J.A.C. 6:8-4.3(a)10iii(2) when a district board of education does not include such rental payment in its current expense budget unless the Commissioner or his or her designee has consented to such approval.

(i) A district board of education having entered into a lease purchase agreement in excess of five years shall not terminate, change or alter the approved lease purchase agreement and accompanying legal documents pertaining thereto, without first obtaining the written consent of the Commissioner.

CORRECTIONS

(a)

THE COMMISSIONER

Medical and Health Services
Psychological Services

Proposed Amendments: N.J.A.C. 10A:16-4.1, 4.2 and 4.8.

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B and 30:1B-10.

Proposal Number: PRN 1988-438.

Submit comments by October 6, 1988 to:
Elaine E. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments modify N.J.A.C. 10A:16-4.1, 4.2 and 4.8 of the Psychological Services subchapter to specify the appropriate admin-

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istrator to whom the Office of Institutional Support Services' Director of Psychological Services reports and submits monthly and annual reports. The proposed amendments add "New Jersey" to references to licensed psychologists.

Social Impact

The proposed amendments will have no significant social impact because they simply clarify administrative reporting and licensure requirements related to the provision of psychological services.

Economic Impact

The proposed amendments will have no economic impact because no additional costs are necessary to implement or maintain the amendments.

Regulatory Flexibility Statement

The proposed amendments impact on inmates and the Department of Corrections and do not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

10A:16-4.1 Office of Institutional Support Services (O.I.S.S.) Director of Psychological Services

(a) The Office of Institutional Support Services (O.I.S.S.), Director of Psychological Services, serving under the [Director, Office of Institutional Support Services] **Supervisor, Health Services Unit** (O.I.S.S.), shall be the designated authority with primary responsibility of serving as a consultant in psychology and providing professional review, evaluation and guidance of all psychological programs and activities of the Department with particular emphasis upon the maintenance of professional standards and the coordination of planning, training, recruitment and research.

(b) The O.I.S.S. Director of Psychological Services shall be responsible for:

1.-7. (No change.)

8. Developing training programs in the area of psychology and assisting interns within the Department **of Corrections**. The day-to-day supervision and evaluation of interns, however, shall be under the direction of a **New Jersey** licensed psychologist of at least the grade of Staff Psychologist I in the correctional facility; and

9. (No change.)

(c) (No change.)

10A:16-4.2 Correctional facility staff and structure

(a) A **New Jersey** licensed psychologist, of at least the grade of Staff Clinical Psychologist I, shall be designated Director of Psychology at each correctional facility and he or she is directly responsible to the Superintendent or his or her designee.

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

10A:16-4.8 Reporting responsibilities

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

(d) Monthly reports, annual reports and, as required, special reports shall be prepared by the O.I.S.S. Director of Psychological Services of the Department **of Corrections** and submitted to the [Director, Office of Institutional Support Services] **Supervisor, Health Services Unit** (O.I.S.S.).

(a)

STATE PAROLE BOARD

Parole Board Rules

Proposed Amendments: N.J.A.C. 10A:71-2.1, 3.4 and 3.28.

Authorized By: New Jersey State Parole Board, Louis Nickolopoulos, Chairman.

Authority: N.J.S.A. 30:4-123.48(d).

Proposal Number: PRN 1988-447.

Submit comments by October 6, 1988 to:
Louis Nickolopoulos, Chairman
New Jersey State Parole Board
CN 862
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The following summarizes the proposed amendments to the rules listed:

1. The proposed amendment to N.J.A.C. 10A:71-2.1 eliminates the current classification of all files, documents and records as being confidential; specifies those categories of information, files, documents, reports, records or other written material which are deemed confidential; and clarifies that confidential information is to be deleted or removed prior to the release of any non-confidential file, document, report, record or other written material.

2. The proposed amendment to N.J.A.C. 10A:71-3.4(p) adds the institutional infraction of .101 Escape (provided such escape is from a medium or maximum security location) to the list of infractions which, if committed by an inmate, precludes the inmate from having a portion of the time period by which parole eligibility was extended by the Board restored to the inmate.

3. The proposed amendment to N.J.A.C. 10A:71-3.28 corrects a grammatical error.

Social Impact

The proposed amendment to N.J.A.C. 10A:71-2.1 clarifies the specific categories of information, files, documents, reports, records or other written materials which are deemed confidential and which will not be released by the Board. The amendment is necessary as a result of *Home News v. State of New Jersey*, 224 N.J. Super 7 (App. Div. 1988), which was critical of the Board's present rule, which deems all information, files, documents, reports, records or other written materials confidential. The proposed amendment will impact on the Board since the Board would now be required to release specified categories of information, files, etc., not deemed confidential.

The proposed amendment to N.J.A.C. 10A:71-3.4 impacts on those adult inmates who commit the infraction of escape from a medium or maximum security location and who have their parole eligibility dates extended by the Board. The restoration of time provisions would not now be applicable to the inmates who have committed this infraction and, therefore, the inmates would not be able to reduce the time period by which their parole eligibility dates were extended.

Economic Impact

The proposed amendments will have no significant economic impact on the Board or the Department of Corrections. Though the Department of Corrections may have to house certain inmates longer prior to their being eligible for parole consideration, it is anticipated that there will be no measurable impact on the number of inmates to which the amendment would apply.

Regulatory Flexibility Statement

The proposed amendments will have no reporting, recording or compliance requirements for small businesses. A regulatory flexibility analysis mandated by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is not required.

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

10A:71-2.1 Confidentiality of information and records

(a) [Except as provided herein, all] **The following information,** files, documents**, reports,** [and] records or other **written** material **submitted to, prepared and maintained by or** [in the offices of the Board,] in the custody of **the Board,** any Board member or employee pertaining to parole[,] **and** parole supervision [or the administrative operations of the Board] are deemed confidential:

1. Reports which are evaluative, diagnostic or prognostic in nature, furnished with a legitimate expectation of confidentiality and which, if revealed to the inmate/parolee or others, could be detrimental to the inmate, adversely affect the inmate's rehabilitation or the future delivery of rehabilitative services, jeopardize the physical safety of individuals who signed the reports or were parties to the decisions, conclusions, or statements contained therein;

2. Information, files, documents, reports, records or other written materials which, if disclosed, could have an adverse impact on the security or orderly operation of an institution;

3. Information, files, documents, reports, records or other written materials which, if disclosed, would infringe or jeopardize privacy rights of the inmate/parolee or others or endanger the life or physical safety of any person;

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4. Disciplinary and investigative reports, including those from informants, which, if disclosed, would impede ongoing investigations, create a risk of reprisal, or interfere with the security or orderly operation of an institution;

5. Investigative reports or information compiled or intended for law enforcement purposes which, if disclosed, would impede ongoing investigations, interfere with law enforcement proceedings, constitute an unwarranted infringement of personal privacy, reveal the identity of a confidential source or confidential information furnished only by a confidential source, reveal investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel, confidential informants, victims or witnesses;

6. Information, files, documents, reports, records or other written materials which, if disclosed, would impede Board functions by discouraging citizens from providing information to the Board;

7. Information, files, documents, reports, records or other written materials which have been provided to the Board by any person with the expectation that his or her identity would not be disclosed;

8. Reports prepared upon the conclusion of a rescission or revocation hearing or victim input hearing as authorized by N.J.A.C. 10A:71-3.45(q);

9. Information, files, documents, reports, records or other written materials classified as confidential by the Department or pursuant to another agency's rules, statutory provisions or judicial decisions;

10. A transcript, if prepared, of any proceeding of the Board; and

11. Such other information, files, documents, reports, records or other written materials as the Board may deem confidential to insure the integrity of the parole and parole supervision processes.

(b) All information, files, documents, reports, records or other written materials prepared and maintained by or in the custody of the Board, any Board member or employee pertaining to the administrative operations of the Board are deemed confidential.

[(b)]**(c)** No **information,** files, documents, **reports,** records or other written material **deemed confidential** pertaining to inmates or parolees shall be [inspected] **reviewed** by any person except a Board member or employee or individual **or law enforcement agency** authorized by the Board or by the Chairperson.

[(c)]**(d)** Inmates or parolees shall be afforded disclosure of adverse material **or information** considered at a hearing, provided such material is not classified as confidential by **the Board or** the Department [and provided disclosure would not threaten the life or physical safety of any person, interfere with law enforcement proceedings or result in the disclosure of professional diagnostic evaluations which would adversely affect the inmate's rehabilitation or the future delivery of rehabilitative services]. If disclosure is withheld, the reason for non-disclosure shall be noted in the Board's files, and such **material or** information shall be identified as confidential.

(e) If any non-confidential file, document, report, record or other written material shall contain information deemed confidential pursuant to (a) above, the information deemed confidential shall be deleted prior to the file, document, report, record or other written material being reviewed by or released to any person or agency.

10A:71-3.4 Institutional infractions; adult inmates

(a)-(o) (No change.)

(p) Except as provided herein, the following procedures for the restoration of time by which an inmate's parole eligibility date was increased by a Board panel or a designated hearing officer pursuant to this section shall apply to all inmates presently incarcerated.

1.-4. (No change.)

5. The provisions of this subsection shall not apply in the following cases:

i. Inmates who have committed the following institutional infractions:

(1) (No change.)

(2) .101—Escape (provided such an escape is from a medium or maximum security location);

Renumber (2) through (8) as **(3) through (9)** (No change in text.)

10A:71-3.28 Board member review; juvenile inmates

(a) Upon review of the recommendation of the hearing officer, the assigned member of the juvenile Board panel shall render the following determination(s):

1.-3. (No change.)

4. Certify an increase in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.22(d); [or]

5. Refer the case to the juvenile Board panel for a decision[.]**; or**

6. (No change.)

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

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Admission Requirements for Foreign and Alien Property and Casualty Insurers

Proposed New Rules: N.J.A.C. 11:1-10

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e) and (i), N.J.S.A. 17:1-8 and 8.1, N.J.S.A. 17:17-1 et seq., N.J.S.A. 17:23-1 et seq., N.J.S.A. 17:32-1 et seq., and N.J.S.A. 17:32-15.

Proposal Number: PRN 1988-449.

Submit comments by October 6, 1988 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street, 12th Floor
CN-325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules contain the procedures to be followed by foreign and alien property and casualty insurers in making application for a Certificate of Authority to transact the business of insurance in the State of New Jersey. New Jersey is one of only a handful of states that have attempted to implement its legislation with formal administrative rules.

The application process is essentially a three-step procedure. Initially, general requirements must be satisfied before the application process can continue to step two. These requirements are summarized below. The second procedure requires a "letter of intent" from the applicant. After the receipt of this letter the third step requires a "final application" to be completed and filed with the Department of Insurance for analysis and evaluation.

The proposed new rules essentially codify existing Departmental guidelines, with the following significant exceptions:

1. The inclusion of two additional means by which a foreign or alien insurer can reduce or waive the five year seasoning requirement (see proposed N.J.A.C. 11:1-10.4(a)5iii(1) and (2));

2. The requirement that an application fee of $1,000 be paid;

3. The delineation of the specific requirements concerning hazardous financial condition (see proposed N.J.A.C. 11:1-10.4(a)1);

4. The additional information required concerning the plan of operation of the applicant (see proposed N.J.A.C. 11:1-10.6(a)12); and

5. An expanded appeal and review procedure.

These new requirements are the result of the Department's belief that, based upon its experience with and its review of the present guidelines, some modifications to the present procedures are necessary. A non-refundable application fee is imposed for the first time, with the "final application", payable only upon the attainment of the third step. This is proposed to cover part of the projected costs of reviewing an application similar to that charged in other states.

A summary of the various provisions of these proposed new rules follows:

Proposed N.J.A.C. 11:1-10.1 and 10.2 establish the purpose and scope of the proposed subchapter. Proposed N.J.A.C. 11:1-10.3 defines the many technical terms used in the subchapter.

The substantive provisions of the proposed new rules include N.J.A.C. 11:1-10.4 through 10.8. Proposed N.J.A.C. 11:1-10.4 establishes the general eligibility requirements which must be met a by foreign or alien property/casualty company to be admitted to transact the business of

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insurance in New Jersey. These requirements are in addition to, or in implementation of, existing statutory requirements, and include, generally, the following:

1. Proof that the company's financial condition is not hazardous;
2. Proof that an applicant's methods of operation are not hazardous;
3. Proof that the applicant possesses minimum amounts of capital and surplus;
4. Proof that an applicant satisifies the NAIC financial and annual statement filings;
5. Proof that an applicant satisfies the seasoning requirements (Note: The surety bond provision at proposed N.J.A.C. 11:1-10.4(a)5iii(4), as a factor to be considered by the Commissioner in deciding whether to grant a seasoning waiver, refers to satisfaction of Departmental requirements for such bonds. These requirements currently exist as Department standards, and the Department contemplates their proposal as rules in the near future.); and
6. Procurance of a New Jersey Certificate of Authority.

Proposed N.J.A.C. 11:1-10.5 requires all applicants to submit a "letter of intent" prior to the Department's acceptance of a final application for a Certificate of Authority. This section also establishes the requirements for completing the "letter of intent".

Proposed N.J.A.C. 11:1-10.6 requires all applicants who fulfill the eligibility requirements (proposed N.J.A.C. 11:1-10.4) and who have previously filed a letter of intent (proposed N.J.A.C. 11:1-10.5) to file with the Department of Insurance a "final application". This section also establishes the requirements for completing the "final application".

Proposed N.J.A.C. 11:1-10.7 establishes the Departmental procedures by which a "final application" is to be reviewed and accepted or rejected. In cases of rejection, this section establishes an appeals procedure.

Proposed N.J.A.C. 11:1-10.8 establishes and imposes requirements upon admission for applicants who request authority to write auto liability and/or automobile physical damage, who contemplate the writing of Workers' Compensation and Employers' Liability insurance and/or homeowners' or comprehensive personal liability policies, or who wish to limit their activity in New Jersey to reinsurance.

Social Impact

The requirements and guidelines established by the proposed new rules will clarify the application procedure for the admission of foreign and alien property/casualty insurers to transact the business of insurance in the State of New Jersey. Applicants will be fully apprised of the types of information sought by the Department of Insurance in its review of their applications for a Certificate of Authority. The publication of administrative rules greatly streamline the entire application process. The expanded and clarified review procedure will fully apprise applicants of the rights and obligations upon the initial rejection of an application and affords them an opportunity to appeal to the Department for an informal review of their rejection prior to filing a formal appeal under the Administrative Procedure Act.

The clarified and generally more thorough review procedures imposed by the proposed new rules will provide the public with more protection against the possibility of failure of an admitted foreign or alien property/casualty insurer. This will in turn provide a more stable business environment.

Economic Impact

The proposed new rules impose a $1,000 application fee in addition to the present licensing fees which are charged successful applicants by the Department.

If an applicant attempts to secure a waiver of the seasoning requirement by the purchase of a surety bond, pursuant to proposed N.J.A.C. 11:1-10.4(a)5iii(4), additional costs of application will be incurred by the insurer.

To the extent that the published administrative rules clarify the application procedures, the time and effort previously expended by an applicant in securing and following guidelines concerning application procedures should be reduced.

The Department of Insurance will experience an increase in its workload as a result of an increase in applications due to both the publication and increased availability of its procedures, and the existence of additional conditions by which the five year seasoning requirement can be waived or reduced. This will prompt more companies to apply for admission. Any projected increases in workload should be absorbed by the present staff and budget. Therefore, no new staff is needed by the Department.

The proposed new rules will inure to the benefit of the general public by further insuring against the possibility of the failure and insolvency of an admitted foreign or alien property/casualty insurer.

Regulatory Flexibility Statement

The proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, since it is impossible to anticipate whether any particular entity may apply for admission, it is impossible to estimate the number of "small businesses" to which the proposed new rules may apply.

The proposed application process applies uniformly to all applicants, whether or not they are "small businesses", since the public interest can only be served by requiring the same thorough review of all applicants, regardless of their size. However, the inclusion of the reduction of the five year seasoning requirement provision in N.J.A.C. 11:1-10.4(a)5iii(3) may enable "small businesses" to reduce the five year seasoning requirement more easily than under the present requirements (see N.J.A.C. 11:1-10.4(a)5iii(1) and (2)).

The reporting, recordkeeping and other compliance requirements imposed upon an applicant, including a "small business", are clearly described in the proposed new rules. As under the current guidelines, the services of both financial and legal professionals will likely be required for all applicants.

The initial capital cost of compliance with the proposed new rules is essentially the application fee. Given the requirements necessary to secure admission, including the minimum capital and surplus requirement, this fee is responsible, non-discriminatory and will not inhibit "small business" from making application. The fee is meant to cover the cost of review which will proceed, for all applicants, according to the requirements of the proposed new rules. Accordingly, the application fee is a fixed fee, calculated to offset generally fixed costs.

Full text of the proposed new rules follows.

SUBCHAPTER 10. ADMISSION REQUIREMENTS FOR FOREIGN AND ALIEN PROPERTY AND CASUALTY INSURERS

11:1-10.1 Purpose

This subchapter establishes the procedures, requirements and standards which govern the application of foreign and alien companies engaged in the business of property and casualty insurance for a Certificate of Authority to transact the business of insurance in the State of New Jersey.

11:1-10.2 Scope

This subchapter applies to any foreign and alien company engaged in the business of property and casualty insurance that applies for a Certificate of Authority to transact the business of insurance in the State of New Jersey. The filing requirements contained in this subchapter shall not apply to the continuation, renewal or timely reinstatement of existing Certificates of Authority except where the Commissioner, pursuant to law, shall otherwise so require.

11:1-10.3 Definitions

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

"Affiliate" of, or person "affiliated" with, a specific person, means a person who or which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Alien insurer" means an insurer formed under the laws of any country other than the United States of America, its states, districts, territories, commonwealths, or possessions.

"Authorized insurer" means a domestic, foreign or alien insurer, duly authorized by a Certificate of Authority issued by the Commissioner of the Department of Insurance of the State of New Jersey to transact the business of insurance in the State of New Jersey.

"Certificate of authority" means a certificate issued by the Commissioner of the Department of Insurance of the State of New Jersey evidencing the authority of an insurer to transact the business of insurance in the State of New Jersey.

"Committee on Admissions" of the Department of Insurance of the State of New Jersey means the advisory committee appointed by the Commissioner to aid in the review of applications for admission

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to transact the business of insurance in the State of New Jersey and to render to the Commissioner recommendations as to the disposition of such applications.

"Commissioner of Insurance" or "Commissioner" means the Commissioner of the Department of Insurance of the State of New Jersey, or his or her designee.

"Control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise; unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person, provided that no such presumption of control shall of itself relieve any person so presumed to have control from any requirement of this subchapter. This presumption may be rebutted by a showing made in the manner provided by N.J.S.A. 17:27A-3(i) that control does not exist in fact. The Commissioner may determine, after furnishing all interested persons with notice and an opportunity to be heard and after making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

"Department" means the Department of Insurance of the State of New Jersey.

"Domestic insurer" means an insurer formed under the laws of the State of New Jersey.

"Domicile" means:

1. As to alien insurers, the country under the laws of which the insurer was formed;

2. As to all other insurers, including United States branches of alien insurers, the state, districts, territories, commonwealths or possessions under the laws of which the insurer was formed;

"Foreign insurer" means an insurer formed under the laws of a jurisdiction of the United States of America, other than the State of New Jersey.

"Hazardous financial condition" means a financial condition deemed to exist when the standards contained in N.J.A.C. 11:1-10.4(a)1 indicate, either singly or in combination of two or more, that the financial condition of any insurer which has applied to transact, or is already transacting, the business of insurance in any jurisdiction, is considered by the Commissioner to be precarious to the policyholders, claimants, creditors, or the public.

"Hazardous operations" means operations deemed to exist when the standards contained in N.J.A.C. 11:1-10.4(a)2 indicate, either singly or in combination of two or more, that the operations of any insurer transacting the business of insurance in any jurisdiction is considered by the Commissioner to be precarious to the policyholders, claimants, creditors or the general public.

"Insurance holding company system" means two or more affiliated persons, one or more of whom or which is an insurer.

"Insurer" means any person or persons, corporation, partnership or company authorized by the laws of this State to transact the business of insurance in this State; except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

"NAIC" means the National Association of Insurance Commissioners.

"Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

"Subsidiary" of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries.

11:1-10.4 General eligibility requirements

(a) In order for a foreign or alien company engaged in the business of property and casualty insurance to be admitted to transact the business of insurance in the State of New Jersey, the requirements of this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

1. The insurer shall satisfy the Commissioner that it is not in a hazardous financial condition. A hazardous financial condition shall be deemed to exist when the following factors indicate, either singly or in combination of two or more, that the financial condition of any insurer which has applied to transact, or is already transacting, the business of insurance in any jurisdiction, is considered by the Commissioner to be precarious to the policyholders, stockholders or the public:

i. The existence of adverse findings reported in financial condition and market conduct examination reports;

ii. The NAIC Insurance Regulatory Information System ratios and or its related reports have been deemed adverse;

iii. The ratios of commission expense, general insurance expense, policy benefits and reserve increases to annual premium and net investment income could lead to an impairment of capital and surplus;

iv. That the asset portfolio of the insurer, when viewed in light of current economic conditions, is determined by the Commissioner to be of insufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;

v. The ability of an assuming reinsurer to meet the obligations being assumed and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus, after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

vi. That the insurer's operating loss in the last 12 month period, or any shorter period of time as the Commissioner may determine, including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to stockholders, is greater than 50 percent of such insurer's remaining surplus for policyholders in excess of the minimum required;

vii. Whether any affiliate of an insurer, subsidiary or reinsurer of such insurer, is insolvent, or, in the opinion of the Commissioner, threatened with insolvency, or delinquent in the payment of its monetary or other obligations;

viii. Whether contingent liabilities, pledges or guarantees which, either individually or collectively, involve a total amount which, in the opinion of the Commissioner, may affect the solvency of the insurer;

ix. Whether any person controlling an insurer is delinquent in making payments of net premiums to such insurer;

x. The age and collectibility of receivables;

xi. Whether the management of an insurer, including officers, directors or any other person who directly or indirectly controls the operation of such insurer, has failed to demonstrate the possession of competence, fitness and reputation deemed by the Commissioner to be necessary to serve the insurer in such position;

xii. Whether management of an insurer has filed any false or misleading financial statement, or has released any false or misleading financial statement to lending institutions or to the public, or has made a false or misleading entry, or has omitted an entry of a material amount in the books of the insurer;

xiii. Whether, in the opinion of the Commissioner, the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and

xiv. Whether, in the opinion of the Commissioner, the insurer has experienced, or is likely to experience in the forseeable future, cash flow and/or liquidity problems.

2. The insurer shall satisfy the Commissioner that its financial condition is not such as would render its operations hazardous to the policyholders, stockholders or the general public. Such operations shall be deemed hazardous when the following standards indicate, either singly or in combination of two or more, that the operations of any insurer transacting the business of insurance in any jurisdiction

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is considered by the Commissioner to be precarious to the policyholders, stockholders or the general public;

i. That the insurer has refused to maintain, or to submit for examination, books, records, accounts, or any other information about the company's affairs deemed relevant by the Commissioner;

ii. That the insurer has concealed or removed records or altered any valuable information from such records, or removed or altered any assets in violation of any applicable state law;

iii. That the insurer has willfully violated its charter or bylaws; and/or

iv. That the insurer has an officer, director or manager who has unlawfully refused to be examined under oath concerning the affairs of the insurer.

3. The insurer shall satisfy the following capital and surplus licensure requirements:

i. An applicant shall satisfy, at a minimum, the statutorily-prescribed minimum capital and surplus requirements for all lines of insurance that it is authorized to write pursuant to the Certificate of Authority issued by its state or country of domicile, whether or not the applicant desires to transact any of those lines of insurance in the State of New Jersey. The Department shall make an adjustment of surplus regarding all applicant companies as follows:

(1) There shall be deducted from unassigned funds special deposits not held for the protection of all policyholders; and

(2) All applicants shall include in their Annual Statement a provision for unauthorized reinsurance for unearned premiums and losses in connection with the reinsurance in all companies not authorized to transact business in New Jersey. An amount in these items slightly larger than that required for New Jersey shall be acceptable where the liability is based on the calculation for some other state. These penalties may be adjusted for subsequent legal action on license status in the State of New Jersey or in other jurisdictions.

ii. Requirements for an application to meet the minimum capital and surplus amounts for all lines of insurance that it is authorized to write pursuant to the Certificate of Authority issued by its state or country of domicile may be modified by the Commissioner if the applicant:

(1) Does not transact one or more of the kinds of insurance contained in the Certificate of Authority issued by its state or country of domicile; and

(2) Submits a resolution by its board of directors stating that it will refrain from transacting the kind(s) of insurance permitted by the Certificate of Authority issued by its state, districts, territories, commonwealth, possessions or country of domicile.

4. The applicant shall be deemed ineligible if any one of the following conditions exist:

i. An applicant company which has received from the NAIC an "immediate regulatory attention" designation for the calendar year next preceding its application date shall not be considered for admission until such designation has been removed by the NAIC;

ii. An applicant company which is a member of an insurance holding company system, where its parent or subsidiary has received from the NAIC an "immediate regulatory attention" designation, shall not be considered for admission until such designation has been removed by the NAIC from the parent or subsidiary;

iii. An applicant company which has been identified as targeted and/or has filed four or more Insurance Regulatory Information System (IRIS) tests shall have its application deferred until it has demonstrated to the Department and its state, districts, territories, commonwealth, possessions or country of domicile that these IRIS test results are not an indicator of a financial condition that may be hazardous to the general public, policyholders and stockholders; and

iv. An applicant company which has failed to file with the NAIC an Annual Statement for the prior year shall have its application deferred until it has failed with the NAIC such Annual Statement.

5. The insurer shall satisfy the following seasoning requirements:

i. Subject to the provisions of this subchapter, no applicant shall be considered for a Certificate of Authority to transact the business of insurance in the State of New Jersey unless the Commissioner has been furnished with evidence that the applicant, under its present control, has been authorized by its/their state(s), district(s), territory(ies), commonwealth(s), possession(s) or country(ies) of domicile, to engage in the kind(s) of insurance business for which the applicant seeks a Certificate of Authority, and has in fact been actively engaged in such business for a period of not less than five years prior to the date of the application for the New Jersey Certificate of Authority.

ii. An applicant insurer qualified under (a)5i above shall demonstrate that:

(1) During any three of the last five years, including therein either of the two most current years of business operations, it generated a net income from operations, after Federal taxes, as reported in the Underwriting and Investment Exhibit in the Annual Statement; and

(2) Surplus has not decreased due to operations over the five year period in question.

iii. The Commissioner may, on a case by case basis, waive, in the case of (a)5iii(1), (2) and (4) below, or reduce, in the case of (a)5iii(3) below, the five year seasoning requirement required by (a)5i above. In determining whether a reduction is appropriate in a particular case, the Commissioner shall consider whether the requirements of this section have been satisfied, and, in addition, whether any one of the requirements provided in (a)5iii(1) through (4) below have been satisfied. In determining whether any one of the requirements in (a)5iii(1) through (4) below have been satisfied, the Commissioner shall consider these requirements in the sequence in which they are listed (That is, (1) before (2), (2) before (3), (3) before (4).).

(1) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least five years. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer who shall effectively guaranty, by a resolution passed by its board of directors, the minimum capital and surplus requirements pursuant to statute of the applicant during the first five years of its operation in this State;

(2) Whether the applicant is the continuing corporation resulting from a merger or consolidation of insurers, at least one of which has been authorized in its state or country of domicile to transact the kind(s) of insurance business for which the applicant seeks a New Jersey Certificate of Authority, and has been actively engaged in such insurance business for at least five years and is currently in good standing; or

(3) Whether the applicant has completed three full years of operation, and, subsequent to its first two years of operation, has available a filed examination report conducted by its state of domicile, which report is in accordance with the New Jersey Department of Insurance standards for examinations. The first two full years of operations covered by the examination report shall be of sufficient magnitude (net premiums written to surplus as regards policyholders of 1:1 or greater) to make the report useful and meaningful to the department. The applicant shall also be required to have experienced profitable operations in two of the three years, including the most current year of business. Additionally, the applicant shall obtain or satisfy the following:

(A) A financial guaranty from its ultimate parent that the applicant will meet the minimum capital and surplus requirements on a quarterly basis, for a period of up to five years from the date of admission;

(B) A favorable financial rating of the ultimate parent by a rating organization acceptable to the Department, according to rating guidelines to be established by the Department;

(C) The ultimate parent must be a United States corporation actively engaged in business for a period of not less than five years prior to the date of application for the New Jersey Certificate of Authority; and

(D) The ultimate parent is a substantial corporation in that its net worth to stockholders as of the date of application is not less than $100,000,000; or

(4) Whether the applicant obtains a surety bond or bonds issued by an insurance company or insurance companies approved by the Commissioner and authorized in the State of New Jersey, in an amount to be determined by the Commissioner, with a minimum requirement of $25,000,000, and issued for a period of time as shall be determined by the Commissioner, but which shall not exceed five years. This bond shall be prepared in such a way as to meet the

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requirements of the Department concerning the protection of New Jersey policyholders, claimants and creditors of the applicant insurance company.

6. The insurer shall procure a New Jersey Certificate of Authority by establishing compliance with the applicable requirements of N.J.S.A. 17:17-1 et seq. and shall successfully complete an admissions process which shall include a detailed review by the Department of the business affairs and financial condition of the applicant as provided by this subchapter.

(b) Upon meeting the general requirements in this section, an applicant company intending to make a formal application for admission shall submit a letter of intent which shall consist of the preliminary information as set forth below in N.J.A.C. 11:1-10.5. Upon review of the preliminary information, the Committee on Admissions may thereafter instruct the applicant to file a final application pursuant to N.J.A.C. 11:1-10.6.

11:1-10.5 Letter of intent

(a) Prior to the acceptance of a final application for a Certificate of Authority in the State of New Jersey, all foreign and alien insurers engaged in the business of property and casualty insurance who desire to transact the business of insurance in the State of New Jersey shall submit a letter of intent which shall include the following identifying information:

1. The name of the applicant;

2. Where applicable, the name of any person, as defined herein, or other entity, by whom the applicant is controlled;

3. The applicant's current insurance holding company systems chart;

4. Where applicable, the name of any insurer(s) currently licensed in the State of New Jersey with whom the applicant is affiliated;

5. The type(s) of insurance proposed to be written by the applicant in the State of New Jersey;

6. A certified copy of the applicant's most recent Annual Statement, prepared on the NAIC annual and quarterly statements forms used by New Jersey domestic insurers;

7. A certified copy of the applicant's current Certificate of Authority from its state, district, commonwealth, territory, possession or country of domicile; and

8. The results of the most recent NAIC Insurance Regulatory Information System (IRIS) tests and related communications concerning the applicant.

11:1-10.6 Final application

(a) Upon meeting all of the requirements provided in N.J.A.C. 11:1-10.4, and after the submission of a letter of intent as required by N.J.A.C. 11:1-10.5, the applicant shall be instructed by the Department to file the following items:

1. A copy of its charter as currently in force, certified by the lawful custodian of the original document;

2. A copy of its bylaws as currently in force, certified by a senior officer of the company;

3. A statement of the company's financial condition as of December 31 of the preceding calendar year, in the NAIC format, signed and sworn to by the president of the company, its secretary and other senior officers;

4. A Certificate of Compliance under the official seal of the commissioner of insurance of the company's domiciliary state or country;

5. A certified copy of a report of the most recent examination of the company's affairs by the department of insurance or its equivalent, of the state or country in which the company is domiciled;

6. An appointment, by the company, of the Commissioner as attorney for service of process;

7. An application for admission, on a form to be prescribed and provided by the Department, including the payment of a non-refundable application fee of $1,000;

8. A "statement of opinion" by a qualified actuary relating to loss and loss adjustment expense reserves, pursuant to N.J.A.C. 11:1-21;

9. A copy of the applicant's quarterly financial statements for the current year, in the NAIC format, and for such other periods of time as shall be required by the Commissioner;

10. Where applicable, a certified copy of the filing made pursuant to the Holding Company Act of the state, district, territory, commonwealth, possessions or country of domicile, for the last fiscal period, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A-3(a) and (b) and applicable Securities and Exchange Commission filing requirements;

11. A statement of ownership of the applicant. This statement shall include all shareholders of record who control five percent or more of the outstanding shares of the applicant, directly or indirectly;

12. A copy of any agreements by which the right to conduct or influence any of the affairs of the applicant is transferred to others;

13. Any employment or deferred compensation agreements in which any officer, director or shareholder who controls five percent or more of the outstanding shares of the applicant, directly or indirectly, participates;

14. Any tender offer materials (advertisements, invitations, etc.) if any tender offer has been made by the company or its parent to acquire another company within the three years preceding;

15. Modified NAIC biographical affidavits, to be completed by all directors and senior officers on a form prescribed and provided by the Department;

16. A corporate plan of operation consisting of:

i. A schedule listing the following:

(1) All jurisdictions in which the applicant has applied for authorization to transact the business of insurance during the preceding 10 years and the dates and results of such applications;

(2) All jurisdictions from which the applicant has withdrawn during the preceding 10 years, and the reasons for withdrawal; and

(3) All administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, or its affiliates, or any of its directors or principal officers have been subject, due to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Where the alleged violation is a felony or its equivalent in a jurisdiction which does not use this designation of a crime, such actions, orders, proceedings and determinations shall include violations not related to insurance operations. If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings, and determinations related thereto;

ii. A description of the applicant's present business plan or plan(s) for conducting an insurance business, including, but not necessarily limited to:

(1) Geographical areas in which business is being written;

(2) The types of insurance to be written;

(3) Marketing methods;

(4) A summary of the methods for establishing premium rates; and

(5) A description of agency systems, including any managing general agency contracts;

iii. A proposed plan for conducting an insurance business in the State of New Jersey, including, but not limited to:

(1) The geographical area in which business is intended to be done;

(2) The types of insurance intended to be written;

(3) Proposed marketing methods;

(4) Proposed methods for the establishment of premium rates; and

(5) A three year forecast of anticipated premiums in this State by line of business;

iv. A summary of the applicant's reinsurance program on assumed and ceded business, indicating the name of the reinsurers, retentions, maximum risks, types of contract (such as pro rata), excess of loss, and any other information which may be relevant to this part of the applicant's operation. Additional information may be requested by the Department in order to supplement or clarify information already provided by the applicant;

v. A summary of the applicant's reinsurance assumed program, with retentions, maximum risks, types of business, types of contracts to be issued, and other factors which may, in the opinion of the Department, be relevant to this part of the applicant's operations;

vi. The number and ratio of complaints as defined by the state or country of domicile to the premium volume of the state or country of domicile, for those lines of business in which the state, districts, territories, commonwealths, possessions or country of domicile makes such determinations; and

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vii. Copies of all management, exclusive agency, administrative services, or any other operating contracts with affiliates or non-affiliates, where applicable, signed by the parties and certified to by the company secretary and chief operating officer.

17. If a United States Branch, the applicant shall provide the Department with:

i. A certificate of deposit from its insurance commissioner showing the amount in trust for policyholders;

ii. A certified copy of power of attorney in favor of United States manager; and

iii. A certified copy of a deed of trust to the trustee of the funds of the company.

18. If the applicant is an alien insurer, a statement of trusteed surplus in the United States.

(b) The Department shall evaluate the difference between the admitted value and the actual market value of all bonds held by the company.

(c) Applicants who wish to write or have the authority to write health insurance in the State of New Jersey shall complete and submit a consumer suitability study on a form prescribed and provided by the Department. This study shall be reviewed and approved by the Department.

(d) Applicants who desire authority to write workers' compensation and employers' liability insurance shall, prior to admission, become members of the Compensation, Rating and Inspection Bureau, located at 60 Park Place, Newark, New Jersey 07102. The Bureau shall be consulted for membership at the point in time when all requirements for admission have been satisfied and the application for admission is actually submitted. The Bureau shall be advised by the Department that the applicant is in the process of filing for admission in the State of New Jersey.

11:1-10.7 Final application review procedures; appeals

(a) Upon receipt of a final application, the Commissioner shall conduct a thorough background investigation which shall include, but not be limited to, inquiries regarding claims settlements practices and the compilation of any other information which, in the opinion of the Commissioner, may be necessary to make an appropriate decision on an application.

(b) Applicant companies shall ensure that all filings submitted to the Department are current. Any amendments, changes or replacements to constituent documents on file shall be timely updated.

(c) Applications accepted after the 1st day of December of each year shall have their review deferred until the Annual Statement for the current year is available and received for review. The review of the filings of the prior year shall begin as of the 1st day of April of each year, after the receipt of Annual Statements, which shall be submitted not later than the 1st day of March of each year.

(d) Before a decision on an application is made, the Department may request from an applicant, in writing, any additional information it may require. Failure by an applicant to respond to written inquiries by the Department within 45 days may be considered grounds for rejection of the application.

(e) Application reviews shall be conducted by the Department on a monthly basis. The Committee on Admissions shall make a recommendation to the Commissioner concerning each application which has been reviewed. The Commissioner shall consider the recommendation and make his or her decision on the application within 10 working days. Written notice of the decision shall be mailed to the applicant within 10 working days of the date of the Commissioner's decision.

(f) When the Commissioner rejects an application, the notice of rejection shall include a statement specifying the reasons for the rejection.

1. Such notice shall further inform the applicant of the right to request an informal Departmental review of the rejection within 20 days of receipt of the notice of rejection.

2. Such notice shall further inform the applicant of the right to provide to the Department a written statement, with supporting documentation, if any, disputing with specificity the reasons for rejection within 30 days of the receipt of the notice of rejection.

3. Upon the timely receipt of the request for Departmental review and the written statement of the company, if any, the Department shall promptly review the application, attached documents, department records and the written statement. In appropriate circumstances, the Commissioner may provide the applicant with an opportunity to present its position in person.

4. If, after reviewing the record, the Commissioner determines that the applicant has failed to qualify, the Commissioner shall promptly so inform the applicant and advise the applicant of its right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:1-10.8 Requirements upon admission

(a) Applicants who request authority to write automobile liability and/or automobile physical damage coverage in the State of New Jersey shall, upon admission, automatically become members of and shall be subject to the requirements of the statutes and rules concerning the New Jersey Automobile Full Insurance Underwriting Association ("NJAFIUA"). Any questions concerning this organization shall be directed to the General Manager, NJAFIUA, 293 Eisenhower Parkway, Livingston, New Jersey 07039.

(b) Applicants contemplating the writing of homeowners or comprehensive personal liability policies in the State of New Jersey shall be required to afford coverage against liability for the payment of any obligation which the policyholder may incur to an injured domestic servant, or household employee, or the dependents thereof, pursuant to the provisions of the Workers' Compensation Law of the State of New Jersey. The Compensation, Rating and Inspection Bureau shall be informed by the Department accordingly.

(c) Applicants who desire authority to write workers' compensation and employers' liability insurance shall, prior to admission, become members of the Compensation, Rating and Inspection Bureau. The Bureau shall be consulted for membership at the point in time when all requirements for admission have been complied with, and the application for admission actually submitted. The Bureau shall be advised by the Department that the applicant is in the process of filing for admission in the State of New Jersey.

(d) Applicants who wish to have their Certificate of Authority limited to "reinsurance" only, may disregard the requirement of N.J.A.C. 11:1-10.8(a) pertaining to the New Jersey Automobile Full Insurance Underwriting Association ("NJAFIUA") and those regulatory requirements concerning membership in the Compensation, Rating and Inspection Bureau and the completion of a consumer suitability study for health insurance identified in 11:1-10.6(c) and (d).

11:1-10.9 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(a)

DIVISION OF ADMINISTRATION

Automobile Insurance: Rate Filing Requirements for Private Passenger Automobile Rate Filings for the Voluntary Market

Proposed New Rules: N.J.A.C. 11:3-16

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:29A-1 et seq., 17:29A-14c(4)(a), 17:29A-5.2, and 5.5, and 17:29A-36 and 37.

Proposal Number: PRN 1988-450.

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Submit comments by October 6, 1988 to:
Verice M. Mason, Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
20 West State Street
CN-325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules provide standards for the submission to the Department of Insurance of private passenger automobile rate filings for the voluntary market. At present, these rate filings are not submitted to the Department in a uniform matter, but, rather, according to the chosen format of each filing insurer or rating organization.

Rules concerning the format for the submission of private passenger automobile rate filings were previously proposed on November 5, 1984 at 16 N.J.R. 2934(a). This proposal was never adopted. Rules were thereafter pre-proposed on May 19, 1986 at 18 N.J.R. 1083(a). The Department received extensive comments on the first proposal and the pre-proposal. As a result of these comments and the Department's own internal and continuing review, the Department now proposes a substantially revised version of these rules.

Among the more significant changes to the previous proposed versions of the rules are the following:

1. The substitution of another method for the Clifford Formula in reporting investment income;
2. The requirement for reporting 10 years of trend data;
3. The requirement for filing supporting testimony "up-front" with the filing;
4. The requirement that incurred but not reported (IBNR) losses, unallocated loss investment expenses and physical damage development be reported;
5. The increased amount of expert data required to be filed;
6. The inclusion of computational procedures; and
7. The inclusion of forms to be used by the filer to both standardize submissions and ensure that all required information has been submitted.

The proposed new rules implement, among other statutory provisions, N.J.S.A. 17:29A-14c(4)(a), which authorizes the Commissioner of Insurance to promulgate rules to establish standards for the submission of proposed filings, amendments, additions, deletions and alterations to the rating systems for filers, including forms to be submitted by each filer (see Appendices A through E of the proposed new rules). The proposed new rules require that every New Jersey private passenger automobile insurer and rating organization provide the Department of Insurance with specified data for every private passenger automobile rate filing. The new rules will ensure that the basic components of a filing, including, but not limited to, loss development, trend expenses, investment income, loss data, and the changes in the underwriting standards, marketing practices or reserving policies, are adequately addressed.

A summary of the provisions of the proposed new rules follows:

Proposed N.J.A.C. 11:3-16.1 contains a statement of purpose and scope, clarifying that the subchapter applies to voluntary market automobile insurance on private passenger cars only, and to all insurers and rating organizations making such filings.

Proposed N.J.A.C. 11:3-16.2 contains definitions.

Proposed N.J.A.C. 11:3-16.3 states the general requirement that approval of a rate filing requires, among other requirements of law, that a reasonable total rate of return on its investment, attributable to the New Jersey private passenger automobile insurance market, will result from the proposed rates.

Proposed N.J.A.C. 11:3-16.4 sets forth general data requirements for all filers. In particular, this section requires filers to utilize the forms in Appendices A through E, where applicable. Additionally, all testimony concerning the filing is required to be filed simultaneously with the filing. Filings are required to be filed simultaneously with the Department of Insurance and the Public Advocate.

Proposed N.J.A.C. 11:3-16.4 establishes standards for the format and arrangement of rate filings. All filings are required to contain the following sections:

I. Table of Contents;
II. Preliminary Statement and Summary;
III. General Information;
IV. Underwriting Results and Earnings Requirements;
V. Loss Exhibits;
VI. Expense Exhibits;
VII. Investment Income Exhibits.

Proposed N.J.A.C. 11:3-16.5 through 16.10 provide the instructions for completing the above-noted sections.

Social Impact

The proposed new rules will aid the Department of Insurance in its review of private passenger automobile rate filings by providing it with specific rate filing data determined to be necessary. The proposed new rules will also aid insurers and rating organizations by providing them with guidelines to follow in preparing private passenger automobile rates and in satisfying the data and information requirements of the Department. The proposed new rules will benefit the consumer by providing more consistent data than is currently available for the proper evaluation of the merits of each filing.

Economic Impact

There may be some initial economic burden on insurers and rating organizations in the possible alteration of current data gathering techniques. This is a one-time expense. No direct economic impact on consumers is anticipated. The Department of Insurance will benefit from the proposed new rules by an anticipated reduction in the time and effort needed for review of each rate filing. The proposed new rules will enable the Department of Insurance to perform more effectively its statutory mandate of regulating private passenger automobile insurance rates.

Regulatory Flexibility Statement

The proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" would include insurance companies authorized to write private passenger automobile insurance. However, any such insurer would likely utilize the services of a large rating organization (for example, ISO) in submitting filings.

Accordingly, the proposed new rules will not impose reporting, recordkeeping or other compliance requirements on "small businesses" and a regulatory flexibility analysis is, therefore, not required (see N.J.S.A. 52:14B-19).

Full text of the proposed new rules follows.

SUBCHAPTER 16. RATE FILING REQUIREMENTS: VOLUNTARY MARKET AUTOMOBILE INSURANCE ON PRIVATE PASSENGER CARS

11:3-16.1 Purpose and scope

(a) This subchapter establishes data and filing format requirements for all private passenger automobile rate filings for the voluntary market, in implementation of N.J.S.A. 17:29A-1 et seq.

(b) This subchapter shall apply to all rating organizations and to all insurers making private passenger automobile insurance rate filings for the voluntary market in this State.

11:3-16.2 Definitions

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

"Accident year" means the 12-month period ending December 31 of each year.

"All other coverages" means underinsured motorist, towing and labor, accidental death and dismemberment, extended medical payments, and additional personal injury protection.

"Coverages" means bodily injury liability, property damage liability, basic personal injury protection, collision, comprehensive, and uninsured motorist.

"Department" means the Department of Insurance of the State of New Jersey.

"Earned exposure" means the number of car years earned in a quarter.

"Exposure" means one car year.

"Filer" means a rating organization or any insurer making its own rates and proposing to establish a new rate or a rate change.

"IBNR" or "incurred but not reported loss" means loss which has occurred but has not yet been reported as of a specified date.

"Total rate of return" means underwriting return and investment return.

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11:3-16.3 Reasonable total rate of return requirement

Proposed rates for private passenger automobile insurance shall be approved only if, in addition to the other requirements of this subchapter and any other applicable provisions of law, the filer demonstrates that a reasonable total rate of return on its investment attributable to the New Jersey private passenger automobile insurance market will result from the proposed rates.

11:3-16.4 General requirements; certification

(a) Each filer shall provide the data required by this subchapter on an MS-DOC formatted 5.25 inch double density floppy disk in ASCII characters in addition to hard copy in the form prescribed in this subchapter. The Department shall provide to insurers and rating organizations detailed data and filing format instructions.

(b) All testimony concerning the filing shall be filed simultaneously with the rate filing.

(c) In meeting the requirements of this subchapter, filers, where applicable, shall utilize the forms and accompanying instructions in Appendices A through E of this subchapter, which are hereby incorporated by reference as part of this subchapter.

(d) Every private passenger automobile rate filing shall be filed simultaneously with the Department of Insurance and the Department of the Public Advocate, Division of Rate Counsel, 744 Broad Street, Newark, New Jersey 07102, and shall be accompanied by the following certification signed by an officer of the filing entity:

I, _____ , certify that the attached filing complies with all statutory and regulatory requirements to the best of my information, belief and knowledge.

11:3-16.5 Format and arrangement of rate filings

(a) Filings shall be made in loose leaf form appropriate for standard sized, three ring binders. The loose leaf sheets used in the filings shall be eight and one-half inches wide by 11 inches long, and punched for three hole standard binders. Only one side of a page shall be used.

(b) The margin at the top of each page shall show the name and address of the filer on the left hand side of the page, and the right hand side of the page shall contain the section, exhibit, and page numbers. Pages shall be numbered consecutively, beginning with page number one for the first page of each section filed.

(c) Each filing shall contain the following sections arranged in the order set forth in (c)1 through 8 below. Every filing made with the Department shall use the following section number designations:

1. Title Page;
2. Section I, Table of Contents;
3. Section II, Preliminary Statement and Summary;
4. Section III, General Information;
5. Section IV, Underwriting Results and Earnings Requirements;
6. Section V, Loss Exhibits;
7. Section VI, Expense Exhibits; and
8. Section VII, Investment Income Exhibits.

(d) The margin at the bottom of each page shall display the following:

1. On the left hand side, the term "Date Filed", followed by the date the filing was made with the Department;
2. In the center of the page, the name and title of the filing company official responsible for the filing; and
3. On the right hand side of the page, the effective date of the filing.

11:3-16.6 Instructions for completing Sections I and II

(a) In Section I, the filer shall provide the Table of Contents for the filing.

(b) In Section II (Preliminary Statement and Summary), the filer shall provide an overview of the filing and a summary of the proposed rate or changes in proposed rates.

11:3-16.7 Instructions for completing Section III (General Information)

(a) Each rate filing shall clearly set forth the reasons and conditions which, in the opinion of the filer, warrant the establishment or change of the filer's rates, including the establishment or change in manual rates, classification, contract, practice, rule, or otherwise. Each filing shall contain, in addition to the other information required by this subchapter, the data identified in (a)1 through 6 below in the format specified by this subchapter.

1. The supporting documentation and data specified in the Expected Underwriting Result, Loss and Loss Adjustment Expense, Trend, Investment Income and Expense Exhibits, described in Sections IV, V, VI, and VII of the filing;
2. A list of all rate level or relativity factor changes approved in the last five years, with effective dates;
3. The filer's share of the New Jersey voluntary market for each of the three most recent calendar years;
4. The filer's last reported amount on line 7, Excess Profits, Form FD, which is required to be filed with the Department pursuant to N.J.A.C. 11:3-20.8;
5. The duration of the policies to be issued under the filing, together with a calculation of the average policy duration if policies of various durations are issued; and
6. The dates of the experience period used in the filing.

11:3-16.8 Instructions for completing Section IV, (Underwriting Results and Earnings Requirements)

(a) Each filer shall completely describe all aspects of the methodology used to derive all values for the following exhibits, and shall provide all workpapers associated with the calculations:

1. Exhibit 1 (Expected Underwriting Results, Basic Limits—Expected Underwriting Results with Unchanged Premium): This exhibit shall display the following data and calculations:

i. Basic limits premium at present rates;
ii. Forecasted losses;
iii. Forecasted loss adjustment expense;
iv. Other underwriting expenses;
v. Underwriting results (profit or loss), which shall be calculated as basic limits premium at current level, by coverage, less losses, less loss adjustment expenses, less other expenses, less other underwriting and acquisition expenses; and
vi. Underwriting result (profit or loss) as a percentage of premium, which shall be calculated as the ratio of underwriting result to basic limits premium at present rates.

2. Exhibit 2 (Expected Underwriting Results, Total Limits—Expected Underwriting Results with Unchanged Premium): This exhibit shall display the following data and calculations:

i. Total limits premium at current level;
ii. Forecasted losses;
iii. Forecasted loss adjustment expenses;
iv. Other underwriting and acquisition expense;
v. Underwriting result (profit and loss), which shall be calculated as total limits premium at current level by coverage, less losses, less loss adjustment expenses, less other underwriting and acquisition expenses; and
vi. Underwriting result (profit or loss) as a percentage of premium, which shall be calculated as the ratio of underwriting result to total limits premium at current levels.

3. Exhibit 3 (Analysis of Earnings Requirements): This exhibit shall display the following information:

i. The amount of surplus allocated to each coverage for New Jersey private passenger automobile insurance as calculated in Investment Income Exhibit 4, Line 4, in Appendix E of this subchapter;
ii. The target rate of return on surplus which the filer believes is appropriate for the coverage in question. Testimony and evidence in support of this target rate of return shall accompany the filing;
iii. The required dollar return on surplus to produce the target rate of return;
iv. The ratio of investment income to premium earned as calculated on Investment Income Exhibit 4, line 11, in Appendix E of this subchapter;
v. Forecasted New Jersey premium earned, by coverage;
vi. The expected dollar return from investment, calculated by multiplying the ratio of investment income to premium earned by forecasted premium earned;
vii. Required underwriting return, calculated as the required return on surplus less the dollar return from investment; and

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viii. The ratio of the required underwriting return to forecasted premium earned.

11:3-16.9 Instructions for Section V (Loss and Loss Adjustment Expenses Exhibits: Voluntary Market)

(a) Each filer shall provide, for both basic and total limits, the information in (a)1 through 4 below according to the formats specified in Loss Exhibits 1, 2, 3, 4, and 5, Loss Adjustment Expense Exhibits 6, 7, and 8, and Trend Exhibits 1, 2, 3, and 4 in Appendices B and C of this subchapter. To the extent that reserves are established by formula, each filer shall set forth all aspects of the reserving formula including any changes in the formula made since the last rate filing.

1. Loss Exhibit 1 (Accident Year Losses by Coverage): For the most recent accident year, this exhibit shall display, by coverage, for New Jersey:

i. The number of claims reported;

ii. The number of claims reported for which payment was made;

iii. The number of claims reported for which payment was not made;

iv. The estimated number of IBNR claims;

v. The total amount paid on all claims paid;

vi. The average amount paid on all claims paid;

vii. The amount reserved for reported claims for which no payment was made;

viii. The average reserve for reported claims for which no payment was made;

ix. The amount reserved for IBNR claims; and

x. The average reserve for IBNR claims.

2. Loss Exhibits 2, 3, 4, and 5 (Historical Information on Claim Counts, Loss Development and Loss Amounts by Coverage for the New Jersey Private Passenger Automobile Insurance Market) shall be provided in the formats specified by Loss Exhibits 2, 3, 4, and 5 of Appendix B of this subchapter. Any claims on which partial payments have been made shall be counted only once.

3. Loss Adjustment Expense Exhibits 6, 7 and 8 (Voluntary Market): Filers shall report historical New Jersey loss adjustment expense information separately from losses for both allocated and unallocated loss adjustment expenses in the format specified by Loss Adjustment Expenses Exhibits 6, 7, and 8 of Appendix B of this subchapter.

4. Trend Exhibits: If a filer uses trend calculations to forecast losses, regression analysis shall be required. The filer shall display standard statistical output with regression estimates (that is, constant term, coefficient estimates, corresponding standard errors of the estimates and T-Statistics, R-values, a correlation matrix for all variables, F-Statistics and other significant tests deemed to be relevant).

i. The filer shall provide a tabulation of the data used in the regression analysis and a narrative statement explaining any planned or past changes in underwriting standards, claims settlement, claims reporting, marketing practices or reserving policies, to the extent that these changes are expected to affect the relevance of the historical experience for the prospective rating period, together with a detailed description of any adjustments made to the historical experience to compensate for such changes.

ii. The following data shall be provided by coverage, for all states (in the aggregate) and for New Jersey (separately), by quarter, for the last 10 years in the format shown in Trend Exhibits 1, 2, 3, and 4, in Appendix C of this subchapter:

i. Paid losses, by quarter;

ii. Paid loss adjustment expenses, by quarter;

iii. Paid losses for the year ending each quarter;

iv. Paid loss adjustment expenses for the year ending each quarter;

v. The number of paid claims, by quarter;

vi. Quarterly claim costs (losses), calculated by dividing paid losses by quarter by the number of paid claims by quarter;

vii. Quarterly claim costs (loss adjustment expenses), calculated by dividing paid loss adjustment expenses by quarter by the number of paid claims by quarter;

viii. The number of paid claims for the year ending each quarter;

ix. Claim cost (losses) for the year ending each quarter, calculated by dividing paid losses for the year ending each quarter by the number of paid claims for the year ending each quarter;

x. Earned exposures;

xi. Earned exposures for the 12-month period ending each quarter;

xii. Quarterly claim frequency, calculated by dividing the number of paid claims by quarter by earned exposures by quarter; and

xiii. Quarterly claim frequency year ending each quarter, calculated by dividing the number of paid claims year ending each quarter by earned exposures year ending each quarter.

11:3-16.10 Instructions for completing Section VI (Expense Exhibits)

(a) Expense Exhibit 1: Each filer shall provide exhibits, for the two most recent calendar years, containing a detailed breakdown of expenses allocated or directly assigned to the New Jersey Voluntary Market and the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA), for each calendar year, in the same format as in Schedules 1 through 6 of Expense Exhibit 1, in Appendix D of this subchapter. Each filer shall, at the same time, file all workpapers and calculations thereon.

(b) Expense Exhibit 2: Each filer shall provide the following:

1. A calculation of the 13-month average balance of accounts receivable from affiliated companies;

2. A calculation of the 13-month average balance of accounts payable to affiliated companies; and

3. A complete list and description of each service provided to the company by each affiliate, and the total charge for each service during the base period.

(c) Each filer shall provide a copy of the company's most recent Federal and State income tax returns, together with tabulations showing the following tax information:

1. All tax losses carried forward at the end of the two most recent calendar years;

2. A reconciliation between book net income and taxable net income for the two most recent calendar years;

3. A calculation of the company's Federal alternative minimum tax liability and minimum tax credits for the two most recent calendar years;

4. A calculation of the company's effective State and Federal income tax rates for the two most recent calendar years;

5. The amounts remaining in "protection against loss accounts" on December 31, 1985, and year end for the two most recent calendar years;

6. The balance in the unearned premium reserve on December 31, 1986, and a calculation of the amount of the reserve includable in taxable income beginning in 1987; and

7. A calculation of the Federal income tax deduction for losses incurred, by the line of business, for the three most recent tax years, showing all calculations of the discounting of loss reserves.

11:3-16.11 Instructions for Completing Section VII (Investment Income Exhibits)

(a) Each filer shall provide the following exhibits pertaining to investment income associated with private passenger automobile insurance in the formats specified by Investment Income Exhibits 1, 2, 3, and 4 in Appendix E of this subchapter.

1. Investment Income Exhibit 1: Each filer shall provide the following information according to the format specified in Investment Income Exhibit 1 (Investment Income from Loss and Loss Expense Reserves):

i. Net investment gain, from page 4, line 9a, of the filer's most recent Annual Statement;

ii. Cash and invested assets, from page 2, line 8a, of the filer's Annual Statement for the two most recent years, and mean cash and invested assets calculated for those two years;

iii. Rate of return on investments, calculated as the ratio of net investment gain to mean cash and invested assets;

iv. New Jersey loss reserves (including IBNR), by coverage, as of December 31, of the two most recent calendar years;

v. New Jersey loss adjustment expense reserves (including IBNR), as of December 31 of the two most recent calendar years;

vi. Mean loss and loss adjustment expense reserves for the two most recent calendar years;

vii. Premium earned by coverage;

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viii. The ratio of loss and loss expense reserves to premium earned; and

ix. Investment income from reserves as a percentage of premium earned.

2. Investment Income Exhibit 2: Each filer shall provide the following information according to the format specified in Investment Income Exhibit 2 (Investment Income from Unearned Premium Reserves):

i. New Jersey unearned premium reserves, by coverage, as of December 31 of the two most recent calendar years and the mean unearned premium reserve calculated for that period;

ii. Premium earned by coverage;

iii. The ratio of unearned premium reserve to earned premium, by coverage;

iv. Rate of return on investments; and

v. Investment income as a percentage of premium earned, by coverage.

3. Investment Income Exhibit 3: Each filer shall provide the following information according to the format specified in Investment Income Exhibit 3 (Company-wide Reserves, Surplus and Invested Assets). The references in the Exhibit pertain to the filer's most recent Annual Statement:

i. Loss reserves for the most recent calendar year;

ii. Loss adjustment expenses reserves for the most recent calendar year and the ratio of unpaid loss adjustment expenses to unpaid losses;

iii. Unearned premium reserves for the most recent calendar year;

iv. Total reserves;

v. Cash and invested assets as of December 31 of the most recent calendar year;

vi. Surplus as of December 31 of the most recent calendar year;

vii. The percent of surplus invested, calculated as cash and invested assets less reserves divided by surplus; and

viii. The ratio of surplus to reserves.

4. Investment Income Exhibit 4: Each filer shall provide the following information according to the format specified in Investment Income Exhibit 4 (Investment Income as a Percent of Premium):

i. Items 1 through 3 in the Exhibit, by coverage;

ii. Item 4 in the Exhibit, which means the dollar amount of New Jersey surplus by coverage, calculated by multiplying total New Jersey reserves by coverage times the ratio of surplus to reserves;

iii. Items 5 and 6 of the Exhibit, which mean the dollar amount of invested New Jersey surplus by coverage, calculated as the product of New Jersey surplus times the percentage of surplus invested;

iv. Items 7 through 9 of the Exhibit, which mean the sum of New Jersey reserves and surplus and the dollar amount of investment income earned on these reserves and surplus; and

v. Items 10 and 11 of the Exhibit, which mean investment income as a percentage of premium earned, by coverage.

APPENDIX A

EXHIBIT 1. EXPECTED UNDERWRITING RESULTS, BASIC LIMITS
Expected Underwriting Results with Unchanged Premium

Company Name:_____

NAIC CODE:_____

	Bodily Injury	Property Damage	PIP
1. Basic Limits Premium at Present Rates	$____	$____	$____
2. Forecasted Losses	$____	$____	$____
3. Forecasted Loss Adjustment	$____	$____	$____
4. Other Underwriting and Acquisition Expenses	$____	$____	$____
5. Underwriting Result	$____	$____	$____
6. Underwriting Result as a Percent of Premium	____%	____%	____%

	Comprehensive	Collision	Uninsured Motorist
1. Premium Earned	$____	$____	$____
2. Forecasted Losses	$____	$____	$____
3. Forecasted Loss Adjustment	$____	$____	$____
4. Other Underwriting and Acquisition Expenses	$____	$____	$____
5. Catastrophe Loading	$____		
6. Underwriting Result	$____	$____	$____
7. Underwriting Result as a Percent of Premium	____%	____%	____%

EXHIBIT 2. EXPECTED UNDERWRITING RESULTS, TOTAL LIMITS
Expected Underwriting Results with Unchanged Premium

Company Name:_____

NAIC CODE:_____

	Bodily Injury	Property Damage	PIP
1. Total Limits Premium at Current Level	$____	$____	$____
2. Forecasted Losses	$____	$____	$____
3. Forecasted Loss Adjustment	$____	$____	$____
4. Other Underwriting and Acquisition Expenses	$____	$____	$____
5. Underwriting Result	$____	$____	$____
6. Underwriting Result as a Percent of Premium	____%	____%	____%

	Comprehensive	Collision	Uninsured Motorist
1. Premium Earned	$____	$____	$____
2. Forecasted Losses	$____	$____	$____
3. Forecasted Loss Adjustment	$____	$____	$____
4. Other Underwriting and Acquisition Expenses	$____	$____	$____
5. Catastrophe Loading	$____		
6. Underwriting Result	$____	$____	$____
7. Underwriting Result as a Percent of Premium	____%	____%	____%

EXHIBIT 3. ANALYSIS OF EARNINGS REQUIREMENTS

Company Name:_____

NAIC CODE:_____

Item	Bodily Injury	Property Damage	PIP
1. New Jersey Surplus by Line, Inv. Inc. Exhibit 4, Line 4	$____	$____	$____
2. Target Rate of Return on Surplus	____%	____%	____%
3. Required Return on Surplus (1) x (2)	$____	$____	$____
4. Ratio of Investment Income to Premium Earned Inv. Inc. Exhibit 4 Line 11	____	____	____
5. Forecasted New Jersey Premium Earned	$____	$____	$____
6. Return from Investment (4) x (5)	$____	$____	$____

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7. Required Underwriting Return (3) - (6)	$_____	$_____	$_____
8. Ratio, Required Underwriting Return to Premium Earned (7)/(5)	___%	___%	___%

Item	Comprehensive	Collision	Uninsured Motorist
1. New Jersey Surplus by Line, Inv. Inc. Exhibit 4, Line 4	$_____	$_____	$_____
2. Target Rate of Return on Surplus	___%	___%	___%
3. Required Return on Surplus (1) x (2)	$_____	$_____	$_____
4. Ratio of Investment Income to Premium Earned Inv. Inc. Exhibit 4, Line 11	_____	_____	_____
5. Forecasted New Jersey Premium Earned	$_____	$_____	$_____
6. Return from Investment (4) x (5)	$_____	$_____	$_____
7. Required Underwriting Return (3) - (6)	$_____	$_____	$_____
8. Ratio, Required Underwriting Return to Premium Earned (7)/(5)	___%	___%	___%

APPENDIX B

INSTRUCTIONS: Loss and Loss Adjustment Exhibits (Voluntary Market)

Loss Exhibit 1. Losses by Coverage:

The filer shall display, for each coverage, for the New Jersey Private Passenger Automobile Market, the number of claims reported, the number of reported claims paid, the number of reported claims unpaid, and the estimated number of IBNR claims, all valued as of March 31 for the 12 month period ended December 31 of the preceding year. The filer will also provide the total amount paid and the average amount paid for claims paid, the total amount and the average amount reserved for reported but unpaid claims, and the total amount and average amount for IBNR claims. Exhibits 1 through 8 shall be prepared for both basic limits and total limits.

Loss Exhibits 2 through 5. Historical Loss Development:

The filer shall display, for each coverage, for New Jersey private passenger automobile insurance, accident year loss development, year-to-year, for incurred losses and the number of incurred claims (Loss Exhibit 2), paid loss development and the number of paid claims (Loss Exhibit 3), case basis reserves for incurred losses and the number of reported claims unpaid (Loss Exhibit 4), and IBNR reserves (Loss Exhibit 5). In all cases, the valuation is as of March 31 of each year for the 12 month period ending December 31.

Loss Exhibits 6 through 8. Historical Loss Adjustment Expense: (Voluntary Market)

The filer shall display, for each coverage, for New Jersey private passenger automobile insurance, accident year allocated loss adjustment expense development for incurred and paid allocated loss adjustment expenses (Exhibit 6), and allocated unpaid loss adjustment expenses for case basis reserves and IBNR reserves (Exhibit 7), and unallocated incurred and paid loss adjustment expense (Exhibit 8). In all cases, the valuation is as of March 31 of each year for the 12 month period ending December 31.

LOSS EXHIBIT
LOSSES BY COVERAGE, New Jersey Private Passenger Automobile Insurance

Calendar Accident Year Ending December 31, 1987

Company Name:_____

NAIC CODE:_____

	Bodily Injury	Property Damage	PIP
1. Number of Claims Reported	_____	_____	_____
2. Number of Claims Reported, Paid	_____	_____	_____
3. Number of Claims Reported, Unpaid	_____	_____	_____
4. Estimated Number of IBNR Claims	_____	_____	_____
5. Amount Paid on Claims Paid	$_____	$_____	$_____
6. Average Amount Paid on Claims Paid	$_____	$_____	$_____
7. Amount Reserved for Reported Claims, Unpaid	$_____	$_____	$_____
8. Average Reserve for Reported Claims, Unpaid	$_____	$_____	$_____
9. Amount Reserved for IBNR Claims	$_____	$_____	$_____
10. Average Reserve for IBNR Claims	$_____	$_____	$_____

	Comprehensive	Collision	Uninsured Motorist
1. Number of Claims Reported	_____	_____	_____
2. Number of Claims Reported, Paid	_____	_____	_____
3. Number of Claims Reported, Unpaid	_____	_____	_____
4. Estimated Number of IBNR Claims	_____	_____	_____
5. Amount Paid on Claims Paid	$_____	$_____	$_____
6. Average Amount Paid on Claims Paid	$_____	$_____	$_____
7. Amount Reserved for Reported Claims, Unpaid	$_____	$_____	$_____
8. Average Reserve for Reported Claims, Unpaid	$_____	$_____	$_____
9. Amount Reserved for IBNR Claims	$_____	$_____	$_____
10. Average Reserve for IBNR Claims	$_____	$_____	$_____

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LOSS EXHIBIT 2. INCURRED LOSSES By Coverage
New Jersey Private Passenger Automobile Insurance

Company:_____

NAIC CODE:_____

Coverage:_____

Accident Year Incurred Losses (Incl. IBNR) Valued As Of:
(000 Omitted)

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	$_____	$_____	$_____	$_____	$_____	$_____	$_____	$_____	$_____
1980		$_____	$_____	$_____	$_____	$_____	$_____	$_____	$_____
1981			$_____	$_____	$_____	$_____	$_____	$_____	$_____
1982				$_____	$_____	$_____	$_____	$_____	$_____
1983					$_____	$_____	$_____	$_____	$_____
1984						$_____	$_____	$_____	$_____
1985							$_____	$_____	$_____
1986								$_____	$_____
1987									$_____

1) Valuation for the 12 months ended Dec. 31 of each accident year as of March of the valuation year.

Accident Year Number of Incurred Claims As Of:
(000 Omitted)

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	_____	_____	_____	_____	_____	_____	_____	_____	_____
1980		_____	_____	_____	_____	_____	_____	_____	_____
1981			_____	_____	_____	_____	_____	_____	_____
1982				_____	_____	_____	_____	_____	_____
1983					_____	_____	_____	_____	_____
1984						_____	_____	_____	_____
1985							_____	_____	_____
1986								_____	_____
1987									_____

LOSS EXHIBIT 3. PAID LOSSES
New Jersey Private Passenger Automobile Insurance

Company:_____

NAIC CODE:_____

Coverage:_____

Accident Year Paid Losses Valued As Of:
(000 Omitted)

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	$_____	$_____	$_____	$_____	$_____	$_____	$_____	$_____	$_____
1980		$_____	$_____	$_____	$_____	$_____	$_____	$_____	$_____
1981			$_____	$_____	$_____	$_____	$_____	$_____	$_____
1982				$_____	$_____	$_____	$_____	$_____	$_____
1983					$_____	$_____	$_____	$_____	$_____
1984						$_____	$_____	$_____	$_____
1985							$_____	$_____	$_____
1986								$_____	$_____
1987									$_____

1) Valuation for the 12 months ended Dec. 31 of each accident year as of March of the valuation year.

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Accident Year Number of Paid Claims As Of:
(000 Omitted)

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	____	____	____	____	____	____	____	____	____
1980		____	____	____	____	____	____	____	____
1981			____	____	____	____	____	____	____
1982				____	____	____	____	____	____
1983					____	____	____	____	____
1984						____	____	____	____
1985							____	____	____
1986								____	____
1987									____

LOSS EXHIBIT 4. UNPAID LOSSES (Reported)
New Jersey Private Passenger Automobile Insurance

Company:_____

NAIC CODE:____

Coverage:_____

Accident Year Case Reserves for Incurred Losses Valued As Of:
(000 Omitted)

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	$____	$____	$____	$____	$____	$____	$____	$____	$____
1980		$____	$____	$____	$____	$____	$____	$____	$____
1981			$____	$____	$____	$____	$____	$____	$____
1982				$____	$____	$____	$____	$____	$____
1983					$____	$____	$____	$____	$____
1984						$____	$____	$____	$____
1985							$____	$____	$____
1986								$____	$____
1987									$____

1) Valuation for the 12 months ended Dec. 31 of each accident year as of March of the valuation year.

Accident Year Number of Unpaid Reported Claims As Of

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	____	____	____	____	____	____	____	____	____
1980		____	____	____	____	____	____	____	____
1981			____	____	____	____	____	____	____
1982				____	____	____	____	____	____
1983					____	____	____	____	____
1984						____	____	____	____
1985							____	____	____
1986								____	____
1987									____

LOSS EXHIBIT 5. UNPAID LOSSES (IBNR)
New Jersey Private Passenger Automobile Insurance

Company:_____

NAIC CODE:____

Coverage:_____

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Accident Year IBNR Reserves for Incurred Losses As Of:
(000 Omitted)

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	$___	$___	$___	$___	$___	$___	$___	$___	$___
1980		$___	$___	$___	$___	$___	$___	$___	$___
1981			$___	$___	$___	$___	$___	$___	$___
1982				$___	$___	$___	$___	$___	$___
1983					$___	$___	$___	$___	$___
1984						$___	$___	$___	$___
1985							$___	$___	$___
1986								$___	$___
1987									$___

1) Valuation for the 12 months ended Dec. 31 of each accident year as of March of the valuation year.

LOSS EXHIBIT 6. ALLOCATED LOSS ADJUSTMENT EXPENSES
New Jersey Private Passenger Automobile Insurance

Company:_____

NAIC CODE:____

Coverage:_____

Accident Year Allocated Incurred Loss Adjustment Expenses Valued As Of:
(000 Omitted)

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	$___	$___	$___	$___	$___	$___	$___	$___	$___
1980		$___	$___	$___	$___	$___	$___	$___	$___
1981			$___	$___	$___	$___	$___	$___	$___
1982				$___	$___	$___	$___	$___	$___
1983					$___	$___	$___	$___	$___
1984						$___	$___	$___	$___
1985							$___	$___	$___
1986								$___	$___
1987									$___

1) Valuation for the 12 months ended Dec. 31 of each accident year as of March of the valuation year.

Accident Year Allocated Paid Loss Adjustment Expenses Valued As Of:
(000 Omitted)

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	$___	$___	$___	$___	$___	$___	$___	$___	$___
1980		$___	$___	$___	$___	$___	$___	$___	$___
1981			$___	$___	$___	$___	$___	$___	$___
1982				$___	$___	$___	$___	$___	$___
1983					$___	$___	$___	$___	$___
1984						$___	$___	$___	$___
1985							$___	$___	$___
1986								$___	$___
1987									$___

LOSS EXHIBIT 7. ALLOCATED LOSS ADJUSTMENT EXPENSES
New Jersey Private Passenger Automobile Insurance

Company:_____

NAIC CODE:____

Coverage:_____

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Accident Year Allocated Unpaid Loss Adjustment Expenses, Case Reserves, Valued As Of:
(000 Omitted)

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	$___	$___	$___	$___	$___	$___	$___	$___	$___
1980		$___	$___	$___	$___	$___	$___	$___	$___
1981			$___	$___	$___	$___	$___	$___	$___
1982				$___	$___	$___	$___	$___	$___
1983					$___	$___	$___	$___	$___
1984						$___	$___	$___	$___
1985							$___	$___	$___
1986								$___	$___
1987									$___

1) Valuation for the 12 months ended Dec. 31 of each accident year as of March of the valuation year.

Accident Year Allocated Unpaid Loss Adjustment Expenses, IBNR Reserves, Valued As Of:
(000 Omitted)

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	$___	$___	$___	$___	$___	$___	$___	$___	$___
1980		$___	$___	$___	$___	$___	$___	$___	$___
1981			$___	$___	$___	$___	$___	$___	$___
1982				$___	$___	$___	$___	$___	$___
1983					$___	$___	$___	$___	$___
1984						$___	$___	$___	$___
1985							$___	$___	$___
1986								$___	$___
1987									$___

LOSS EXHIBIT 8. UNALLOCATED LOSS ADJUSTMENT EXPENSES
New Jersey Private Passenger Automobile Insurance

Company:_____

NAIC CODE:____

Coverage:_____

Accident Year Unallocated Incurred Loss Adjustment Expenses Valued As Of:
(000 Omitted)

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	$___	$___	$___	$___	$___	$___	$___	$___	$___
1980		$___	$___	$___	$___	$___	$___	$___	$___
1981			$___	$___	$___	$___	$___	$___	$___
1982				$___	$___	$___	$___	$___	$___
1983					$___	$___	$___	$___	$___
1984						$___	$___	$___	$___
1985							$___	$___	$___
1986								$___	$___
1987									$___

1) Valuation for the 12 months ended Dec. 31 of each accident year as of March of the valuation year.

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Accident Year Unallocated Paid Loss Adjustment Expenses Valued As Of:
(000 Omitted)

Year Incurred	1980	1981	1982	1983	1984	1985	1986	1987	1988
1979 & Earlier	$____	$____	$____	$____	$____	$____	$____	$____	$____
1980		$____	$____	$____	$____	$____	$____	$____	$____
1981			$____	$____	$____	$____	$____	$____	$____
1982				$____	$____	$____	$____	$____	$____
1983					$____	$____	$____	$____	$____
1984						$____	$____	$____	$____
1985							$____	$____	$____
1986								$____	$____
1987									$____

APPENDIX C

Instructions: Trend Exhibits

The trend exhibits require that information be reported for losses and loss adjustment expenses for the New Jersey private passenger automobile insurance market and for all states. The unit of measurement for "exposures" shall be car years. Data will be provided quarterly for the last ten years. The data provided for Comprehensive coverage on Trend Exhibits 1, 2, 3, and 4 shall be presented with catastrophic losses removed from the data. Trend Exhibit 5 pertains to excess losses. In addition to the data requested, a complete description of the methodology used to derive a catastrophic loading shall be included.

A. Trend Exhibits 1 and 2:

1. Paid Losses means the sum of losses paid during the quarter.
2. Paid Loss Adjustment means the sum of loss adjustment expenses paid during the quarter.
3. Paid Losses Yr. Ending means the sum of losses paid in the 12 month period ending each quarter.
4. Paid Loss Adjustment Expenses means the sum of loss adjustment expenses paid in the 12 month period ending each quarter.
5. Paid Claims means the sum of number of paid claims paid during each quarter.
6. Quarterly Claim Costs, Losses means the average loss payment during the quarter, calculated by dividing quarterly loss payments by the number of claims paid during the quarter.
7. Quarterly Claim Costs, Loss Adjustment Expenses means the average loss adjustment expense payment made during the quarter, calculated by dividing quarterly loss adjustment expense payments by the number of claims paid during the quarter.

B. Trend Exhibits 3 and 4, Loss Frequency

1. Earned Exposures means the sum of the number of car years earned in the quarter.
2. Earned Exposures Year Ending means the sum of the car years earned for the 12 months ending with each quarter.
3. Paid Claims means the number of paid claims during the quarter.
4. Quarterly Claim Frequency means the number of paid claims in the quarter divided by the number of exposures earned during the quarter.

C. Trend Exhibit 5, Excess Wind, Water & Hail Losses, Comprehensive Coverage

Annual data displaying comprehensive losses paid both with and without catastrophic losses shall be displayed for as many years as data is available, at least 20 years of data, more if available. This exhibit shall also display and explain the computation of the excess or catastrophic loading used in the filing for Comprehensive coverage.

D. Trend Exhibits 6 & 7, Age and Symbol Trends

Trend Exhibits 6 & 7 pertain to Age and Symbol trends. In addition to the data requested, a complete description of the methodology used to calculate these trends shall also be included. In addition to the data requested in Exhibit 7 concerning the average symbol relativity by quarter, distributions displaying the calculation of the average value on an annual basis for each of the 5 years prior to the current year shall also be included.

Trend Exhibit 1. New Jersey Loss and Loss Adjustment Expenses

Company Name:_____

NAIC CODE:_____

Coverage:_____

Quarter Ending	(1) Paid Losses ($)	(2) Paid Loss Adjustment ($)	(3) Paid Losses Yr. Ending ($)	(4) Paid LAE Yr. Ending ($)	(5) Paid Claims (#)	(6) Quarterly Claim Cost Losses	(7) Quarterly Claim Cost LAE	(8) Paid Claims Yr. Ending (#)	(9) Claim Cost Yr. Ending
3/31/1978	____	____	____	____	____	____	____	____	____
6/30/1978	____	____	____	____	____	____	____	____	____
9/30/1978	____	____	____	____	____	____	____	____	____
12/31/1978	____	____	____	____	____	____	____	____	____
3/31/1979	____	____	____	____	____	____	____	____	____
6/30/1979	____	____	____	____	____	____	____	____	____
9/30/1979	____	____	____	____	____	____	____	____	____
12/31/1979	____	____	____	____	____	____	____	____	____
3/31/1980	____	____	____	____	____	____	____	____	____
6/30/1980	____	____	____	____	____	____	____	____	____
9/30/1980	____	____	____	____	____	____	____	____	____

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12/31/1980									
3/31/1981									
6/30/1981									
9/30/1981									
12/31/1981									
3/31/1982									
6/30/1982									
9/30/1982									
12/31/1982									
3/31/1983									
6/30/1983									
9/30/1983									
12/31/1983									
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9/30/1984									
12/31/1984									
3/31/1985									
6/30/1985									
9/30/1985									
12/31/1985									
3/31/1986									
6/30/1986									
9/30/1986									
12/31/1986									
3/31/1987									
6/30/1987									
9/30/1987									
12/31/1987									
3/31/1988									

Trend Exhibit 1. New Jersey Loss and Loss Adjustment Expenses

Company Name:_____

NAIC CODE:_____

Coverage:_____

Quarter Ending	(1) Paid Losses ($)	(2) Paid Loss Adjustment ($)	(3) Paid Losses Yr. Ending ($)	(4) Paid LAE Yr. Ending ($)	(5) Paid Claims (#)	(6) Quarterly Claim Cost Losses	(7) Quarterly Claim Cost LAE	(8) Paid Claims Yr. Ending (#)	(9) Claim Cost Yr. Ending
3/31/1978									
6/30/1978									
9/30/1978									
12/31/1978									
3/31/1979									
6/30/1979									
9/30/1979									
12/31/1979									
3/31/1980									
6/30/1980									
9/30/1980									

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12/31/1980									
3/31/1981									
6/30/1981									
9/30/1981									
12/31/1981									
3/31/1982									
6/30/1982									
9/30/1982									
12/31/1982									
3/31/1983									
6/30/1983									
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12/31/1983									
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9/30/1985									
12/31/1985									
3/31/1986									
6/30/1986									
9/30/1986									
12/31/1986									
3/31/1987									
6/30/1987									
9/30/1987									
12/31/1987									
3/31/1988									

Trend Exhibit 3. Loss Frequency, New Jersey

Company Name:_____

NAIC CODE:_____

Coverage:_____

Quarter Ending	(10) Earned Exposures (#)	(11) Earned Expo Year Ending (#)	(12) Quarterly Claim Frequency	(13) Claim Frequency Yr. Ending
3/31/1978				
6/30/1978				
9/30/1978				
12/31/1978				
3/31/1979				
6/30/1979				
9/30/1979				
12/31/1979				
3/31/1980				
6/30/1980				
9/30/1980				
12/31/1980				
3/31/1981				
6/30/1981				
9/30/1981				
12/31/1981				
3/31/1982				
6/30/1982				
9/30/1982				
12/31/1982				
3/31/1983				
6/30/1983				
9/30/1983				
12/31/1983				
3/31/1984				
6/30/1984				
9/30/1984				
12/31/1984				
3/31/1985				

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6/30/1985				
9/30/1985				
12/31/1985				
3/31/1986				
6/30/1986				
9/30/1986				
12/31/1986				
3/31/1987				
6/30/1987				
9/30/1987				
12/31/1987				
3/31/1988				

Trend Exhibit 4. Loss Frequently, All States

Company Name:_____

NAIC CODE:_____

Coverage:_____

Quarter Ending	(10) Earned Exposures (#)	(11) Earned Expo Year Ending (#)	(12) Quarterly Claim Frequency	(13) Claim Frequency Yr. Ending
3/31/1978				
6/30/1978				
9/30/1978				
12/31/1978				
3/31/1979				
6/30/1979				
9/30/1979				
12/31/1979				
3/31/1980				
6/30/1980				
9/30/1980				
12/31/1980				
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6/30/1986				
9/30/1986				
12/31/1986				
3/31/1987				
6/30/1987				
9/30/1987				
12/31/1987				
3/31/1988				

Trend Exhibit 5. Excess Wind, Water & Hail (Catastrophic) Factor

Company Name:_____

NAIC CODE:_____

Coverage: Comprehensive

Year & Month	(1) Total Paid Losses ($)	(2) Wind Water Hail Losses Losses Paid ($)	(3) Paid Losses Less Wind Water Hail Losses Col. 1 - Col. 2 ($)
1958			
1959			
1960			
1961			
1962			
1963			
1964			
1965			
1966			
1967			
1968			
1969			
1970			
1971			
1972			
1973			
1974			
1975			
1976			
1977			
1978			
1979			
1980			
1981			
1982			
1983			
1984			
1985			
1986			

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1987	_____	_____	_____
1988	_____	_____	_____

Trend Exhibit 6. Age Trend, Model Year Relativity

Company Name:_____

NAIC CODE:_____

Coverage: Comprehensive & Collision

Base Period

Automobile Model Year	(1) Exposure Distribution Comprehensive (%)	(2) Model Year Relativity Comprehensive	(3) Exposure Distribution Collision (%)	(4) Model Year Relativity Collision
1988	_____	_____	_____	_____
1987	_____	_____	_____	_____
1986	_____	_____	_____	_____
1985	_____	_____	_____	_____
1984	_____	_____	_____	_____
1983	_____	_____	_____	_____
1982	_____	_____	_____	_____
1981 & Older	_____	_____	_____	_____

Base Period

Automobile Model Year	(1) Exposure Distribution Comprehensive (%)	(2) Model Year Relativity Comprehensive	(3) Exposure Distribution Collision (%)	(4) Model Year Relativity Collision
1989	_____	_____	_____	_____
1988	_____	_____	_____	_____
1987	_____	_____	_____	_____
1986	_____	_____	_____	_____
1985	_____	_____	_____	_____
1984	_____	_____	_____	_____
1983	_____	_____	_____	_____
1982 & Older	_____	_____	_____	_____

Base Period

Automobile Model Year	(1) Exposure Distribution Comprehensive (%)	(2) Model Year Relativity Comprehensive	(3) Exposure Distribution Collision (%)	(4) Model Year Relativity Collision
1990	_____	_____	_____	_____
1989	_____	_____	_____	_____
1988	_____	_____	_____	_____
1987	_____	_____	_____	_____
1986	_____	_____	_____	_____
1985	_____	_____	_____	_____
1984	_____	_____	_____	_____
1983 & Older	_____	_____	_____	_____

Trend Exhibit 7. Symbol Trend

Company Name:_____

NAIC CODE:_____

Coverage: Comprehensive & Collision

Quarter Ending	(1) Relativity Full Coverage (Independent Qtrs.)	(2) Relativity Full Coverage Yr. Ending
3/31/1978	_____	_____
6/30/1978	_____	_____
9/30/1978	_____	_____
12/31/1978	_____	_____
3/31/1979	_____	_____
6/30/1979	_____	_____
9/30/1979	_____	_____
12/31/1979	_____	_____
3/31/1980	_____	_____
6/30/1980	_____	_____
9/30/1980	_____	_____
12/31/1980	_____	_____
3/31/1981	_____	_____
6/30/1981	_____	_____
9/30/1981	_____	_____
12/31/1981	_____	_____
3/31/1982	_____	_____
6/30/1982	_____	_____
9/30/1982	_____	_____
12/31/1982	_____	_____
3/31/1983	_____	_____
6/30/1983	_____	_____
9/30/1983	_____	_____
12/31/1983	_____	_____
3/31/1984	_____	_____
6/30/1984	_____	_____
9/30/1984	_____	_____
12/31/1984	_____	_____
3/31/1985	_____	_____
6/30/1985	_____	_____
9/30/1985	_____	_____
12/31/1985	_____	_____
3/31/1986	_____	_____
6/30/1986	_____	_____
9/30/1986	_____	_____
12/31/1986	_____	_____
3/31/1987	_____	_____
6/30/1987	_____	_____
9/30/1987	_____	_____
12/31/1987	_____	_____
3/31/1988	_____	_____

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APPENDIX D

General Instructions

Expense Exhibit 1

1. The purpose of these schedules is to show the allocation of insurer expenses to the New Jersey voluntary private passenger automobile market by type of coverage.

On Schedule 1 the filer shall display the allocation or assignment of total group insurer expenses to the company.

On Schedule 2 the filer shall display the allocation or assignment of company expenses to each expense group.

On Schedule 3 the filer shall display the allocation or assignment of loss adjustment expenses to the private passenger automobile line of insurance.

On Schedule 3a the filer shall display the allocation or assignment of private passenger automobile insurance loss adjustment, expenses to each type of coverage (bodily injury, personal injury protection, property damage, comprehensive, collision, uninsured motorist, and all other).

On Schedule 3b the filer shall display the allocation or assignment of loss adjustment expenses by type of private passenger automobile insurance coverage to the state of New Jersey. A separate schedule 3b shall be completed for each type of private passenger automobile coverage.

On Schedule 3c the filer shall display the allocation or assignment of New Jersey loss adjustment expenses by type of private passenger automobile insurance coverage to the Voluntary Market and the NJAFIUA. A separate schedule 3c shall be completed for each type of private passenger automobile insurance coverage (bodily injury, personal injury protection, property damage, comprehensive, collision, uninsured motorist, and all other).

On Schedule 4 the filer shall display the allocation or assignment of acquisition, field supervision and collection expenses to the private passenger automobile line of insurance.

On Schedule 4a the filer shall display the allocation or assignment of private passenger automobile insurance acquisition, field supervision and collection expenses to each type of coverage (bodily injury, personal injury protection, property damage, comprehensive, collision, uninsured motorist, and all other).

On Schedule 4b the filer shall display the allocation or assignment of acquisition, field supervision and collection expenses by type of private passenger automobile insurance coverage to the state of New Jersey. A separate schedule 4b shall be completed for each type of private passenger automobile insurance coverage.

On Schedule 4c the filer shall display the allocation or assignment of New Jersey acquisition, field supervision and collection expenses by type of private passenger automobile insurance coverage to the Voluntary Market and the NJAFIUA. A separate schedule 4c shall be completed for each type of private passenger automobile coverage (bodily injury, personal injury protection, property damage, comprehensive, collision, uninsured motorist, and all other).

On Schedule 5 the filer shall display the allocation or assignment of general expenses to the private passenger automobile line of insurance.

On Schedule 5a the filer shall display the allocation or assignment of private passenger automobile insurance general expenses to each type of coverage (bodily injury, personal injury protection, property damage, comprehensive, collision, uninsured motorist, and all other).

On Schedule 5b the filer shall display the allocation or assignment of general expenses by type of private passenger automobile insurance coverage to the state of New Jersey. A separate schedule 5b shall be completed for each type of private passenger automobile insurance coverage.

On Schedule 5c the filer shall display the allocation or assignment of New Jersey general expenses by type of private passenger automobile insurance coverage to the Voluntary Market and the NJAFIUA. A separate schedule 5c shall be completed for each type of private passenger automobile insurance coverage (bodily injury, personal injury protection, property damage, comprehensive, collision, uninsured motorist, and all other).

On Schedule 6 the filer shall display the allocation or assignment of taxes, licenses and fees to the private passenger automobile line of insurance.

On Schedule 6a the filer shall display the allocation or assignment of private passenger automobile insurance taxes, licenses and fees to each type of coverage (bodily injury, personal injury protection, property damage, comprehensive, collision, uninsured motorist, and all other).

On Schedule 6b the filer shall display the allocation or assignment of taxes, licenses and fees by type of private passenger automobile insurance coverage to the state of New Jersey. A separate schedule 6b shall be completed for each type of private passenger automobile coverage.

On Schedule 6c the filer shall display allocation or assignment of New Jersey taxes, licensing and fees by type of private passenger automobile insurance coverage to the Voluntary Market and the NJAFIUA. A separate schedule 6c shall be completed for each type of private passenger automobile coverage (bodily injury, personal injury protection, property damage, comprehensive, collision, uninsured motorist, and all other).

2. The Financial Condition Examiner's Handbook (Part 6) gives detailed instructions for the uniform classification of expenses. The allocation of expenses from the Insurer Group to the Company, to expense groups and to lines of insurance shall be in accordance with those uniform instructions unless otherwise specified herein.

3. No allocations shall be made on the basis of premiums unless the expense is incurred as a percentage of premiums (i.e., commissions and gross receipts taxes).

4. NJAFIUA is the New Jersey Automobile Full Insurance Underwriting Association.

5. Schedules 3c, 4c, 5c and 6c are only required for participating carriers in the NJAFIUA.

6. The allocation basis "Direct" is used with the meaning direct assignment.

7. The operating expense classifications used in these schedules are the same as those specified in Part 6 of the Financial Condition Examiners' Handbook.

Instructions

Schedule 1

Allocation to Company

1. In Column A list total insurer group expenses by type of expense as specified.

2. Follow the instructions in Column B in allocating or assigning insurer group expenses to companies within the group. If no specific instruction is provided, specify and follow the basis of allocation that your group follows in accordance with the instructions provided in Part 6 of the Financial Condition Examiners Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.

3. In Column C state all insurer group expenses allocated or assigned to the Company by expense type.

EXPENSE EXHIBIT 1—Schedule 1
INSURER GROUP EXPENSES
ALLOCATION TO COMPANY

Company Name:_____

NAIC Code:_____

	Insurer Group Expenses (A)	Basis of Allocation (B)	Company Expenses (C)
1. Claim adjustment services			
A. Direct			
1. Independent adjusters	_____	Direct	_____
2. Other legal services	_____	Direct	_____
3. Court costs	_____	Direct	_____
4. Medical exams	_____	Direct	_____

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5. Other	_____	Direct	_____
B. Reinsurance assumed	_____	Direct	_____
C. Reinsurance ceded	_____	Direct	_____
D. Net claim adjustment services (A + B - C)	_____		_____
2. Commission and brokerage			
A. Direct	_____	Direct	_____
B. Reinsurance assumed	_____	Direct	_____
C. Reinsurance ceded	_____	Direct	_____
D. Contingent—net	_____	Direct	_____
E. Policy and membership fees	_____	Direct	_____
F. Net commission and brokerage (A + B - C + D + E)	_____		_____
3. Allowances to managers & agents	_____	Direct	_____
4. Advertising	_____		_____
A. Product sales & advertising	_____	Special Study	_____
B. Public relations counsel & other nonsales advertising	_____	Special Study	_____
5. Boards, bureaus and assoc.	_____	Special Study	_____
6. Surveys & underwriting reports	_____	Special Study	_____
7. Audit of assureds records	_____	Special Study	_____
8. Salaries			
A. Underwriting related	_____	_____	_____
B. Claims related	_____	_____	_____
C. Investment related	_____	_____	_____
D. Lobbying	_____	_____	_____
E. Other executive	_____	_____	_____
F. Other general clerical & support	_____	_____	_____
9. Employee relations & welfare			
A. Pension & retirement benefits	_____	Salaries	_____
B. Insurance	_____	Salaries	_____
C. Gatherings, outings & entertainment	_____	Salaries	_____
D. Other	_____	Salaries	_____
10. Insurance			
A. Self insurance	_____	Salaries	_____
B. Purchased from affiliates	_____	Salaries	_____
C. Purchased from independent carriers	_____	Salaries	_____
11. Directors fees	_____	Salaries	_____
12. Travel & travel items			
A. Employee transportation	_____	Special Study	_____
B. Employee transfer	_____	Special Study	_____
C. Auto depreciation	_____	Special Study	_____
D. Auto maintenance & operating expenses	_____	Special Study	_____
E. Auto leasing	_____	Special Study	_____
F. Dues & subscriptions—social & civic clubs	_____	Special Study	_____
G. Cost of favors, presents, entertainment	_____	Special Study	_____
H. Other	_____	Special Study	_____
13. Rent & rent items			
A. Space rented from others	_____	Salaries	_____
B. Space in owned buildings	_____	Salaries	_____
C. Other	_____	Salaries	_____

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14. Equipment			
A. Rent	_____	Salaries	_____
B. Repair	_____	Salaries	_____
C. Depreciation	_____	Salaries	_____
15. Printing & stationery			
A. Printing, stationery, office supplies	_____	Salaries	_____
B. Policies & policy forms	_____	Salaries	_____
C. Books, newspapers, periodicals	_____	Salaries	_____
D. Other	_____	Salaries	_____
16. Postage, telephone & telegraph			
A. Postage & freight	_____	Salaries	_____
B. Telecommunications	_____	Salaries	_____
C. Bank charges for collection & exchange	_____	Salaries	_____
17. Legal & auditing			
A. Auditing fees	_____	Special Study	_____
B. Investment counsel fees	_____	Special Study	_____
C. Legal fees—lobbying & public relations	_____	Special Study	_____
D. Other legal fees	_____	Special Study	_____
E. Other	_____	Special Study	_____
18. Taxes, licenses & fees			
A. State & local insurance taxes	_____	Direct	_____
B. Payroll taxes	_____	Salaries	_____
C. Insurance Department fees	_____	Direct	_____
D. All other	_____	_____	_____
19. Real estate expenses	_____	Salaries	_____
20. Real estate taxes	_____	Salaries	_____
21. Miscellaneous			
A. Donations	_____	Special Study	_____
B. Income from special services	_____	Special Study	_____
C. Other	_____	Special Study	_____
22. Total	_____	_____	_____

Instructions

Schedule 2
Allocation to Expense Groups

1. The amounts shown in Column A should be the same as the amounts in Column C of Schedule 1.
2. Follow the instruction in Column B in allocating or assigning each expense type to each expense group. If no specific instruction is provided, specify and follow the basis of allocation in accordance with the instructions provided in Part 6 of the Financial Condition Examiners Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.
3. In Column C show expenses assigned or allocated to the expense group, Loss Adjustment Expenses.
4. In Column D show expenses assigned or allocated to the expense group, Acquisition, Field Supervision and Collection Expenses.
5. In Column E show expenses assigned or allocated to the expense group, General Expenses.
6. In Column F show expenses assigned or allocated to the expense group, Taxes, Licenses and Fees.
7. In Column G show expenses assigned or allocated to the expense group, Investment Expenses.

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EXPENSE EXHIBIT 1—Schedule 2
COMPANY EXPENSES
ALLOCATION TO EXPENSE GROUPS

Company Name:_____

NAIC CODE:_____

	Company Expenses (A)	Basis of Allocation (B)	Loss Adjust. Expenses (C)	Acquis., Field Sup. & Collect. (D)	General Expenses (E)	Taxes, Licenses, & Fees (F)	Invest. Expenses (G)
1. Claim adjustment services							
A. Direct							
1. Independent adjusters	____	Direct	____				
2. Other legal services	____	Direct	____				
3. Court costs	____	Direct	____				
4. Medical exams	____	Direct	____				
5. Other	____	Direct	____				
B. Reinsurance assumed	____	Direct	____				
C. Reinsurance ceded	____	Direct	____				
D. Net claim adjustment services (A + B - C)	____		____				
2. Commission and brokerage							
A. Direct	____	Direct	____	____	____		
B. Reinsurance assumed	____	Direct		____			
C. Reinsurance ceded	____	Direct		____			
D. Contingent—net	____	Direct		____			
E. Policy and membership fees	____	Direct		____			
F. Net commission and brokerage (A + B - C + D + E)	____		____	____	____		
3. Allowances to managers & agents	____	____	____	____	____	____	____
4. Advertising							
A. Product sales & advertising	____	Direct		____			
B. Public relations counsel & other nonsales advertising	____	Direct		____			
5. Boards, bureaus and assoc.	____	Direct			____		
6. Surveys & underwriting reports	____	Direct			____		
7. Audit of assureds records	____	Direct			____		
8. Salaries							
A. Underwriting related	____	____	____	____	____	____	____
B. Claims related	____	____	____	____	____	____	____
C. Investment related	____	____	____	____	____	____	____
D. Lobbying	____	____	____	____	____	____	____
E. Other executive	____	____	____	____	____	____	____
F. Other general clerical & support	____	____	____	____	____	____	____
9. Employee relations & welfare							
A. Pension & retirement benefits	____	Salaries	____	____	____	____	____
B. Insurance	____	Salaries	____	____	____	____	____
C. Gatherings, outings & entertainment	____	Salaries	____	____	____	____	____
D. Other	____	Salaries	____	____	____	____	____
10. Insurance							
A. Self insurance	____	Salaries	____	____	____	____	____
B. Purchased from affiliates	____	Salaries	____	____	____	____	____
C. Purchased from independent carriers	____	Salaries	____	____	____	____	____

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11. Directors fees	____	Salaries	____	____	____	____	____
12. Travel & travel items							
A. Employee transportation	____	Special Study	____	____	____	____	____
B. Employee transfer	____	Special Study	____	____	____	____	____
C. Auto depreciation	____	Special Study	____	____	____	____	____
D. Auto maintenance & operating expenses	____	Special Study	____	____	____	____	____
E. Auto leasing	____	Special Study	____	____	____	____	____
F. Dues & subscriptions—social & civic clubs	____	Special Study	____	____	____	____	____
G. Cost of favors, presents, entertainment	____	Special Study	____	____	____	____	____
H. Other	____	Special Study	____	____	____	____	____
13. Rent & rent items							
A. Space rented from others	____	Salaries	____	____	____	____	____
B. Space in owned buildings	____	Salaries	____	____	____	____	____
C. Other	____	Salaries	____	____	____	____	____
14. Equipment							
A. Rent	____	Salaries	____	____	____	____	____
B. Repair	____	Salaries	____	____	____	____	____
C. Depreciation	____	Salaries	____	____	____	____	____
15. Printing & stationery							
A. Printing, stationery, office supplies	____	Salaries	____	____	____	____	____
B. Policies & policy forms	____	Salaries	____	____	____	____	____
C. Books, newspapers, periodicals	____	Salaries	____	____	____	____	____
D. Other	____	Salaries	____	____	____	____	____
16. Postage, telephone & telegraph							
A. Postage & freight	____	Salaries	____	____	____	____	____
B. Telecommunications	____	Salaries	____	____	____	____	____
C. Bank charges for collection & exchange	____	Salaries	____	____	____	____	____
17. Legal & auditing							
A. Auditing fees	____	Special Study	____	____	____	____	____
B. Investment counsel fees	____	Special Study	____	____	____	____	____
C. Legal fees—lobbying & public relations	____	Special Study	____	____	____	____	____
D. Other legal fees	____	Special Study	____	____	____	____	____
E. Other	____	Special Study	____	____	____	____	____
18. Taxes, licenses & fees							
A. State & local insurance taxes	____	Direct				____	
B. Payroll taxes	____	Direct				____	
C. Insurance Department fees	____	Direct				____	
D. All other	____	Direct				____	
19. Real estate expenses	____	Direct					____
20. Real estate taxes	____	Direct					____
21. Miscellaneous							
A. Donations	____	Special Study	____	____	____	____	____
B. Income from special services	____	Special Study	____	____	____	____	____
C. Other	____	Special Study	____	____	____	____	____
22. Total	____	____	____	____	____	____	____

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Instructions

Schedule 3
Loss Adjustment Expenses
Allocation to Private Passenger Automobile Insurance

1. The amounts shown in Column A should be the same as the amounts in Column C of Schedule 2.
2. Follow the instruction in Column B in allocating or assigning each expense type to private passenger automobile insurance and all other lines of insurance. If no specific instruction is provided, specify and follow the basis of allocation in accordance with the instructions provided in Part 6 of the Financial Condition Examiners Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.
3. In Column C show Loss Adjustment Expenses assigned or allocated to private passenger automobile insurance.
4. In Column D show Loss Adjustment Expenses assigned or allocated to all other lines of insurance.

EXPENSE EXHIBIT 1—Schedule 3
LOSS ADJUSTMENT EXPENSES
ALLOCATION TO PRIVATE PASSENGER AUTOMOBILE INSURANCE

Company Name:_____

NAIC CODE:_____

	Company Loss Adjust. Expenses (A)	Basis of Alloc. to Lines of Ins. (B)	Private Passenger Auto Ins. (C)	All Other Lines of Insurance (D)
1. Claim adjustment services				
A. Direct				
1. Independent adjusters	____	Direct	____	____
2. Other legal services	____	Direct	____	____
3. Court costs	____	Direct	____	____
4. Medical exams	____	Direct	____	____
5. Other	____	Direct	____	____
B. Reinsurance assumed	____	Direct	____	____
C. Reinsurance ceded	____	Direct	____	____
D. Net claim adjustment services (A + B - C)	____		____	____
2. Commission and brokerage				
A. Direct	____	Direct	____	____
B. Reinsurance assumed	____			
C. Reinsurance ceded	____			
D. Contingent—net	____			
E. Policy and membership fees	____			
F. Net commission and brokerage (A + B - C + D + E)	____	____	____	____
3. Allowances to managers & agents	____	____	____	____
4. Salaries				
A. Underwriting related	____	____	____	____
B. Claims related	____	____	____	____
C. Investment related	____	____	____	____
D. Lobbying	____	____	____	____
E. Other executive	____	____	____	____
F. Other general clerical & support	____	____	____	____
5. Employee relations & welfare				
A. Pension & retirement benefits	____	Salaries	____	____
B. Insurance	____	Salaries	____	____
C. Gatherings, outings & entertainment	____	Salaries	____	____
D. Other	____	Salaries	____	____

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6. Insurance				
A. Self insurance	____	Salaries	____	____
B. Purchased from affiliates	____	Salaries	____	____
C. Purchased from independent carriers	____	Salaries	____	____
7. Directors fees	____	Salaries	____	____
8. Travel & travel items				
A. Employee transportation	____	Special Study	____	____
B. Employee transfer	____	Special Study	____	____
C. Auto depreciation	____	Special Study	____	____
D. Auto maintenance & operating expenses	____	Special Study	____	____
E. Auto leasing	____	Special Study	____	____
F. Dues & subscriptions—social & civic clubs	____	Special Study	____	____
G. Cost of favors, presents, entertainment	____	Special Study	____	____
H. Other	____	Special Study	____	____
9. Rent & rent items				
A. Space rented from others	____	Salaries	____	____
B. Space in owned buildings	____	Salaries	____	____
C. Other	____	Salaries	____	____
10. Equipment				
A. Rent	____	Salaries	____	____
B. Repair	____	Salaries	____	____
C. Depreciation	____	Salaries	____	____
11. Printing & stationery				
A. Printing, stationery, office supplies	____	Salaries	____	____
B. Policies & policy forms	____	Salaries	____	____
C. Books, newspapers, periodicals	____	Salaries	____	____
D. Other	____	Salaries	____	____
12. Postage, telephone & telegraph				
A. Postage & freight	____	Salaries	____	____
B. Telecommunications	____	Salaries	____	____
C. Bank charges for collection & exchange	____	Salaries	____	____
13. Legal & auditing				
A. Auditing fees	____	Special Study	____	____
B. Investment counsel fees	____	Special Study	____	____
C. Legal fees—lobbying & public relations	____	Special Study	____	____
D. Other legal fees	____	Special Study	____	____
E. Other	____	Special Study	____	____
14. Miscellaneous				
A. Donations	____	Special Study	____	____
B. Income from special services	____	Special Study	____	____
C. Other	____	Special Study	____	____
15. Total	____	____	____	____

Instructions

Schedule 3a
Loss Adjustment Expenses
Allocation to Coverage

1. The amounts shown in Column A should be the same as the amounts in Column C of Schedule 3.
2. Follow the instruction in Column B in allocating or assigning each expense type to each type of coverage. If no specific instruction is provided, specify and follow the basis of allocation that your group follows in accordance with the instructions provided in Part 6 of the Financial Condition Examiners Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the

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schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.

3. In Columns C, D, E, F, G, H, and I show the Loss Adjustment Expenses assigned or allocated to the specified coverage.

EXPENSE EXHIBIT 1—Schedule 3a
PRIVATE PASSENGER AUTOMOBILE INSURANCE
LOSS ADJUSTMENT EXPENSES
ALLOCATION TO COVERAGE

Company Name:_____

NAIC CODE:_____

	P.P. Auto Loss Adjust. Expenses (A)	Basis of Alloc. to Coverage (B)	Bodily Injury (C)	Personal Injury Protection (D)	Property Damage (E)	Compre-hensive (F)	Collision (G)	Uninsured Motorist (H)	All Other (I)
1. Claim adjustment services									
A. Direct									
1. Independent adjusters	____	Direct	____	____	____	____	____	____	____
2. Other legal services	____	Direct	____	____	____	____	____	____	____
3. Court costs	____	Direct	____	____	____	____	____	____	____
4. Medical exams	____	Direct	____	____	____	____	____	____	____
5. Other	____	Direct	____	____	____	____	____	____	____
B. Reinsurance assumed	____	Direct	____	____	____	____	____	____	____
C. Reinsurance ceded	____	Direct	____	____	____	____	____	____	____
D. Net claim adjustment services (A + B - C)	____		____	____	____	____	____	____	____
2. Commission and brokerage									
A. Direct	____	Direct	____	____	____	____	____	____	____
B. Reinsurance assumed	____								
C. Reinsurance ceded	____								
D. Contingent—net	____								
E. Policy and membership fees	____								
F. Net commission and brokerage (A + B - C + D + E)	____		____	____	____	____	____	____	____
3. Allowances to managers & agents	____	____	____	____	____	____	____	____	____
4. Salaries									
A. Underwriting related	____	____	____	____	____	____	____	____	____
B. Claims related	____	____	____	____	____	____	____	____	____
C. Investment related	____	____	____	____	____	____	____	____	____
D. Lobbying	____	____	____	____	____	____	____	____	____
E. Other executive	____	____	____	____	____	____	____	____	____
F. Other general clerical & support	____	____	____	____	____	____	____	____	____
5. Employee relations & welfare									
A. Pension & retirement benefits	____	Salaries	____	____	____	____	____	____	____
B. Insurance	____	Salaries	____	____	____	____	____	____	____
C. Gatherings, outings & entertainment	____	Salaries	____	____	____	____	____	____	____
D. Other	____	Salaries	____	____	____	____	____	____	____
6. Insurance									
A. Self insurance	____	Salaries	____	____	____	____	____	____	____
B. Purchased from affiliates	____	Salaries	____	____	____	____	____	____	____
C. Purchased from independent carriers	____	Salaries	____	____	____	____	____	____	____

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7. Directors fees	____	Salaries	____	____	____	____	____	____	____
8. Travel & travel items									
A. Employee transportation	____	Special Study	____	____	____	____	____	____	____
B. Employee transfer	____	Special Study	____	____	____	____	____	____	____
C. Auto depreciation	____	Special Study	____	____	____	____	____	____	____
D. Auto maintenance & operating expenses	____	Special Study	____	____	____	____	____	____	____
E. Auto leasing	____	Special Study	____	____	____	____	____	____	____
F. Dues & subscriptions—social & civic clubs	____	Special Study	____	____	____	____	____	____	____
G. Cost of favors, presents, entertainment	____	Special Study	____	____	____	____	____	____	____
H. Other	____	Special Study	____	____	____	____	____	____	____
9. Rent & rent items									
A. Space rented from others	____	Salaries	____	____	____	____	____	____	____
B. Space in owned buildings	____	Salaries	____	____	____	____	____	____	____
C. Other	____	Salaries	____	____	____	____	____	____	____
10. Equipment									
A. Rent	____	Salaries	____	____	____	____	____	____	____
B. Repair	____	Salaries	____	____	____	____	____	____	____
C. Depreciation	____	Salaries	____	____	____	____	____	____	____
11. Printing & stationery									
A. Printing, stationery, office supplies	____	Salaries	____	____	____	____	____	____	____
B. Policies & policy forms	____	Salaries	____	____	____	____	____	____	____
C. Books, newspapers, periodicals	____	Salaries	____	____	____	____	____	____	____
D. Other	____	Salaries	____	____	____	____	____	____	____
12. Postage, telephone & telegraph									
A. Postage & freight	____	Salaries	____	____	____	____	____	____	____
B. Telecommunications	____	Salaries	____	____	____	____	____	____	____
C. Bank charges for collection & exchange	____	Salaries	____	____	____	____	____	____	____
13. Legal & auditing									
A. Auditing fees	____	Special Study	____	____	____	____	____	____	____
B. Investment counsel fees	____	Special Study	____	____	____	____	____	____	____
C. Legal fees—lobbying & public relations	____	Special Study	____	____	____	____	____	____	____
D. Other legal fees	____	Special Study	____	____	____	____	____	____	____
E. Other	____	Special Study	____	____	____	____	____	____	____
14. Miscellaneous									
A. Donations	____	Special Study	____	____	____	____	____	____	____
B. Income from special services	____	Special Study	____	____	____	____	____	____	____
C. Other	____	Special Study	____	____	____	____	____	____	____
15. Total	____	____	____	____	____	____	____	____	____

Instructions

Schedule 3b
Loss Adjustment Expenses
Allocation to New Jersey

1. The amounts shown in Column A should be the same as the amounts shown in Columns C, D, E, F, G, H or I of Schedule 3a. A separate Schedule 3b is required to be completed by the carrier for each coverage type (Bodily Injury, Personal Injury Protection, Property Damage, Comprehensive, Collision, Uninsured Motorist, and all other).

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2. Follow the instruction in Column B in allocating or assigning each expense type to New Jersey. If no specific instruction is provided, specify and follow the same basis for allocation used in allocating that expense type to coverage (line of insurance) as specified in Part 6 of the Financial Condition Examiners Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.

3. Salaries which cannot be directly assigned will be allocated based on the number of claims reported and the number of exposures. One half of allocable salaries shall be allocated based on the number of claims reported and one half of allocable salaries shall be allocated based on the number of exposures.

EXPENSE EXHIBIT 1—Schedule 3b
(Coverage)
LOSS ADJUSTMENT EXPENSES
ALLOCATION TO STATE OF NEW JERSEY

Company Name:_____

NAIC CODE:_____

	Loss Adjust. Expenses For (Coverage) (A)	Basis of Alloc. to New Jersey (B)	New Jersey Loss Adjust. Expenses (C)
1. Claim adjustment services			
A. Direct	_____	Direct	_____
1. Independent adjusters	_____	Direct	_____
2. Other legal services	_____	Direct	_____
3. Court costs	_____	Direct	_____
4. Medical exams	_____	Direct	_____
5. Other	_____	Direct	_____
B. Reinsurance assumed	_____	Direct	_____
C. Reinsurance ceded	_____	Direct	_____
D. Net claim adjustment services (A + B - C)	_____		_____
2. Commission and brokerage			
A. Direct	_____	Direct	_____
B. Reinsurance assumed	_____		
C. Reinsurance ceded	_____		
D. Contingent—net	_____		
E. Policy and membership fees	_____		
F. Net commission and brokerage (A + B - C + D + E)	_____		_____
3. Allowances to managers & agents	_____	_____	_____
4. Salaries			
A. Underwriting related	_____		
B. Claims related	_____	Claims & Expos.	_____
C. Investment related	_____		
D. Lobbying	_____	_____	_____
E. Other executive	_____	Claims & Expos.	_____
F. Other general clerical & support	_____	Claims & Expos.	_____
5. Employee relations & welfare			
A. Pension & retirement benefits	_____	Salaries	_____
B. Insurance	_____	Salaries	_____
C. Gatherings, outings & entertainment	_____	Salaries	_____
D. Other	_____	Salaries	_____
6. Insurance			
A. Self insurance	_____	Salaries	_____
B. Purchased from affiliates	_____	Salaries	_____
C. Purchased from independent carriers	_____	Salaries	_____

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7. Directors fees	_____	Salaries	_____
8. Travel & travel items			
A. Employee transportation	_____	Special Study	_____
B. Employee transfer	_____	Special Study	_____
C. Auto depreciation	_____	Special Study	_____
D. Auto maintenance & operating expenses	_____	Special Study	_____
E. Auto leasing	_____	Special Study	_____
F. Dues & subscriptions—social & civic clubs	_____	Special Study	_____
G. Cost of favors, presents, entertainment	_____	Special Study	_____
H. Other	_____	Special Study	_____
9. Rent & rent items			
A. Space rented from others	_____	Salaries	_____
B. Space in owned buildings	_____	Salaries	_____
C. Other	_____	Salaries	_____
10. Equipment			
A. Rent	_____	Salaries	_____
B. Repair	_____	Salaries	_____
C. Depreciation	_____	Salaries	_____
11. Printing & stationery			
A. Printing, stationery, office supplies	_____	Salaries	_____
B. Policies & policy forms	_____	Salaries	_____
C. Books, newspapers, periodicals	_____	Salaries	_____
D. Other	_____	Salaries	_____
12. Postage, telephone & telegraph			
A. Postage & freight	_____	Salaries	_____
B. Telecommunications	_____	Salaries	_____
C. Bank charges for collection & exchange	_____	Salaries	_____
13. Legal & auditing			
A. Auditing fees	_____	Special Study	_____
B. Investment counsel fees	_____	Special Study	_____
C. Legal fees—lobbying & public relations	_____	Special Study	_____
D. Other legal fees	_____	Special Study	_____
E. Other	_____	Special Study	_____
14. Miscellaneous			
A. Donations	_____	Special Study	_____
B. Income from special services	_____	Special Study	_____
C. Other	_____	Special Study	_____
15. Total	_____	_____	_____

Instructions

Schedule 3c
Loss Adjustment Expenses
Allocation to New Jersey Voluntary Market and NJAFIUA

1. The amounts shown in Column A should be the same as the amounts shown in Column C of Schedule 3b. A separate Schedule 3c is required to be completed by the carrier for each coverage type (Bodily Injury, Personal Injury Protection, Property Damage, Comprehensive, Collision, Uninsured Motorist, and all other).

2. Follow the instruction in Column B in allocating or assigning each expense type to the New Jersey Voluntary Market and the NJAFIUA. If no specific instruction is provided, specify and follow the same basis for allocation used in allocating that expense type to coverage (line of insurance) as specified in Part 6 of the Financial Condition Examiners' Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.

3. All expenses which can be directly assigned to the NJAFIUA or to the voluntary market should be directly assigned.

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EXPENSE EXHIBIT I—Schedule 3c
(Coverage)
NEW JERSEY LOSS ADJUSTMENT EXPENSES
ALLOCATION TO VOLUNTARY MARKET AND NJAFIUA

Company Name:_____

NAIC CODE:_____

	Company Loss Adjust. Expenses (A)	Basis of Allocation (B)	Voluntary Market Loss Adj. Exp. (C)	NJAFIUA Loss Adjust. Expenses (D)
1. Claim adjustment services				
A. Direct				
1. Independent adjusters	____	Direct	____	____
2. Other legal services	____	Direct	____	____
3. Court costs	____	Direct	____	____
4. Medical exams	____	Direct	____	____
5. Other	____	Direct	____	____
B. Reinsurance assumed	____	Direct	____	
C. Reinsurance ceded	____	Direct	____	
D. Net claim adjustment services (A + B - C)	____		____	____
2. Commission and brokerage				
A. Direct	____	Direct	____	____
B. Reinsurance assumed	____			
C. Reinsurance ceded	____			
D. Contingent—net	____			
E. Policy and membership fees	____			
F. Net commission and brokerage (A + B - C + D + E)	____		____	____
3. Allowances to managers & agents	____	____	____	____
4. Salaries				
A. Underwriting related	____			
B. Claims related	____	Direct*	____	____
C. Investment related	____			
D. Lobbying	____	Direct	____	
E. Other executive	____	Other Salaries†	____	____
F. Other general clerical & support	____	Other Salaries†	____	____
5. Employee relations & welfare				
A. Pension & retirement benefits	____	Salaries	____	____
B. Insurance	____	Salaries	____	____
C. Gatherings, outings & entertainment	____	Salaries	____	____
D. Other	____	Salaries	____	____
6. Insurance				
A. Self insurance	____	Salaries	____	____
B. Purchased from affiliates	____	Salaries	____	____
C. Purchased from independent carriers	____	Salaries	____	____
7. Directors fees	____	Salaries	____	____
8. Travel & travel items				
A. Employee transportation	____	Direct*	____	____
B. Employee transfer	____	Direct*	____	____
C. Auto depreciation	____	Direct*	____	____
D. Auto maintenance & operating expenses	____	Direct*	____	____

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E. Auto leasing	____	Direct*	____	____
F. Dues & subscriptions—social & civic clubs	____	Direct*	____	____
G. Cost of favors, presents, entertainment	____	Direct*	____	____
H. Other	____	Direct*	____	____
9. Rent & rent items				
A. Space rented from others	____	Salaries	____	____
B. Space in owned buildings	____	Salaries	____	____
C. Other	____	Salaries	____	____
10. Equipment				
A. Rent	____	Salaries	____	____
B. Repair	____	Salaries	____	____
C. Depreciation	____	Salaries	____	____
11. Printing & stationery				
A. Printing, stationery, office supplies	____	Salaries	____	____
B. Policies & policy forms	____	Salaries	____	____
C. Books, newspapers, periodicals	____	Salaries	____	____
D. Other	____	Salaries	____	____
12. Postage, telephone & telegraph				
A. Postage & freight	____	Salaries	____	____
B. Telecommunications	____	Salaries	____	____
C. Bank charges for collection & exchange	____	Salaries	____	____
13. Legal & auditing				
A. Auditing fees	____	Direct*	____	____
B. Investment counsel fees	____	Direct*	____	____
C. Legal fees—lobbying & public relations	____	Direct*	____	____
D. Other legal fees	____	Direct*	____	____
E. Other	____	Direct*	____	____
14. Miscellaneous				
A. Donations	____	Direct	____	____
B. Income from special services	____	Special Study	____	____
C. Other	____	Special Study	____	____
15. Total	____	____	____	____

*Those costs which are specifically identifiable as costs incurred for the NJAFIUA should be directly assigned to the NJAFIUA. Costs which cannot be directly assigned should be allocated between the NJAFIUA and the voluntary market on the basis of special studies.

†Allocation to the NJAFIUA should be based on the proportion of salaries assigned or allocated to the NJAFIUA on line 4B.

Instructions

Schedule 4
Acquisition, Field Supervision and Collection Expenses
Allocation to Private Passenger Automobile Insurance

1. The amounts shown in Column A should be the same as the amount shown in Column D of Schedule 2.
2. Follow the instruction in Column B in allocating or assigning each expense type to private passenger automobile insurance and all other lines of insurance. If no specific instruction is provided, specify and follow the basis of allocation in accordance with the instructions provided in Part 6 of the Financial Condition Examiners Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.
3. In Column C show Acquisition, Field Supervision and Collection Expenses assigned or allocated to private passenger automobile insurance.
4. In Column D show Acquisition, Field Supervision and Collection Expenses assigned or allocated to all other lines of insurance.

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EXPENSE EXHIBIT 1—Schedule 4
ACQUISITION, FIELD SUPERVISION, AND COLLECTION EXPENSES
ALLOCATION TO PRIVATE PASSENGER AUTOMOBILE INSURANCE

Company Name:_____

NAIC CODE:_____

	Company A, FS & C Expenses (A)	Basis of Alloc. to Line of Ins. (B)	Private Passenger Auto Ins. (C)	All Other Lines of Insurance (D)
1. Commission and brokerage				
A. Direct	____	Direct	____	____
B. Reinsurance assumed	____	Direct	____	____
C. Reinsurance ceded	____	Direct	____	____
D. Contingent—net	____	Special Study	____	____
E. Policy and membership fees	____	Direct	____	____
F. Net commission and brokerage (A + B - C + D + E)	____		____	____
2. Allowances to managers & agents	____	____	____	____
3. Advertising				
A. Product sales & advertising	____	____	____	____
B. Public relations counsel & other nonsales advertising	____	____	____	____
4. Salaries				
A. Underwriting related	____	____	____	____
B. Claims related	____			
C. Investment related	____			
D. Lobbying	____	____	____	____
E. Other executive	____	____	____	____
F. Other general clerical & support	____	____	____	____
5. Employee relations & welfare				
A. Pension & retirement benefits	____	Salaries	____	____
B. Insurance	____	Salaries	____	____
C. Gatherings, outings & entertainment	____	Salaries	____	____
D. Other	____	Salaries	____	____
6. Insurance				
A. Self insurance	____	Salaries	____	____
B. Purchased from affiliates	____	Salaries	____	____
C. Purchased from independent carriers	____	Salaries	____	____
7. Directors fees	____	Salaries	____	____
8. Travel & travel items				
A. Employee transportation	____	Special Study	____	____
B. Employee transfer	____	Special Study	____	____
C. Auto depreciation	____	Special Study	____	____
D. Auto maintenance & operating expenses	____	Special Study	____	____
E. Auto leasing	____	Special Study	____	____
F. Dues & subscriptions—social & civic clubs	____	Special Study	____	____
G. Cost of favors, presents, entertainment	____	Special Study	____	____
H. Other	____	Special Study	____	____
9. Rent & rent items				
A. Space rented from others	____	Salaries	____	____
B. Space in owned buildings	____	Salaries	____	____
C. Other	____	Salaries	____	____

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10. Equipment				
A. Rent	____	Salaries	____	____
B. Repair	____	Salaries	____	____
C. Depreciation	____	Salaries	____	____
11. Printing & stationery				
A. Printing, stationery, office supplies	____	Salaries	____	____
B. Policies & policy forms	____	Salaries	____	____
C. Books, newspapers, periodicals	____	Salaries	____	____
D. Other	____	Salaries	____	____
12. Postage, telephone & telegraph				
A. Postage & freight	____	Salaries	____	____
B. Telecommunications	____	Salaries	____	____
C. Bank charges for collection & exchange	____	Salaries	____	____
D. Other	____	Salaries	____	____
13. Legal and auditing				
A. Auditing fees	____	Special Study	____	____
B. Investment counsel fees	____	Special Study	____	____
C. Legal fees—lobbying & public relations	____	Special Study	____	____
D. Other legal fees	____	Special Study	____	____
E. Other	____	Special Study	____	____
14. Miscellaneous				
A. Donations	____	Special Study	____	____
B. Income from special services	____	Special Study	____	____
C. Other	____	Special Study	____	____
15. Total	____	____	____	____

Instructions

Schedule 4a
Acquisition, Field Supervision and Collection Expenses
Allocation to Coverage

1. The amounts shown in Column A should be the same as the amounts in Column C of Schedule 4.
2. Follow the instruction in Column B in allocating or assigning each expense type to each type of coverage. If no specific instruction is provided, specify and follow the basis of allocation in accordance with the instructions provided in Part 6 of the Financial Condition Examiners Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.
3. In Columns C, D, E, F, G, H, and I show the Acquisition, Field Supervision and Collection Expenses assigned or allocated to the specified coverage.

EXPENSE EXHIBIT 1—Schedule 4a
PRIVATE PASSENGER AUTOMOBILE INSURANCE
ACQUISITION, FIELD SUPERVISION, AND COLLECTION EXPENSES
ALLOCATION TO COVERAGE

Company Name:_____

NAIC CODE:_____

	P.P. Auto A, FS & C Expenses (A)	Basis of Alloc. to Coverage (B)	Bodily Injury (C)	Personal Injury Protection (D)	Property Damage (E)	Comprehensive (F)	Collision (G)	Uninsured Motorist (H)	All Others (I)
1. Commission and brokerage									
A. Direct	____	Direct	____	____	____	____	____	____	____
B. Reinsurance assumed	____	Direct	____	____	____	____	____	____	____
C. Reinsurance ceded	____	Direct	____	____	____	____	____	____	____
D. Contingent—net	____	Special Study	____	____	____	____	____	____	____
E. Policy and membership fees	____	Direct	____	____	____	____	____	____	____

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F. Net Commission and brokerage (A + B - C + D + E)	____		____	____	____	____	____	____	____
2. Allowances to managers & agents	____	____	____	____	____	____	____	____	____
3. Advertising									
A. Product sales & advertising	____	____	____	____	____	____	____	____	____
B. Public relations counsel & other nonsales advertising	____	____	____	____	____	____	____	____	____
4. Salaries									
A. Underwriting related	____	____	____	____	____	____	____	____	____
B. Claims related	____								
C. Investment related	____								
D. Lobbying	____	____	____	____	____	____	____	____	____
E. Other executive	____	____	____	____	____	____	____	____	____
F. Other general clerical & support	____	____	____	____	____	____	____	____	____
5. Employee relations & welfare									
A. Pension & retirement benefits	____	Salaries	____	____	____	____	____	____	____
B. Insurance	____	Salaries	____	____	____	____	____	____	____
C. Gatherings, outings & entertainment	____	Salaries	____	____	____	____	____	____	____
D. Other	____	Salaries	____	____	____	____	____	____	____
6. Insurance									
A. Self insurance	____	Salaries	____	____	____	____	____	____	____
B. Purchased from affiliates	____	Salaries	____	____	____	____	____	____	____
C. Purchased from independent carriers	____	Salaries	____	____	____	____	____	____	____
7. Directors fees	____	Salaries	____	____	____	____	____	____	____
8. Travel & travel items									
A. Employee transportation	____	Special Study	____	____	____	____	____	____	____
B. Employee transfer	____	Special Study	____	____	____	____	____	____	____
C. Auto depreciation	____	Special Study	____	____	____	____	____	____	____
D. Auto maintenance & operating expenses	____	Special Study	____	____	____	____	____	____	____
E. Auto leasing	____	Special Study	____	____	____	____	____	____	____
F. Dues & subscriptions—social & civic clubs	____	Special Study	____	____	____	____	____	____	____
G. Cost of favors, presents, entertainment	____	Special Study	____	____	____	____	____	____	____
H. Other	____	Special Study	____	____	____	____	____	____	____
9. Rent & rent items									
A. Space rented from others	____	Salaries	____	____	____	____	____	____	____
B. Space in owned buildings	____	Salaries	____	____	____	____	____	____	____
C. Other	____	Salaries	____	____	____	____	____	____	____
10. Equipment									
A. Rent	____	Salaries	____	____	____	____	____	____	____
B. Repair	____	Salaries	____	____	____	____	____	____	____
C. Depreciation	____	Salaries	____	____	____	____	____	____	____
11. Printing & stationery									
A. Printing, stationery, office supplies	____	Salaries	____	____	____	____	____	____	____
B. Policies & policy forms	____	Salaries	____	____	____	____	____	____	____

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C. Books, newspapers, periodicals	____	Salaries	____	____	____	____	____	____	____
D. Other	____	Salaries	____	____	____	____	____	____	____
12. Postage, telephone & telegraph									
A. Postage & freight	____	Salaries	____	____	____	____	____	____	____
B. Telecommunications	____	Salaries	____	____	____	____	____	____	____
C. Bank charges for collection & exchange	____	Salaries	____	____	____	____	____	____	____
D. Other	____	Salaries	____	____	____	____	____	____	____
13. Legal & auditing									
A. Auditing fees	____	Special Study	____	____	____	____	____	____	____
B. Investment counsel fees	____	Special Study	____	____	____	____	____	____	____
C. Legal fees—lobbying & public relations	____	Special Study	____	____	____	____	____	____	____
D. Other legal fees	____	Special Study	____	____	____	____	____	____	____
E. Other	____	Special Study	____	____	____	____	____	____	____
14. Miscellaneous									
A. Donations	____	Special Study	____	____	____	____	____	____	____
B. Income from special services	____	Special Study	____	____	____	____	____	____	____
C. Other	____	Special Study	____	____	____	____	____	____	____
15. Total	____	____	____	____	____	____	____	____	____

Instructions

Schedule 4b
Acquisition, Field Supervision and Collection Expenses
Allocation to New Jersey

1. The amounts shown in Column A should be the same as the amounts shown in Columns C, D, E, F, G, H or I of Schedule 4a. A separate Schedule 4b is required to be completed by the carrier for each coverage type (Bodily Injury, Personal Injury Protection, Property Damage, Comprehensive, Collision, Uninsured Motorist, and all other).

2. Follow the instruction in Column B in allocating or assigning each expense type to New Jersey. If no specific instruction is provided, specify and follow the same basis for allocation used in allocating that expense type to coverage (line of insurance) as specified in Part 6 of the Financial Condition Examiners' Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.

EXPENSE EXHIBIT 1—Schedule 4b
(Coverage)
ACQUISITION, FIELD SUPERVISION AND COLLECTION EXPENSES
ALLOCATION TO STATE OF NEW JERSEY

Company Name:_____

NAIC CODE:_____

	A, FS & C For (Coverage) (A)	Basis of Alloc. to New Jersey (B)	New Jersey A, FS & C Expenses (C)
1. Commission and brokerage			
A. Direct	_____	Direct	_____
B. Reinsurance assumed	_____	Direct	_____
C. Reinsurance ceded	_____	Direct	_____
D. Contingent—net	_____	Special Study	_____
E. Policy and membership fees	_____	Direct	_____
F. Net commission and brokerage (A + B - C + D + E)	_____		_____
2. Allowances to managers & agents	_____	_____	_____
3. Advertising			
A. Product sales & advertising	_____	_____	_____
B. Public relations counsel & other nonsales advertising	_____	_____	_____

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4. Salaries			
A. Underwriting related	_____	_____	_____
B. Claims related	_____		
C. Investment related	_____		
D. Lobbying	_____	_____	_____
E. Other executive	_____	_____	_____
F. Other general clerical & support	_____	_____	_____
5. Employee relations & welfare			
A. Pension & retirement benefits	_____	Salaries	_____
B. Insurance	_____	Salaries	_____
C. Gatherings, outings & entertainment	_____	Salaries	_____
D. Other	_____	Salaries	_____
6. Insurance			
A. Self insurance	_____	Salaries	_____
B. Purchased from affiliates	_____	Salaries	_____
C. Purchased from independent carriers	_____	Salaries	_____
7. Directors fees	_____	Salaries	_____
8. Travel & travel items			
A. Employee transportation	_____	Special Study	_____
B. Employee transfer	_____	Special Study	_____
C. Auto depreciation	_____	Special Study	_____
D. Auto maintenance & operating expenses	_____	Special Study	_____
E. Auto leasing	_____	Special Study	_____
F. Dues & subscriptions—social & civic clubs	_____	Special Study	_____
G. Cost of favors, presents, entertainment	_____	Special Study	_____
H. Other	_____	Special Study	_____
9. Rent & rent items			
A. Space rented from others	_____	Salaries	_____
B. Space in owned buildings	_____	Salaries	_____
C. Other	_____	Salaries	_____
10. Equipment			
A. Rent	_____	Salaries	_____
B. Repair	_____	Salaries	_____
C. Depreciation	_____	Salaries	_____
11. Printing & stationery			
A. Printing, stationery, office supplies	_____	Salaries	_____
B. Policies & policy forms	_____	Salaries	_____
C. Books, newspapers, periodicals	_____	Salaries	_____
D. Other	_____	Salaries	_____
12. Postage, telephone & telegraph			
A. Postage & freight	_____	Salaries	_____
B. Telecommunications	_____	Salaries	_____
C. Bank charges for collection & exchange	_____	Salaries	_____
D. Other	_____	Salaries	_____
13. Legal & auditing			
A. Auditing fees	_____	Special Study	_____
B. Investment counsel fees	_____	Special Study	_____
C. Legal fees—lobbying & public relations	_____	Special Study	_____
D. Other legal fees	_____	Special Study	_____

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E. Other	_____	Special Study	_____
14. Miscellaneous			
A. Donations	_____	Special Study	_____
B. Income from special services	_____	Special Study	_____
C. Other	_____	Special Study	_____
15. Total	_____	_____	_____

Instructions

Schedule 4c
Acquisition, Field Supervision and Collection Expenses
Allocation to New Jersey Voluntary Market and NJAFIUA

1. The amounts shown in Column A should be the same as the amounts shown in Column C of Schedule 4b. A separate Schedule 4c is required to be completed by the carrier for each coverage type (Bodily Injury, Personal Injury Protection, Property Damage, Comprehensive, Collision, Uninsured Motorist, and all other).

2. Follow the instruction in Column B in allocating or assigning each expense type to the New Jersey Voluntary Market and the NJAFIUA. If no specific instruction is provided, specify and follow the same basis for allocation used in allocating that expense type to coverage (line of insurance) as specified in Part 6 of the Financial Condition Examiners' Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.

3. All expenses which can be directly assigned to the NJAFIUA or to the voluntary market should be directly assigned.

EXPENSE EXHIBIT 1—Schedule 4c
(Coverage)
ACQUISITION, FIELD SUPERVISION AND COLLECTION EXPENSES
ALLOCATION TO NEW JERSEY VOLUNTARY MARKET AND NJAFIUA

Company Name:_____

NAIC CODE:_____

	New Jersey A, FS & C for (Coverage) (A)	Basis of Alloc. to NJAFIUA (B)	Voluntary Market A, FS & C Exp. (C)	NJAFIUA A, FS & C Expenses (D)
1. Commission and brokerage				
A. Direct	____	Direct	____	____
B. Reinsurance assumed	____	Direct	____	
C. Reinsurance ceded	____	Direct	____	
D. Contingent—net	____	Direct	____	
E. Policy and membership fees	____	Direct	____	____
F. Net commission and brokerage (A + B - C + D + E)	____		____	____
2. Allowances to managers & agents	____	____	____	____
3. Advertising				
A. Product sales & advertising	____	Direct	____	
B. Public relations counsel & other nonsales advertising	____	Direct	____	
4. Salaries				
A. Underwriting related	____	Direct*	____	____
B. Claims related	____			
C. Investment related	____			
D. Lobbying	____	____	____	____
E. Other executive	____	Other Salaries†	____	____
F. Other general clerical & support	____	Other Salaries†	____	____
5. Employee relations & welfare				
A. Pension & retirement benefits	____	Salaries	____	____
B. Insurance	____	Salaries	____	____
C. Gatherings, outings & entertainment	____	Salaries	____	____
D. Other	____	Salaries	____	____

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6. Insurance				
A. Self insurance	____	Salaries	____	____
B. Purchased from affiliates	____	Salaries	____	____
C. Purchased from independent carriers	____	Salaries	____	____
7. Directors fees	____	Salaries	____	____
8. Travel & travel items				
A. Employee transportation	____	Direct*	____	____
B. Employee transfer	____	Direct*	____	____
C. Auto depreciation	____	Direct*	____	____
D. Auto maintenance & operating expenses	____	Direct*	____	____
E. Auto leasing	____	Direct*	____	____
F. Dues & subscriptions—social & civic clubs	____	Direct*	____	____
G. Cost of favors, presents, entertainment	____	Direct*	____	____
H. Other	____	Direct*	____	____
9. Rent & rent items				
A. Space rented from others	____	Salaries	____	____
B. Space in owned buildings	____	Salaries	____	____
C. Other	____	Salaries	____	____
10. Equipment				
A. Rent	____	Salaries	____	____
B. Repair	____	Salaries	____	____
C. Depreciation	____	Salaries	____	____
11. Printing & stationery				
A. Printing, stationery, office supplies	____	Salaries	____	____
B. Policies & policy forms	____	Salaries	____	____
C. Books, newspapers, periodicals	____	Salaries	____	____
D. Other	____	Salaries	____	____
12. Postage, telephone & telegraph				
A. Postage & freight	____	Salaries	____	____
B. Telecommunications	____	Salaries	____	____
C. Bank charges for collection & exchange	____	Salaries	____	____
D. Other	____	Salaries	____	____
13. Legal & auditing				
A. Auditing fees	____	Direct*	____	____
B. Investment counsel fees	____	Direct*	____	____
C. Legal fees—lobbying & public relations	____	Direct*	____	____
D. Other legal fees	____	Direct*	____	____
E. Other	____	Direct*	____	____
14. Miscellaneous				
A. Donations	____	Direct	____	
B. Income from special services	____	Special Study	____	____
C. Other	____	Special Study	____	____
15. Total	____	____	____	____

*Those costs which are specifically identifiable as costs incurred for the NJAFIUA should be directly assigned to the NJAFIUA. Costs which cannot be directly assigned should be allocated between the NJAFIUA and the voluntary market on the basis of special studies.

†Allocation to the NJAFIUA should be based on the proportion of salaries assigned or allocated to the NJAFIUA on line 4A.

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Instructions

Schedule 5
General Expenses
Allocation to Private Passenger Automobile Insurance

1. The amounts shown in Column A should be the same as the amounts in Column E of Schedule 2.
2. Follow the instruction in Column B in allocating or assigning each expense type to each line of insurance. If no specific instruction is provided, specify and follow the basis of allocation in accordance with the instructions provided in Part 6 of the Financial Condition Examiners Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.
3. In Column C show General Expenses assigned or allocated to private passenger automobile insurance.
4. In Column D show General Expenses assigned or allocated to all other lines of insurance.

EXPENSE EXHIBIT 1—Schedule 5
GENERAL EXPENSES
ALLOCATION TO PRIVATE PASSENGER AUTOMOBILE INSURANCE

Company Name:_____

NAIC CODE:_____

	Company General Expenses (A)	Basis of Allocation to Line of Ins. (B)	Private Passenger Auto Ins. (C)	All Other Lines (D)
1. Commission and brokerage				
A. Direct	____	Direct	____	____
B. Reinsurance assumed	____			
C. Reinsurance ceded	____			
D. Contingent—net	____			
E. Policy and membership fees	____			
F. Net commission and brokerage (A + B - C + D + E)	____		____	____
2. Allowances to managers & agents	____	____	____	____
3. Boards, bureaus and assoc.	____	Special Study	____	____
4. Surveys & underwriting reports	____	Special Study	____	____
5. Audit of assureds records	____	Special Study	____	____
6. Salaries				
A. Underwriting related	____			
B. Claims related	____			
C. Investment related	____			
D. Lobbying	____	____	____	____
E. Other executive	____	____	____	____
F. Other general clerical & support	____	____	____	____
7. Employee relations & welfare				
A. Pension & retirement benefits	____	Salaries	____	____
B. Insurance	____	Salaries	____	____
C. Gatherings, outings & entertainment	____	Salaries	____	____
D. Other	____	Salaries	____	____
8. Insurance				
A. Self insurance	____	Salaries	____	____
B. Purchased from affiliates	____	Salaries	____	____
C. Purchased from independent carriers	____	Salaries	____	____
9. Directors fees	____	Salaries	____	____
10. Travel & travel items				
A. Employee transportation	____	Special Study	____	____
B. Employee transfer	____	Special Study	____	____
C. Auto depreciation	____	Special Study	____	____

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D. Auto maintenance & operating expenses	____	Special Study	____	____
E. Auto leasing	____	Special Study	____	____
F. Dues & subscriptions—social & civic clubs	____	Special Study	____	____
G. Cost of favors, presents, entertainment	____	Special Study	____	____
H. Other	____	Special Study	____	____
11. Rent & rent items				
A. Space rented from others	____	Salaries	____	____
B. Space in owned buildings	____	Salaries	____	____
C. Other	____	Salaries	____	____
12. Equipment				
A. Rent	____	Salaries	____	____
B. Repair	____	Salaries	____	____
C. Depreciation	____	Salaries	____	____
13. Printing & stationery				
A. Printing, stationery, office supplies	____	Salaries	____	____
B. Policies & policy forms	____	Salaries	____	____
C. Books, newspapers, periodicals	____	Salaries	____	____
D. Other	____	Salaries	____	____
14. Postage, telephone & telegraph				
A. Postage & freight	____	Salaries	____	____
B. Telecommunications	____	Salaries	____	____
C. Bank charges for collection & exchange	____	Salaries	____	____
15. Legal and auditing				
A. Auditing fees	____	Special Study	____	____
B. Investment counsel fees	____	Special Study	____	____
C. Legal fees—lobbying & public relations	____	Special Study	____	____
D. Other legal fees	____	Special Study	____	____
E. Other	____	Special Study	____	____
16. Miscellaneous				
A. Donations	____	Special Study	____	____
B. Income from special services	____	Special Study	____	____
C. Other	____	Special Study	____	____
17. Total	____	____	____	____

Instructions

Schedule 5a
General Expenses
Allocation to Coverage

1. The amounts shown in Column A should be the same as the amounts in Column C of Schedule 5.
2. Follow the instruction in Column B in allocating or assigning each expense type to each type of coverage. If no specific instruction is provided, specify and follow the basis of allocation in accordance with the instructions provided in Part 6 of the Financial Condition Examiners Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.
3. In Columns C, D, E, F, G, H, and I show the General Expenses assigned or allocated to the specified coverage.

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EXPENSE EXHIBIT 1—Schedule 5a
PRIVATE PASSENGER AUTOMOBILE INSURANCE
GENERAL EXPENSES
ALLOCATION TO COVERAGE

Company Name:_____

NAIC CODE:_____

	P.P. Auto General Expenses (A)	Basis of Allocation to Coverage (B)	Bodily Injury (C)	Personal Injury Protection (D)	Property Damage (E)	Comprehensive (F)	Collision (G)	Uninsured Motorist (H)	All Others (I)
1. Commission and brokerage									
A. Direct	____	Direct	____	____	____	____	____	____	____
B. Reinsurance assumed	____								
C. Reinsurance ceded	____								
D. Contingent—net	____								
E. Policy and membership fees	____								
F. Net commission and brokerage (A + B - C + D + E)	____		____	____	____	____	____	____	____
2. Allowances to managers & agents	____	____	____	____	____	____	____	____	____
3. Boards, bureaus and assoc.	____	Special Study	____	____	____	____	____	____	____
4. Surveys & underwriting reports	____	Special Study	____	____	____	____	____	____	____
5. Audit of assureds records	____	Special Study	____	____	____	____	____	____	____
6. Salaries									
A. Underwriting related	____								
B. Claims related	____								
C. Investment related	____								
D. Lobbying	____	____	____	____	____	____	____	____	____
E. Other executive	____	____	____	____	____	____	____	____	____
F. Other general clerical & support	____	____	____	____	____	____	____	____	____
7. Employee relations & welfare									
A. Pension & retirement benefits	____	Salaries	____	____	____	____	____	____	____
B. Insurance	____	Salaries	____	____	____	____	____	____	____
C. Gatherings, outings & entertainment	____	Salaries	____	____	____	____	____	____	____
D. Other	____	Salaries	____	____	____	____	____	____	____
8. Insurance									
A. Self insurance	____	Salaries	____	____	____	____	____	____	____
B. Purchased from affiliates	____	Salaries	____	____	____	____	____	____	____
C. Purchased from independent carriers	____	Salaries	____	____	____	____	____	____	____
9. Directors fees	____	Salaries	____	____	____	____	____	____	____
10. Travel & travel items									
A. Employee transportation	____	Special Study	____	____	____	____	____	____	____
B. Employee transfer	____	Special Study	____	____	____	____	____	____	____
C. Auto depreciation	____	Special Study	____	____	____	____	____	____	____
D. Auto maintenance & operating expenses	____	Special Study	____	____	____	____	____	____	____
E. Auto leasing	____	Special Study	____	____	____	____	____	____	____
F. Dues & subscriptions—social & civic clubs	____	Special Study	____	____	____	____	____	____	____
G. Cost of favors, presents, entertainment	____	Special Study	____	____	____	____	____	____	____

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H. Other	____	Special Study	____	____	____	____	____	____	____
11. Rent & rent items									
A. Space rented from others	____	Salaries	____	____	____	____	____	____	____
B. Space in owned buildings	____	Salaries	____	____	____	____	____	____	____
C. Other	____	Salaries	____	____	____	____	____	____	____
12. Equipment									
A. Rent	____	Salaries	____	____	____	____	____	____	____
B. Repair	____	Salaries	____	____	____	____	____	____	____
C. Depreciation	____	Salaries	____	____	____	____	____	____	____
13. Printing & stationery									
A. Printing, stationery, office supplies	____	Salaries	____	____	____	____	____	____	____
B. Policies & policy forms	____	Salaries	____	____	____	____	____	____	____
C. Books, newspapers, periodicals	____	Salaries	____	____	____	____	____	____	____
D. Other	____	Salaries	____	____	____	____	____	____	____
14. Postage, telephone & telegraph									
A. Postage & freight	____	Salaries	____	____	____	____	____	____	____
B. Telecommunications	____	Salaries	____	____	____	____	____	____	____
C. Bank charges for collection & exchange	____	Salaries	____	____	____	____	____	____	____
15. Legal & auditing									
A. Auditing fees	____	Special Study	____	____	____	____	____	____	____
B. Investment counsel fees	____	Special Study	____	____	____	____	____	____	____
C. Legal fees—lobbying & public relations	____	Special Study	____	____	____	____	____	____	____
D. Other legal fees	____	Special Study	____	____	____	____	____	____	____
E. Other	____	Special Study	____	____	____	____	____	____	____
16. Miscellaneous									
A. Donations	____	Special Study	____	____	____	____	____	____	____
B. Income from special services	____	Special Study	____	____	____	____	____	____	____
C. Other	____	Special Study	____	____	____	____	____	____	____
17. Total	____	____	____	____	____	____	____	____	____

Instructions

Schedule 5b
General Expenses
Allocation to New Jersey

1. The amounts shown in Column A should be the same as the amounts shown in Columns C, D, E, F, G, H or I of Schedule 5a. A separate Schedule 5b is required to be completed by the carrier for each coverage type (Bodily Injury, Personal Injury Protection, Property Damage, Comprehensive, Collision, Uninsured Motorist, and all other).

2. Follow the instruction in Column B in allocating or assigning each expense type to New Jersey. If no specific instruction is provided, specify and follow the same basis for allocation used in allocating that expense type to coverage (line of insurance) as specified in Part 6 of the Financial Condition Examiners' Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.

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EXPENSE EXHIBIT 1—Schedule 5b
(Coverage)
GENERAL EXPENSES
ALLOCATION TO STATE OF NEW JERSEY

Company Name:_____

NAIC CODE:_____

	General Expenses For (Coverage) (A)	Basis of Allocation to New Jersey (B)	New Jersey General Expenses (C)
1. Commission and brokerage			
A. Direct	_____	Direct	_____
B. Reinsurance assumed	_____		
C. Reinsurance ceded	_____		
D. Contingent—net	_____		
E. Policy and membership fees	_____		
F. Net commission and brokerage (A + B - C + D + E)	_____		_____
2. Allowances to managers & agents	_____	_____	_____
3. Boards, bureaus and assoc.	_____	Special Study	_____
4. Surveys & underwriting reports	_____	Special Study	_____
5. Audit of assureds records	_____	Special Study	_____
6. Salaries			
A. Underwriting related	_____		
B. Claims related	_____		
C. Investment related	_____		
D. Lobbying	_____	_____	_____
E. Other executive	_____	_____	_____
F. Other general clerical & support	_____	_____	_____
7. Employee relations & welfare			
A. Pension & insurance benefits	_____	Salaries	_____
B. Insurance	_____	Salaries	_____
C. Gatherings, outings & entertainment	_____	Salaries	_____
D. Other	_____	Salaries	_____
8. Insurance			
A. Self insurance	_____	Salaries	_____
B. Purchased from affiliates	_____	Salaries	_____
C. Purchased from independent carriers	_____	Salaries	_____
9. Directors fees	_____	Salaries	_____
10. Travel & travel items			
A. Employee transportation	_____	Special Study	_____
B. Employee transfer	_____	Special Study	_____
C. Auto depreciation	_____	Special Study	_____
D. Auto maintenance & operating expenses	_____	Special Study	_____
E. Auto leasing	_____	Special Study	_____
F. Dues & subscriptions—social & civic clubs	_____	Special Study	_____
G. Cost of favors, presents, entertainment	_____	Special Study	_____
H. Other	_____	Special Study	_____
11. Rent & rent items			
A. Space rented from others	_____	Salaries	_____
B. Space in owned buildings	_____	Salaries	_____
C. Other	_____	Salaries	_____

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12. Equipment			
A. Rent	_____	Salaries	_____
B. Repair	_____	Salaries	_____
C. Depreciation	_____	Salaries	_____
13. Printing & stationery			
A. Printing, stationery, office supplies	_____	Salaries	_____
B. Policies & policy forms	_____	Salaries	_____
C. Books, newspapers, periodicals	_____	Salaries	_____
D. Other	_____	Salaries	_____
14. Postage, telephone & telegraph			
A. Postage & freight	_____	Salaries	_____
B. Telecommunications	_____	Salaries	_____
C. Bank charges for collection & exchange	_____	Salaries	_____
15. Legal & auditing			
A. Auditing fees	_____	Special Study	_____
B. Investment counsel fees	_____	Special Study	_____
C. Legal fees—lobbying & public relations	_____	Special Study	_____
D. Other legal fees	_____	Special Study	_____
E. Other	_____	Special Study	_____
16. Miscellaneous			
A. Donations	_____	Special Study	_____
B. Income from special services	_____	Special Study	_____
C. Other	_____	Special Study	_____
17. Total	_____	_____	_____

Instructions

Schedule 5c
General Expenses
Allocation to New Jersey Voluntary Market and NJAFIUA

1. The amounts shown in Column A should be the same as the amounts shown in Column C of Schedule 5b. A separate Schedule 5c is required to be completed by the carrier for each coverage type (Bodily Injury, Personal Injury Protection, Property Damage, Comprehensive, Collision, Uninsured Motorist, and all other).

2. Follow the instruction in Column B in allocating or assigning each expense type to the New Jersey Voluntary Market and the NJAFIUA. If no specific instruction is provided, specify and follow the same basis for allocation used in allocating that expense type to coverage (line of insurance) as specified in Part 6 of the Financial Condition Examiners' Handbook. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.

3. All expenses which can be directly assigned to the NJAFIUA or to the voluntary market should be directly assigned.

EXPENSE EXHIBIT 1—Schedule 5c
(Coverage)
GENERAL EXPENSES
ALLOCATION TO NEW JERSEY VOLUNTARY MARKET AND NJAFIUA

Company Name:_____

NAIC CODE:_____

	New Jersey General Exp. (Coverage) (A)	Basis of Allocation to NJAFIUA (B)	Voluntary Market General Exp. (C)	NJAFIUA General Expenses (D)
1. Commission and brokerage				
A. Direct	_____	Direct	_____	_____
B. Reinsurance assumed	_____			
C. Reinsurance ceded	_____			
D. Contingent—net	_____			
E. Policy and membership fees	_____			
F. Net commission and brokerage (A + B - C + D + E)	_____		_____	_____

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2. Allowances to managers & agents	____	____	____	____
3. Boards, bureaus and assoc.	____	Direct	____	
4. Surveys & underwriting reports	____	Direct	____	____
5. Audit of assureds records	____	Direct	____	____
6. Salaries				
A. Underwriting related	____			
B. Claims related	____			
C. Investment related	____			
D. Lobbying	____	Direct	____	
E. Other executive	____	@	____	____
F. Other general clerical & support	____	@	____	____
7. Employee relations & welfare				
A. Pension & insurance benefits	____	Salaries	____	____
B. Insurance	____	Salaries	____	____
C. Gatherings, outings & entertainment	____	Salaries	____	____
D. Other	____	Salaries	____	____
8. Insurance				
A. Self insurance	____	Salaries	____	____
B. Purchased from affiliates	____	Salaries	____	____
C. Purchased from independent carriers	____	Salaries	____	____
9. Directors fees	____	Salaries	____	____
10. Travel & travel items				
A. Employee transportation	____	Direct*	____	____
B. Employee transfer	____	Direct*	____	____
C. Auto depreciation	____	Direct*	____	____
D. Auto maintenance & operating expenses	____	Direct*	____	____
E. Auto leasing	____	Direct*	____	____
F. Dues & subscriptions—social & civic clubs	____	Direct*	____	____
G. Cost of favors, presents, entertainment	____	Direct*	____	____
H. Other	____	Direct*	____	____
11. Rent & rent items				
A. Space rented from others	____	Salaries	____	____
B. Space in owned buildings	____	Salaries	____	____
C. Other	____	Salaries	____	____
12. Equipment				
A. Rent	____	Salaries	____	____
B. Repair	____	Salaries	____	____
C. Depreciation	____	Salaries	____	____
13. Printing & stationery				
A. Printing, stationery, office supplies	____	Salaries	____	____
B. Policies & policy forms	____	Salaries	____	____
C. Books, newspapers, periodicals	____	Salaries	____	____
D. Other	____	Salaries	____	____
14. Postage, telephone & telegraph				
A. Postage & freight	____	Salaries	____	____
B. Telecommunications	____	Salaries	____	____
C. Bank charges for collection & exchange	____	Salaries	____	____
15. Legal & auditing				
A. Auditing fees	____	Direct*	____	____

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B. Investment counsel fees	____	Direct*	____	____
C. Legal fees—lobbying & public relations	____	Direct*	____	____
D. Other legal fees	____	Direct*	____	____
E. Other	____	Direct*	____	____
16. Miscellaneous				
A. Donations	____	Direct	____	
B. Income from special services	____	Special Study	____	____
C. Other	____	Special Study	____	____
17. Total	____	____	____	____

@Other executive and other general clerical & support salaries should be allocated to the NJAFIUA in proportion to the total of claims related and underwriting related salaries assigned or allocated to the NJAFIUA.

*Those costs which are specifically identifiable as costs incurred for the NJAFIUA should be directly assigned to the NJAFIUA. Costs which cannot be directly assigned should be allocated between the NJAFIUA and the voluntary market on the basis of special studies.

Instructions

Schedule 6
Taxes, Licensing & Fees
Allocation to Private Passenger Automobile Insurance

1. The amounts shown in Column A should be the same as the amounts in Column F of Schedule 2.
2. Follow the instruction in Column B in allocating or assigning each expense type to each line of insurance. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.
3. In Column C show Taxes, Licensing & Fees assigned or allocated to private passenger automobile insurance.
4. In Column D show Taxes, Licensing & Fees assigned or allocated to all other lines of insurance.

EXPENSE EXHIBIT 1—Schedule 6
TAXES, LICENSES & FEES
ALLOCATION TO PRIVATE PASSENGER AUTOMOBILE INSURANCE

Company Name:_____

NAIC CODE:_____

	Company Tax Expenses (A)	Basis of Allocation to Line of Ins. (B)	Private Passenger Auto Ins. (C)	All Other Lines of Insurance (D)
1. Taxes, licenses and fees				
A. State and local insurance taxes	____	Special Study	____	____
B. Payroll taxes	____	Salaries	____	____
C. Insurance Department fees	____	Special Study	____	____
D. All other	____	Special Study	____	____
2. Total	____	____	____	____

Instructions

Schedule 6a
Taxes, Licensing & Fees
Allocation to Coverage

1. The amounts shown in Column A should be the same as the amounts in Column C of Schedule 6.
2. Follow the instruction in Column B in allocating or assigning each expense type to each type of coverage. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.
3. In Columns C, D, E, F, G, H, and I show the Taxes, Licensing & Fees assigned or allocated to the specified coverage.

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EXPENSE EXHIBIT 1—Schedule 6a
PRIVATE PASSENGER AUTOMOBILE INSURANCE
TAXES, LICENSES & FEES
ALLOCATION TO COVERAGE

Company Name:_____

NAIC CODE:_____

	P.P. Auto Taxes, Licenses & Fees (A)	Basis of Allocation to Coverage (B)	Bodily Injury (C)	Personal Injury Protection (D)	Property Damage (E)	Compre-hensive (F)	Collision (G)	Uninsured Motorist (H)	All Other (I)
1. Taxes, licenses and fees									
A. State and local insurance taxes	____	Special Study	____	____	____	____	____	____	____
B. Payroll taxes	____	Salaries	____	____	____	____	____	____	____
C. Insurance Department fees	____	Special Study	____	____	____	____	____	____	____
D. All other	____	Special Study	____	____	____	____	____	____	____
2. Total	____	____	____	____	____	____	____	____	____

Instructions

Schedule 6b
Taxes, Licensing & Fees
Allocation to New Jersey

1. The amounts shown in Column A should be the same as the amounts shown in Columns C, D, E, F, G, H or I of Schedule 6a. A separate Schedule 6b is required to be completed by the carrier for each coverage type (Bodily Injury, Personal Injury Protection, Property Damage, Comprehensive, Collision, Uninsured Motorist, and all other).

2. Follow the instruction in Column B in allocating or assigning each expense type to New Jersey. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.

EXPENSE EXHIBIT 1—Schedule 6b
(Coverage)
TAXES, LICENSES & FEES
ALLOCATION TO STATE OF NEW JERSEY

Company Name:_____

NAIC CODE:_____

	Taxes, Licenses & Fees For (Coverage) (A)	Basis of Allocation to New Jersey (B)	New Jersey Taxes, Licenses & Fees (C)
1. Taxes, licenses and fees			
A. State and local insurance taxes	_____	Direct	_____
B. Payroll taxes	_____	Salaries	_____
C. Insurance Department fees	_____	Direct	_____
D. All other	_____	Special Study	_____
2. Total	_____	_____	_____

Instructions

Schedule 6c
Taxes, Licensing & Fees
Allocation to New Jersey Voluntary Market and NJAFIUA

1. The amounts shown in Column A should be the same as the amounts shown in Column C of Schedule 6b. A separate Schedule 6b is required to be completed by the carrier for each coverage type (Bodily Injury, Personal Injury Protection, Property Damage, Comprehensive, Collision, Uninsured Motorist, and all other).

2. Follow the instruction in Column B in allocating or assigning each expense type to the New Jersey Voluntary Market and the NJAFIUA. Footnotes should provide a description of each allocation basis. If a special study is used for an allocation, an explanation of the study performed should be appended to the schedule. If more than one allocation or assignment basis is used for any expense type, each basis and the total amount allocated or assigned using that basis should be stated in footnotes to the schedule.

3. All taxes, licenses and fees which can be directly assigned to the NJAFIUA or to the voluntary market should be directly assigned.

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EXPENSE EXHIBIT 1—Schedule 6c
(Coverage)
TAXES, LICENSES & FEES
ALLOCATION TO NEW JERSEY VOLUNTARY MARKET AND NJAFIUA

Company Name:_____

NAIC CODE:_____

	New Jersey Taxes, Licenses & Fees (A)	Basis of Allocation (B)	Voluntary Market Taxes, Licenses & Fees (C)	NJAFIUA Taxes, Licenses & Fees (D)
1. Taxes, licenses and fees				
A. State and local insurance taxes	_____	Direct*	_____	_____
B. Payroll taxes	_____	Salaries	_____	_____
C. Insurance Department fees	_____	Direct*	_____	_____
D. All other	_____	Direct*	_____	_____
2. Total	_____	_____	_____	_____

*Taxes, licenses or fees which cannot be identified and charged directly to the NJAFIUA or the voluntary market should be allocated on the basis of special studies.

APPENDIX E

INVESTMENT INCOME EXHIBIT 1.
Investment Income from Loss and Loss Expense Reserves, New Jersey

Company Name:_____

NAIC CODE:_____

1. Net Investment Gain, Annual Statement P-4, Line 9a	$_____
2. Cash and Invested Assets, Annual Statement P-2, Line 8a	
a. As of 12/31/87	$_____
b. As of 12/31/86	$_____
c. Mean Cash & Invested Assets	$_____
3. Rate of Return on Investments (1./2c.)	_____%

	Bodily Injury	Property Damage	Personal Injury Protection
4. New Jersey Loss Reserves			
a. As of 12/31/87	$_____	$_____	$_____
b. As of 12/31/86	$_____	$_____	$_____
5. New Jersey Loss Adjustment Expense Reserves 12/31/87			
a. As of 12/31/87	$_____	$_____	$_____
b. As of 12/31/86	$_____	$_____	$_____
6. Mean Loss & LAX Reserves ((4a. + 4b.)/2) + ((5a. + 5b.)/2)	$_____	$_____	$_____
7. Premium Earned	$_____	$_____	$_____
8. Ratio Loss & LAX Reserves to Earned Premium (6./7.)	_____%	_____%	_____%
9. Investment Income as a Percent of Premium (3. x 8.)	_____%	_____%	_____%

	Comprehensive	Collision	Uninsured Motorist
4. New Jersey Loss Reserves			
a. As of 12/31/87	$_____	$_____	$_____
b. As of 12/31/86	$_____	$_____	$_____
5. New Jersey Loss Adjustment Expense Reserves 12/31/87			
a. As of 12/31/87	$_____	$_____	$_____
b. As of 12/31/86	$_____	$_____	$_____

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6. Mean Loss & LAX Reserves ((4a. + 4b.)/2) + ((5a. + 5b.)/2)	$_____	$_____	$_____
7. Premium Earned	$_____	$_____	$_____
8. Ratio Loss & LAX Reserves to Earned Premium (6./7.)	_____%	_____%	_____%
9. Investment Income as a Percent of Premium (3. x 8.)	_____%	_____%	_____%

INVESTMENT INCOME EXHIBIT 2.
Investment Income from Unearned Premium Reserve, New Jersey

Company Name:_____

NAIC Code:_____

Item	Bodily Injury	Property Damage	Personal Injury Protection
1. New Jersey Unearned Premium Reserves 12/31/87			
a. As of 12/31/87	$_____	$_____	$_____
b. As of 12/31/86	$_____	$_____	$_____
c. Mean Premium Reserve (1a. + 1b.)/2	$_____	$_____	$_____
2. Premium Earned	$_____	$_____	$_____
3. Ratio, Unearned Premium Reserves to Earned Premium (1c./2.)	_____%	_____%	_____%
4. Rate of Return on Investments			
Investment Income Exhibit 1, Line 3	_____%	_____%	_____%
5. Investment Income as a Percent of Premium (3) x (4)	_____%	_____%	_____%

	Comprehensive	Collision	Uninsured Motorist
1. New Jersey Unearned Premium Reserves 12/31/87			
a. As of 12/31/87	$_____	$_____	$_____
b. As of 12/31/86	$_____	$_____	$_____
c. Mean Premium Reserve (1a. + 1b.)/2	$_____	$_____	$_____
2. Premium Earned	$_____	$_____	$_____
3. Ratio, Unearned Premium Reserves to Earned Premium (1c./2.)	_____%	_____%	_____%
4. Rate of Return on Investments			
Investment Income Exhibit 1, Line 3	_____%	_____%	_____%
5. Investment Income as a Percent of Premium (3) x (4)	_____%	_____%	_____%

INVESTMENT INCOME EXHIBIT 3.
Company-wide Reserves, Surplus, and Invested Assets

Company Name:_____

NAIC CODE:_____

Item	Amount	Annual Statement Reference
1. Loss Reserve 12/31/87	$_____	Page 10, Part 3A, Line 32, Col. 5
2. Loss Adjustment Reserve 12/31/87	$_____	Page 10, Part 3A, Line 32, Col. 6
3. Unearned Premium 12/31/87	$_____	Page 7, Part 2, Line 31, Col. 3
4. Total Reserves (1 + 2 + 3)	$_____	
5. Cash and Invested Assets 12/31/87	$_____	Page 2, Line 9a, Col. 1
6. Surplus	$_____	Page 4, Line 32, Col. 1
7. Percent of Surplus Invested ((5-4)/6)	_____%	
8. Ratio of Surplus to Reserves (6/4)	_____%	

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INVESTMENT INCOME EXHIBIT 4.
Investment Income As A Percent of Premium

Company Name:_____

NAIC CODE:_____

	Bodily Injury	Property Damage	Personal Injury Protection
1. Mean New Jersey Premium Reserve			
Investment Income Exhibit 2, Line 1c.	$_____	$_____	$_____
2. Mean New Jersey Loss & Loss Adj. Reserve			
Investment Income Exhibit 1, Line 6	$_____	$_____	$_____
3. Total New Jersey Reserves	$_____	$_____	$_____
4. New Jersey Surplus (3) x Inv. Inc. Exhibit 3, Line 8	$_____	$_____	$_____
5. Percent of Surplus Invested, Inv. Inc. Exhibit 3, Line 7	_____%	_____%	_____%
6. Invested Surplus, (4) x (5)	$_____	$_____	$_____
7. Sum, Reserves and Invested Surplus (3) + (6)	$_____	$_____	$_____
8. Rate of Return on Investments			
Investment Income Exhibit 1, Line 3	_____%	_____%	_____%
9. Investment Income Earned on Reserves and Invested Surplus (7) x (8)	$_____	$_____	$_____
10. Premium Earned, Inv. Inc. Exhibit 1, Line 7	$_____	$_____	$_____
11. Investment Income as a % of Premium Earned (9)/(10)	_____%	_____%	_____%

	Comprehensive	Collision	Uninsured Motorist
1. Mean New Jersey Premium Reserve			
Investment Income Exhibit 2, Line 1c.	$_____	$_____	$_____
2. Mean New Jersey Loss & Loss Adj. Reserve			
Investment Income Exhibit 1, Line 6	$_____	$_____	$_____
3. Total New Jersey Reserves	$_____	$_____	$_____
4. New Jersey Surplus (3) x Inv. Inc. Exhibit 3, Line 8	$_____	$_____	$_____
5. Percent of Surplus Invested, Inv. Inc. Exhibit 3, Line 7	_____%	_____%	_____%
6. Invested Surplus, (4) x (5)	$_____	$_____	$_____
7. Sum, Reserves and Invested Surplus (3) + (6)	$_____	$_____	$_____
8. Rate of Return on Investments			
Investment Income Exhibit 1, Line 3	_____%	_____%	_____%
9. Investment Income Earned on Reserves and Invested Surplus (7) x (8)	$_____	$_____	$_____
10. Premium Earned, Inv. Inc. Exhibit 1, Line 7	$_____	$_____	$_____
11. Investment Income as a % of Premium Earned (9)/(10)	_____%	_____%	_____%

(a)

DIVISION OF ACTUARIAL SERVICES

Homeowners Insurance Price Comparison

Proposed New Rules: N.J.A.C. 11:4-29

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), N.J.S.A. 17:23-4 and N.J.S.A. 17:29A-1.

Proposal Number: PRN 1988-451.

Submit comments by October 6, 1988 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN-325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In order to properly perform its regulatory functions, and in implementation of N.J.S.A. 17:23-4, the Department of Insurance finds it necessary to conduct an annual price comparison survey of current annual premiums being charged in the residential insurance marketplace and, in conjunction therewith, to publish a homeowners price comparison guide for the general public. Under the proposed new rules, the Department of Insurance requires the submission of this information from all insurers writing personal homeowners, tenant and/or condominium coverage in the State of New Jersey.

Under the proposed new rules, the requested information is required to be calculated and collected on a semiannual basis and reported to the Department of Insurance on or before July 31 of the reporting year and January 31 of the ensuing year. The information submitted must be prepared on forms prescribed and provided by the Commissioner, which forms appear in Appendices A, B, and C of the proposed new rules.

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The proposed new rules will permit the consumer to gain information on comparative personal homeowners premiums of the various companies providing this product and provide him or her with the necessary information by which to make a choice of carrier.

Social Impact

The proposed new rules require and provide the mechanism for the collection of coverage selection information allowing the consumer a wider choice based on the total disclosure of relevant information. The impact on the insurance companies is negligible, since they are merely providing informational premium computations and charges which are otherwise collected and used by them on a daily basis. The premium coverage information will assist the Commissioner in monitoring the ratings used by insurers and will facilitate compliance with the rules which pertain to homeowners ratings, policies and premium charges. All consumers and insurance companies doing business within the State writing homeowners, tenants and/or condominium policies are affected as stated above. The proposed new rules will provide New Jersey insurers who write homeowners, tenant and/or condominium coverage with an expedient method by which to collect and file with the Department of Insurance the required information.

Economic Impact

The economic purpose of these proposed new rules is to produce an annual price comparison compilation for dissemination to the consumer so as to give the consumer the option to choose the coverage and premium that suits his or her needs and economic means.

The proposed new rules provide a method of tracking the choices of consumers in individualized selection. Pursuant to rules of the Department, insurers have been required to supply similar information for other coverages and to collect data for monitoring purposes. Accordingly, the collection of the required information will not impose new burdens on the insurer, but the new rules will place a slight burden on insurers by requiring the submission of information to the Department.

No substantial economic impact, in terms of premiums lost or saved, upon either consumers or insurers is expected from these rules, as the Department's experience with a consumer guide for homeowners insurance as of the end of 1987 demonstrated no impact, positive or negative, for either group.

The administrative costs expected to be incurred by the Department of Insurance will be absorbed within the current budget.

Regulatory Flexibility Statement

Of the entities to be regulated by these proposed new rules, it is estimated that only a very small number are small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed new rules impose only minimal compliance requirements on small businesses by requiring them to notify the Department of premiums on a hypothetical basis, which would be their actual charge to the consumer at the time. Since these insurers would maintain an underwriting staff, there would be no initial capital costs or annual costs involved in complying with these rules. The only costs which may be incurred are those associated with notifying the Department of the required information. Such costs should be minimal.

Full text of the proposed new rules follows:

SUBCHAPTER 29. HOMEOWNERS COMPARISON SURVEY

11:4-29.1 Purpose and scope

(a) This subchapter requires the submission of data by insurers concerning premiums on personal homeowners, tenant and/or condominium coverage to enable the Department to compile an annual Homeowners Insurance Price Comparison Guide for use by the general public.

(b) This subchapter applies to every insurer authorized to provide and sell personal homeowners, tenant and/or condominium coverage insurance in the State of New Jersey.

11:4-29.2 Definitions

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

"Commissioner" means the Commissioner of the Department of Insurance of the State of New Jersey.

"Department" means the Department of Insurance of the State of New Jersey.

"Insurer" means a company writing homeowners, tenants and/or condominium policies in the State of New Jersey.

"Personal homeowners, tenant and/or condominium coverage" means a policy insuring the dwelling structure, contents, personal liability and medical payments in kinds and amounts set forth by the Commissioner.

11:4-29.3 Coverage option survey requirements

(a) Every insurer shall prepare and file with the Commissioner a premium survey concerning premiums charged on personal homeowners, tenant and/or condominium coverage in the following manner:

1. The survey shall reflect the total number of homeowners, tenant and/or condominium policies issued by each insurer as of June 30 and December 31 of the given year.

2. Survey forms reflecting premiums for homeowners, tenants and/or condominium policies as of June 30 and December 31 of any given year shall be filed with the Commissioner on or before July 31 of that year and January 31 of the following year.

3. Completed coverage option survey forms shall be submitted to:

Director of Consumer Affairs
State of New Jersey
Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

4. In the preparation and filing of the information required by this subchapter, insurers shall use forms prescribed and provided by the Commissioner. These forms appear in Appendices A, B and C of this subchapter, which are hereby incorporated by reference as part of this subchapter.

APPENDIX A

Company Name: _____

Affiliated with Group (name): _____

Price Comparison Survey

Period Ending: _____

A. Homeowners Coverage: Policy Form HO-3, frame structure built in 1980 with a smoke detector, dwelling amount $110,000, personal liability $100,000, medical payments $1,000, $250.00 deductible, five miles or less to a fire station and within 1,000 feet of a hydrant or usable suction point and written on a replacement cost basis. Price as of December 31, 1987. All surcharges should be included in premium price.

Location		Annual Premium
1. Cities		
City of	County of	
Bayonne	Hudson	
Camden	Camden	
Clifton	Passaic	
E. Orange	Essex	
Elizabeth	Union	
Jersey City	Hudson	
Newark	Essex	
Passaic	Passaic	
Paterson	Passaic	
Trenton	Mercer	
Woodbridge	Middlesex	
2. Other Than Cities		
County of		
Atlantic		
Bergen		
Burlington		
Camden		
Cape May		
Cumberland		
Essex		
Gloucester		
Hudson		
Hunterdon		

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Mercer
Middlesex
Monmouth
Morris
Ocean
Passaic
Salem
Somerset
Sussex
Union
Warren

As of January 1, 19__, _____ (company name) had _____ New Jersey homeowners policies in force.

As of December 31, 19__, _____ (company name) had _____ New Jersey homeowners policies in force.

_____
Signature of Officer or Senior Manager

Phone Number: _____

APPENDIX B

Company Name: _____

Affiliated with Group (name): _____

Price Comparison Survey

Period Ending: _____

B. Tenant Coverage: Policy Form HO-4, contents amount $15,000, smoke detector, $250.00 deductible and five miles or less to a fire station and within 1,000 feet of a hydrant or usable suction point. Price as of December 31, 1987. All surcharges should be included in premium price.

Location		Annual Premium
1. Cities		
City of	County of	
Bayonne	Hudson	
Camden	Camden	
Clifton	Passaic	
E. Orange	Essex	
Elizabeth	Union	
Jersey City	Hudson	
Newark	Essex	
Passaic	Passaic	
Paterson	Passaic	
Trenton	Mercer	
Woodbridge	Middlesex	

2. Other Than Cities
County of
Atlantic
Bergen
Burlington
Camden
Cape May
Cumberland
Essex
Gloucester
Hudson
Hunterdon
Mercer
Middlesex
Monmouth
Morris
Ocean
Passaic
Salem
Somerset
Sussex
Union
Warren

As of January 1, 19__, _____ (company name) had _____ New Jersey tenant policies in force.

As of December 31, 19__, _____ (company name) had _____ New Jersey tenant policies in force.

_____
Signature of Officer or Senior Manager

Phone Number: _____

APPENDIX C

Company Name: _____

Affiliated with Group (name): _____

Price Comparison Survey

Period Ending: _____

C. Condominium Coverage: Policy Form HO-6, contents amount $15,000, smoke detector, $250.00 deductible and five miles or less to a fire station and within 1,000 feet of a hydrant or usable suction point. Price as of December 31, 1987.

Location		Annual Premium
1. Cities		
City of	County of	
Bayonne	Hudson	
Camden	Camden	
Clifton	Passaic	
E. Orange	Essex	
Elizabeth	Union	
Jersey City	Hudson	
Newark	Essex	
Passaic	Passaic	
Paterson	Passaic	
Trenton	Mercer	
Woodbridge	Middlesex	

2. Other Than Cities
County of
Atlantic
Bergen
Burlington
Camden
Cape May
Cumberland
Essex
Gloucester
Hudson
Hunterdon
Mercer
Middlesex
Monmouth
Morris
Ocean
Passaic
Salem
Somerset
Sussex
Union
Warren

As of January 1, 19__, _____ (company name) had _____ New Jersey condominium policies in force.

As of December 31, 19__, _____ (company name) had _____ New Jersey condominium policies in force.

_____
Signature of Officer or Senior Manager

Phone Number: _____

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(a)

Real Estate Commission Rules

Proposed Readoption: N.J.A.C. 11:5
Proposed Repeal: N.J.A.C. 11:5-1.14

Authority: N.J.S.A. 45:15-6.
Proposal Number: PRN 1988-444.
The agency proposal follows:

Summary

Pursuant to Executive Order Number 66(1978), N.J.A.C. 11:5 will expire on November 7, 1988. The New Jersey Real Estate Commission (Commission) has reviewed the rules and deems them necessary, reasonable and proper for the purpose for which they were originally promulgated. The Real Estate Commission proposes to readopt these rules, many of which have been amended by the Commission within the last few years. The only provision not being readopted is N.J.A.C. 11:5-1.14, which is to be repealed.

The Commission's decision to propose the repeal of N.J.A.C. 11:5-1.14 was based upon several considerations, including the fact that the abuses which this rule was intended to prevent concerning absentee brokers are being more directly addressed by a pending proposed amendment to N.J.A.C. 11:5-1.18 regarding the supervision of offices (See 20 N.J.R. 1160(a)). Further, given the ability to identify the true parties in interest of any licensees using ambiguous corporate, fictitious or trade names by searching the records of the appropriate state or county offices, the Commission felt that no significant protection was afforded to the public by restricting the names in which licensees could operate.

In addition, new rules will be proposed in the near future as additional subchapters.

A summary of the text of the existing subchapter and subchapters being considered for proposal follows:

Subchapter 1 includes all of the rules currently promulgated by the Commission. These involve such matters as salesperson's and broker's licensure requirements, commissions and fee payments, office maintenance, recordkeeping, removal of files, advertising, contract of sale, leases and listing agreements, sale of interstate properties, approved schools requirements, instructor qualifications, criminal history record check, proscription of certain discriminatory commission splits and proscription of price fixing and agreements in regard to methods of arriving at commissions, and the real estate guaranty fund. It should be noted that many of the rules in this subchapter have been amended in the last few years for the purpose of clarification and to improve their effectiveness.

Thus, the decision to readopt many of these rules is, in part based upon the testimony and formal comments concerning those recent rule amendments which were presented to the Commission during the amendment adoption proceedings.

Subchapter 2 to be proposed will specify the responsibilities, functions and organizational structure of the Commission. These responsibilities and functions are carried out by the three sections of the Commission which are designated as licensing, investigations (including the Bureau of Subdivided Land Sales Control), and administration.

The Real Estate Commission is responsible for the supervision and regulation of the education, examination and licensing of real estate brokers and salespersons, the regulation of the sale or lease of certain out-of-state properties to New Jersey residents through promotional activities in New Jersey, the investigation of complaints and adjudication of disciplinary actions against licensees and the administration of the Real Estate Guaranty Fund.

Subchapter 3 to be proposed will prescribe the procedures applicable to the filing of petitions by interested persons for the promulgation, amendment or repeal of a rule by the New Jersey Real Estate Commission as required by N.J.S.A. 52:14B-7.

Subchapter 4 to be proposed will set forth the administrative requirements on the filing of pleadings such as Orders to Show Cause, complaints, answers, petitions and motions before the Commission. This section will also delineate the procedures applicable to conference hearings and settlements, and the Commission's powers in situations involving a respondent's failure to answer or appear as directed by a Commission Order.

Subchapter 5 to be proposed will describe the procedures applicable to appeals of initial denials of licensing applications. Its sections will indicate the kinds of applications that are eligible for appeal, the procedures for the filing of appeals, and the minimum requirements of all appeal submissions.

Social Impact

The readoption of the existng rules will have a beneficial social impact on the real estate industry and the public at large. The rules which set forth the administrative and procedural guidelines concerning commissions, fees, advertising, educational requirements, office maintenance, and the maintenance of employment and accounting records help the Commission ensure that real estate licensees comply with their statutory obligations when engaging in real estate transactions.

Furthermore, these rules provide valuable information to licensees, consumers and other interested persons who are affected by the administrative policies and actions of the Commission. Through the readoption of these rules, the Commission will continue to provide administrative and managerial direction to real estate licensees through the regulatory process.

The repeal of N.J.A.C. 11:5-1.14 will have a minimal social impact since, regardless of what name a licensee operates under, the true parties in interest, including the individuals licensed as the authorized broker of a corporate or partnership licensee or as a sole proprietor using a trade name can be identified by reference to the Commission's licensing records and will be held accountable for any regulatory violations.

Economic Impact

The readoption of these rules will have a substantial economic impact on the real estate industry and licensees. While the administrative expenses for application and renewal fees will remain unchanged, the requirements regarding termination agreements and accountings of commissions due salespersons (N.J.A.C. 11:5-1.10); the content of advertisements (N.J.A.C. 11:5-1.15); the content of contracts, leases and listing agreements (N.J.A.C. 11:5-1.16); and the sale of interstate properties (N.J.A.C. 11:5-1.25) established by these rules do result in additional costs of doing businesses to licensees. Further, the procedures mandated for the maintenance of escrow accounts (N.J.A.C. 11:5-1.8 and 9); the keeping of records (N.J.A.C. 11:5-1.11, 12 and 13); the maintenance of offices (N.J.A.C. 11:5-1.18 and 19); the conducting of their business in accordance with the laws of agency, the principles of fiduciary obligations and so as to protect and promote the interests of the public (N.J.A.C. 11:5-1.23); the closing of offices (N.J.A.C. 11:5-1.24); the operation of pre-licensure schools (N.J.A.C. 11:5-1.28); the operation of rental referral agencies (N.J.A.C. 11:5-1.32); the division of compensation in cooperative transactions (N.J.A.C. 11:5-1.33 and 34) and the provisions pertaining to the Real Estate Guaranty Fund (N.J.A.C. 11:5-1.36) all have a substantial economic impact upon licensees' operations. However, the benefits and protection afforded to the public and to other licensees by these provisions are considered to outweigh the cost of compliance.

Several other rules to be readopted operate to lower the costs incurred by licensees. These include the criminal history record check (N.J.A.C. 11:5-1.29); the sponsoring of applications or transfers of licenses (N.J.A.C. 11:5-1.30) and the expediting of license procedures (N.J.A.C. 11:5-1.31).

The addition of to-be-proposed new rules, particularly subchapters 3 to 5, should help licensees and other persons affected by the rules to anticipate and prepare for expenses associated with administrative hearings, and the filing of pleadings with and appeals to the full Commission.

The repeal of N.J.A.C. 11:5-1.14 will have a minimal economic impact upon licensees since, though its restrictions which had been placed upon the name in which licensees could operate will be lifted. It is not anticipated that a substantial number of name change requests will be enacted and, for those that may be made, it is not anticipated that any substantial economic consequences will ensue from such name changes.

Regulatory Flexibility Statement

The Commission anticipates that small businesses will not be burdened by any additional reporting requirements. However, through readoption, some of these rules will impose a substantial burden on all brokerage operations, regardless of size, to keep comprehensive records of many aspects of their operations. These requirements are designed to provide adequate safeguards to protect the public interest. Thus, the readoption of such rules as those on escrow accounts (N.J.A.C. 11:5-1.8 and 9); commissions and accountings to salespersons (N.J.A.C. 11:5-1.10); contracts of sale and listing agreements (N.J.A.C. 11:5-1.16); records regarding pending and closed real estate transactions (N.J.A.C. 11:5-1.12 and 13); submission of offers (N.J.A.C. 11:5-1.23); residential rental referral agencies (N.J.A.C. 11:5-1.32) and approved schools' student records (N.J.A.C. 11:5-1.28) will benefit all licensees and the public at large by assuring that all licensed real estate brokerage operations maintain adequate records of their dealings with the public and with licensees.

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The proposed repeal of N.J.A.C. 11:5-1.14 does not affect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:5-1.14.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:5.

DIVISION OF THE REAL ESTATE COMMISSION

The following proposals are authorized by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.

Submit comments by October 6, 1988 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625

(a)

Contracts of Sale and Listing Agreements Definitions

Proposed Amendments: N.J.A.C. 11:5-1.16.

Authority: N.J.S.A. 45:15-6.

Proposal Number: PRN 1988-436.

The agency proposal follows:

Summary

The New Jersey Real Estate Commission (Commission) has proposed a comprehensive amendment to N.J.A.C. 11:5-1.16(d). The purpose of the amendment is to inform all real estate licensees and the general public as to the distinctions between and legal effect of various types of listing agreements. Specifically, the amendment provides a list and definitions of the various kinds of listing agreements which may be negotiated among brokers and sellers.

In addition, the proposed amendment indicates specific information which all listing agreements will be required to contain. For example, the amendment requires the inclusion of data such as the address and description of the property, the commencement and termination date of the listing agreement, the commission rate or fee amount to be paid to the broker and the portion to be paid to cooperating brokers, if any, the price and terms of the agreement, and the full names of all persons who have an ownership interest in the property.

Furthermore, the listing agreement must reflect what public utilities the property is serviced by, and the official zoning classification. By requiring such information to be ascertained at the time a listing is taken, the Commission hopes to avoid the recurrence of problems which have arisen in the past in situations where listing agreements contained vague or incomplete information.

Social Impact

The proposed amendment will have a beneficial effect on real estate licensees and the general public.

By providing a clear guide as to the different types of listing agreements and the requisite information, the amendment will help to lessen the number of disputes between brokers and sellers which frequently arise concerning the terms and conditions of such agreements. The amendment will also promote uniformity and consistency amongst the various types of listing agreements utilized by real estate brokerage offices throughout the State, thus eliminating the substantial variation which now exists as a result of the evolution of divergent business customs in different areas. Also, by requiring the disclosure of commission splits, owners will be supplied with information on which they will be able to gauge what inducement is being offered to other brokers to exert efforts to market the property.

Economic Impact

This proposed amendment will have no significant adverse economic effect on real estate licensees or the general public. On the contrary, upon the promulgation of this amendment, licensees and prospective clients will avoid additional expenses that are associated with legal disputes and misunderstandings which often result from the inclusion in listing agreements of non-specific language.

The only cost which brokers may incur as a result of the promulgation of this amendment might be the cost of printing revised listing agreement forms.

Regulatory Flexibility Statement

The proposed amendment does not impose any additional recordkeeping responsibilities on small business real estate enterprises. However, both large and small businesses are expected to maintain copies of the listing agreements required under N.J.A.C. 11:5-1.13. As indicated above, the amendment clarifies the different kinds of listing agreements that are recognized in the industry and directs that certain essential information be specified in all listing agreements.

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

11:5-1.16 Contracts of sale, leases and listing agreements

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

[d. Upon request, the listing broker shall advise the seller of the rate or amount of any commission split or distribution.]

(d) In addition to such other provisions as are required by law and by other rules of this Commission, all listing agreements shall comply with the requirements of the New Jersey Statute of Frauds, N.J.S.A. 25:1-9, and with the following rules:

1. All listing agreements shall contain a statement indicating whether the agreement is an "open listing" agreement, an "exclusive agency" agreement or an "exclusive listing" agreement. For the purpose of this subsection, the following definitions shall apply:

i. An "open listing" agreement means a non-exclusive listing agreement, the terms of which permit the owner to simultaneously list the property with any number of brokers, and sell or rent the property through his or her own independent efforts without incurring any liability to any broker for the payment of a commission if the owner succeeds in doing so;

ii. An "exclusive agency" agreement means a listing agreement which provides that the property will only be listed with one broker during its term and that the owner has reserved the right to sell or rent the property through his or her own independent efforts and, if successful, that the owner will incur no liability to this broker for the payment of a commission;

iii. An "exclusive listing" agreement means a listing agreement which provides that the property will only be listed with a specific broker during its term and that the owner will be liable to this broker for the payment of the commission specified in the agreement if the property is sold or rented by anyone, including the owner during the term of the agreement;

2. All "exclusive listing" and "exclusive agency" agreements shall contain a statement indicating whether the agreement is a "multiple" exclusive listing or exclusive agency agreement, a "non-multiple" exclusive listing or exclusive agency agreement or a "non-cooperating office restricted" exclusive listing or exclusive agency agreement. For the purpose of this subsection, the following definitions shall apply:

i. A "multiple" exclusive listing or exclusive agency agreement means an exclusive listing or agency agreement which provides that the listing broker will submit the listing for circulation through one or more multiple listing systems and will fully cooperate with all other brokers;

ii. A "non-multiple" exclusive listing or exclusive agency agreement means an exclusive listing or agency agreement which provides that the listing broker will fully cooperate with all other brokers, but the listing is not to be circulated through any multiple listing system;

iii. A "non-cooperating office restricted" exclusive listing or exclusive agency agreement means an exclusive listing or agency agreement which provides, at the owner's request, that the listing is not to be circulated through any multiple listing system, and that the listing broker is directed by the owner(s) not to cooperate with any other broker. Whenever a broker enters into a non-cooperative office restricted exclusive listing or agency agreement, the requirements of N.J.A.C. 11:5-1.23(c) shall be fulfilled, including the execution by all parties of the "Waiver of Broker Cooperation" form prescribed in that rule.

3. All listing agreements, regardless of their type, shall specify:

i. The address of the property to which the listing agreement refers;

ii. A description of the property, which shall indicate whether it is vacant land, a residential property, an office building, a commercial property, a warehouse, etc.;

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iii. The commencement date of the listing agreement;

iv. The termination date of the listing agreement, which date shall not be subject to any qualifying terms or conditions;

v. The commission rate or fee amount to be paid to the broker in consideration for the services rendered by the broker to or on behalf of the owner(s);

vi. If the listing is to be submitted to one or more multiple listing systems, which systems the listing will be submitted to, and whether the subject property is within the area covered by the multiple listing system(s) to which the listing will be submitted;

vii. On listings which are to be submitted to any multiple listing system(s) and/or on which the broker is to cooperate with other brokers, the commission split or other compensation offered to cooperating brokers;

viii. The price and terms at which the property will be offered for sale;

ix. The full names of all persons who have an ownership interest in the property;

x. Whether the property is serviced by sewers or by a private septic system, and whether the property's water is supplied by a public system, a private supply company or an individual well unique to the property;

xi. By what public utilities the property is serviced, with no connections or additional lines required to be made or lain, on the commencement date of the listing agreement;

xii. The official zoning classification of the property which is the subject of the listing agreement;

xiii. Whether or not a certification has been issued which indicates that the property is or is not located in a flood hazard area and, if so, the date and content of that certification; and

xiv. A statement, in type size at least as large as the predominant size type in the writing, advising the owner(s) that all verbal representations should be reduced to writing and made a part of the written agreement or of any confirming letters.

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

(a)

Obligations of Licensees to the Public and Each Other
Offers
Proposed Amendment: N.J.A.C. 11:5-1.23

Authority: N.J.S.A. 45:15-6.

Proposal Number: PRN 1988-437.

The agency proposal follows:

Summary

On January 26, 1988, the New Jersey Real Estate Commission (Commission) conducted a public hearing to entertain comments from real estate licensees concerning the above-captioned rule (see 19 N.J.R. 2238(a)). Upon consideration of the comments presented at the hearing, the Commission has proposed to amend the existing rule to clarify the extent of a broker's obligation to present offers to an owner.

Specifically, the current rule requires that all offers must be in writing in order to obligate the licensee to present such offers to the owner. The proposed amendment requires licensees to present every written offer made to the owner until the owner has accepted a fully agreed upon contract or lease. Where such a signed contract or lease contains an attorney review provision, licensees must continue to present other offers during the review period unless a provision in the contract directs them not to do so. Thus, all licensees must adhere to the owner's instructions and any Agreement to Honor provision in the contract or lease.

The proposed amendment further provides that upon the expiration of the attorney review period and of any extension to it, or upon the acceptance of an agreement which does not contain an attorney review provision, all written offers thereafter obtained by licensees shall be referred to the listing broker who shall not present such offers to the owner unless the owner has directed in the listing agreement that such post-contract offers be presented. Finally, where the listing agreement authorizes the presentation of post-contract offers, the proposed amendment requires that this provision of the listing agreement be fully disclosed to all cooperating brokers and potential purchasers before any offers are obtained through or from such persons.

Social Impact

All persons involved in real estate transactions will benefit from the promulgation of this proposed amendment.

The amendment establishes clear guidelines on the obligations imposed by the Commission on cooperating licensees and on the listing broker with regard to multiple offers. Further, by requiring that a direction must be included in the listing agreement whereby the seller specifically instructs the listing broker to convey post-contract offers, and by requiring the disclosure of the existence of such a clause to potential co-operating brokers and purchasers, future misunderstandings and legal disputes concerning the presentation of post-contract offers may be avoided.

Economic Impact

The proposed amendment will also have a favorable economic impact on the real estate industry. Clarifying the uncertainty in this area will help licensees avoid wasting their efforts by pursuing potential offers on transactions where a firm, final contract is in place and the owner has not authorized the submission of post-contract offers in the listing agreement.

Regulatory Flexibility Statement

The proposed amendment will have no adverse effect on small businesses. No additional reporting requirements are set forth in the amendment. Another rule of the Commission (N.J.A.C. 11:5-1.13) requires listing brokers to maintain a copy of their written listing agreements involving each real estate transaction.

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

11:5-1.23 Obligations of licensees to the public and to each other

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

(d) **Licensees shall comply with the following requirements relating to offers:**

1. If any offer on real property or interest therein is made orally, the licensee shall advise the offeror that he **or she** is not obligated to present to the owner or his **or her** authorized representative any offer unless the offer is in writing, and, **unless the licensee is not required to present further offers as indicated in (e) below,** the licensee shall secure forthwith the offer in writing. [The licensee] **Prior to the owner's acceptance of a fully executed contract, all of the terms of which have been agreed to by the parties, licensees** shall transmit forthwith every written offer on any property or interest therein to the owner or his **or her** authorized representative. If any acceptance of an offer is given orally, the licensee shall secure forthwith the acceptance in writing.

2. Once an owner has accepted a contract or lease which contains an attorney review provision, all licensees shall follow the owner's instructions and any Agreement to Honor provision in the contract or lease with respect to the presentation of offers during the attorney review period. After the attorney review period and any agreed upon extension to it has expired, or after a contract which does not provide for attorney review has been fully agreed upon and accepted, all written offers obtained by any licensees shall be referred to the listing broker who shall not be required by this section to present such offers to the owner unless the owner has directed in the listing agreement that such offers be presented. In the event that an owner has directed in a listing agreement that such post-contract offers are to be presented, full disclosure of that element of the listing agreement shall be made to all cooperating brokers and all prospective purchasers prior to any offers being obtained through or from such persons.

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

(b)

DIVISION OF ADMINISTRATION
New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge
N.J.A.C. 11:18
Notice of Correction

Take notice that the Regulatory Flexibility Statement for proposed new rules N.J.A.C. 11:18, New Jersey Medical Malpractice Reinsurance Recovery Fund, published in the August 15, 1988 issue of the New Jersey

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Register at 20 N.J.R. 2010(a), contains an error in the last sentence. The fifth word in the last sentence of the Statement, "insureds", should be "insurers".

Full text of the corrected sentence follows:

To provide for uniform and consistent applicability of these rules, and to avoid granting any advantage to insurers which are small businesses, no differential treatment is accorded to small business insurers by these proposed new rules.

LABOR

The following proposals are authorized by Charles Serraino, Commissioner, Department of Labor.

Submit comments by October 6, 1988 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

(a)

DIVISION OF EMPLOYMENT SECURITY

1989 Maximum Weekly Benefit Rates
1989 Taxable Wage Base under the Unemployment Compensation Law
1989 Contribution Rate of Governmental Entities and Instrumentalities
1989 Base Week
1989 Alternative Earnings Test
Proposed Amendments: N.J.A.C. 12:15-1.3, 1.4, 1.5, 1.6, and 1.7.

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e), 43:21-3(c), 43:21-4(e), 43:21-7(b)(3), 43:21-7.3(e), 43:21-19(t), 43:21-27, 43:21-40 and 43:21-41.

Proposal Number: PRN 1988-455.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 12:15-1.3 establishes the 1989 maximum weekly benefit rate for benefits under the Unemployment Compensation Law and for State Plan benefits under the Temporary Disability Benefits Law.

The proposed amendment to N.J.A.C. 12:15-1.4 establishes the 1989 taxable wage base for the purpose of contributions under the Unemployment Compensation Law in accordance with N.J.S.A. 43:21-7(b)(3).

The proposed amendment to N.J.A.C. 12:15-1.5 establishes the 1989 contribution rate for governmental entities that elect to pay contributions under the Unemployment Compensation Law.

The proposed amendment to N.J.A.C. 12:15-1.6 raises the amount of earnings required in 1989 to establish a base week for an individual's claim for unemployment compensation and State Plan temporary disability benefits.

Finally, the proposed amendment to N.J.A.C. 12:15-1.7 raises the amount of base year earnings required to establish an individual's eligibility for unemployment compensation and State Plan temporary disability benefits, in those instances in which the individual has not established 20 base weeks.

Social Impact

The proposed amendment to N.J.A.C. 12:15-1.3 will ensure that payments to unemployment and disability insurance recipients entitled to maximum benefits will increase in line with the upward trend of wages in the State's economy, thus preserving the real purchasing power of their benefits.

The proposed amendment to N.J.A.C. 12:15-1.4 will generate increased revenues for the Unemployment Insurance and Disability Insurance Trust Funds needed to offset the increased level of benefits for these programs, which are statutorily indexed to the upward trend of wages in the State's economy.

The proposed amendment to N.J.A.C. 12:15-1.5 will lower the contribution rate for governmental entities, and will have no real social impact on the general public.

The proposed amendments to N.J.A.C. 12:15-1.6 and 12:15-1.7 provide for the base week amount and the amount of earnings to establish eligibility, respectively, to be indexed to wage increases as benefit payments have been indexed since 1969. Some claimants who work temporarily or intermittently may not qualify for benefits under these tightened eligibility standards.

Economic Impact

The proposed amendment to N.J.A.C. 12:15-1.3 will increase the weekly benefit rates received by individuals eligible for the maximum weekly benefit rate under the Unemployment Compensation Law and under the Temporary Disability Benefits Law beginning January 1, 1989, in compliance with statutory provisions which automatically adjust these benefit rates each year in accordance with changes in the Statewide average weekly wage. The maximum weekly benefit for Unemployment Compensation is computed as 56 and 2/3 percent of the Statewide average weekly wage in the second preceding calendar year. As of January 1, 1989, the maximum weekly benefit will increase from $241.00 to $258.00.

The maximum weekly benefit for State Plan Temporary Disability is computed as 53 percent of the Statewide average weekly wage in the second preceding calendar year. As of January 1, 1989, the maximum weekly benefit will increase from $226.00 to $241.00.

The proposed amendment to N.J.A.C. 12:15-1.4 will increase from $12,000 to $12,800 the wages of an individual employee of an employer that are subject to employer and worker contributions under the Unemployment Compensation Law, beginning January 1, 1989. The taxable wage base is computed as 28 times the Statewide average weekly wage in the second preceding calendar year.

The proposed amendment to N.J.A.C. 12:15-1.5, which will lower the contribution rate for governmental entities to 1.1 percent of taxable wages for 1989 from 1.2 percent in 1988, will, other things being equal, result in lower costs to State and local government units that choose this financing option.

The proposed amendment to N.J.A.C. 12:15-1.6 will increase the amount an individual must earn to establish a base week under the Unemployment Compensation and Temporary Disability Laws. The amount is computed as 20 percent of the Statewide average weekly wage in the second preceding calendar year and will increase from $86.00 to $92.00 for benefit years and periods of disability commencing January 1, 1989.

The proposed amendment to N.J.A.C. 12:15-1.7 increases the alternative earnings eligibility standard under the law in those situations where the individual has not established 20 base weeks in the base year period. The amount will increase from $5,200 in 1988 to $5,500 in 1989. The alternative earnings test is indexed each year at 12 times the Statewide average weekly wage in the second preceding calendar year.

The Department does not expect to experience any economic impact as a result of the proposed amendments.

Regulatory Flexibility Statement

The proposed amendments do not impose any reporting, recordkeeping or compliance requirements on businesses. Thus, a regulatory flexibility analysis is not required.

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

12:15-1.3 Maximum weekly benefit rates

(a) In accordance with the provisions of the Unemployment Compensation Law, the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being [$241.00] **$258.00** per week.

(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being [$226.00] **$241.00** per week.

(c) These maximum benefits shall be effective for the calendar year [1987] **1989** on benefit years and periods of disability commencing on or after January 1, [1988] **1989**.

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12:15-1.4 Taxable wage base under the Unemployment Compensation Law

In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first [$12,000] **$12,800** during the calendar year [1988] **1989**.

12:15-1.5 Contribution rate of governmental entities and instrumentalities

(a) In accordance with the provisions of N.J.S.A. 43:21-7.3(e), the contribution rate for all governmental entities and instrumentalities electing to pay contributions under the Unemployment Compensation Law is hereby promulgated as one and [two-] **one**-tenth[s] percent (1.[2] **1** percent) for the entire calendar year.

(b) This contribution rate shall be effective on taxable wages paid in the calendar year [1988] **1989**.

12:15-1.6 Base week

In accordance with the provisions of N.J.S.A. 43:21-19(t), the base week amount is hereby promulgated as being [$86.00] **$92.00** per week for benefit years and periods of disability commencing on or after January 1, [1988] **1989**.

12:15-1.7 Alternative earnings test

In accordance with the provisions of N.J.S.A. 43:21-4(e) and 43:21-41 in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being [$5,200] **$5,500** for benefit years and periods of disability commencing on or after January 1, [1988] **1989**.

(a)

DIVISION OF WORKERS' COMPENSATION

1989 Maximum Workers' Compensation Benefit Rates

Proposed Amendment: N.J.A.C. 12:235-1.6.

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e) and 34:15-12(a).

Proposal Number: PRN 1988-454.

The agency proposal follows:

Summary

The proposed amendment establishes the 1989 maximum workers' compensation rates for temporary disability, permanent total disability, permanent partial disability, and dependency.

Social Impact

The proposed amendment will ensure that payments to Workers' Compensation recipients entitled to maximum benefits will increase in line with the upward trend of wages in the State's economy, thus preserving the real purchasing power of their benefits.

Economic Impact

The proposed amendment will increase from $320.00 to $342.00 the weekly benefit rate received by individuals eligible for maximum weekly benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency under the Workers' Compensation Law.

The effect of this change, other things being equal, will be to raise the employers' workers' compensation insurance costs.

The Department does not expect to experience any economic impact as a result of the proposed amendment.

Regulatory Flexibility Statement

The proposed amendment does not impose any reporting, recordkeeping or compliance requirements on business. Thus, a regulatory flexibility analysis is not required.

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

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being [$320.00] **$342.00** per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year [1988] **1989**.

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(b)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Certificate of Need for Electric Facilities

Proposed Readoption with Amendments: N.J.A.C. 14A:14

Authorized By: Borden R. Putnam, Commissioner, Department of Commerce, Energy and Economic Development.

Authority: N.J.S.A. 48:7-18 and 52:27F-11q.

Proposal Number: PRN 1988-426.

Submit comments by October 6, 1988 to:
Edward J. Linky, Esq.
Chief Regulatory Officer
Division of Energy Planning and Conservation
101 Commerce Street
Newark, New Jersey 07102

The agency proposal is as follows:

Summary

The Department proposes to readopt with amendments the administrative rules governing the implementation of the Certificate of Need for Electric Facilities. Pursuant to Executive Order No. 66(1978), this chapter will expire on February 6, 1989. The amendments have been necessitated by requests from both Atlantic Electric Company and Jersey Central Power and Light Company for the interpretation of a section of the Electric Facility Need Assessment Act (Act) which requires a certificate of need from a public utility if a planned expansion of a single facility or combination of units at a single site will result in an increase of capacity by 100 megawatts or a 25 percent increase in installed capacity, whichever is smaller.

The Act and implementing rules do not currently define "100 megawatts." The Division has carefully considered the following perspectives in tendering the proposed definition for public comment.

1. The legislative intent of the Act;
2. Methods of measurement used by other states and other regulatory bodies; and
3. Appropriate technical bases.

The Division has also reviewed the requirement that applicants must submit a "Notice of Intent" at least one year prior to the anticipated submission of an application for a certificate of need and proposes a change that will make the rules more responsive to the evolving deregulated environment in which the electric utilities are now operating. The one-year requirement has the potential to encourage applicants to undersize facilities in order to avoid the time delays currently built into the rules. The Division believes that it is in the interest of both the public and the utilities that all planned units be of optimal size, subjected to an analysis of whether a utility project is the best way to meet projected demand, and evaluated under these rules in a timely fashion.

Finally, in light of the fast-changing relationships in the rapidly expanding alternative power production market in New Jersey, these proposed amendments will define the limits of public utility involvement in that market.

Social Impact

This proposed readoption with amendments will place the certificate of need process in a current regulatory context. The legislative intent of the Act was to provide an avenue of scrutiny for utility investment in new generating capacity to determine whether any expansion is, in fact, needed. This mandate provides a mechanism to ensure that ratepayer dollars are spent wisely. The proposed amendments simply update the certificate of need process by setting limits on utility involvement with alternative and/or independent power producers, thereby ensuring that they are truly independent of the public utilities. In addition, amending

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the one-year requirement to the Notice of Intent phase will have a positive impact on those utilities who propose additions to capacity but fear the inability to receive timely approvals.

Economic Impact

This proposed readoption with amendments will have a positive economic impact by strictly defining the limits of public utility involvement in alternative and/or independent power production. Further, this readoption with amendments will help introduce competition into the generation of electricity, thereby assisting in providing the most efficient network of electric generating facilities at the lowest possible cost.

Environmental Impact

This proposed readoption with amendments will have a positive impact on the environment by providing an improved mechanism to approve only those facilities which are needed by the public utilities. Amending the process to ensure timely evaluation of applications will encourage the utilities to propose facilities which are optimally sized to meet the capacity requirements rather than to downsize a facility to avoid the requirements of the Act. An optimally-sized facility will generate electricity in a more efficient manner and thus have a more positive environmental impact.

Regulatory Flexibility Statement

This proposed readoption with amendments does not impose recordkeeping, bookkeeping or compliance burdens on small businesses. To the extent that public utility involvement in alternative and/or independent power production is minimized, opportunities for small businesses are created.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14A:14.

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

14A:14-2.1 Definitions

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

. . .

"Commissioner" means the Commissioner of the Department of **Commerce,** Energy **and Economic Development**.

["Department" means the Department of Energy for the State of New Jersey.]

"Division" means the Division of Energy Planning and Conservation in the Department of Commerce, Energy and Economic Development.

"Electric facility" means:

1. Any electric power generating unit or combination of units at a single site [with a combined production of 100 megawatts or more and any facilities appurtenant thereto; or] **which is owned by one or more electric utilities as defined by the public utility laws of New Jersey, N.J.S.A. 48:2-13, and**

i. Has a combined electric power generating capacity of 100 megawatts or more as measured under N.J.A.C. 14A:14-2.2(a); or

ii. Will increase the installed capacity of any electric utility's existing electric power generating facility by 25 percent or more, even if the proposed addition is less than 100 megawatts.

[2. Any electric generating facility which will increase its installed capacity by 25 percent or by 100 megawatts, whichever is smaller.]

2. For the purposes of this definition, the size in megawatts of any facility or additions thereto shall be measured by determining the maximum potential operating capacity of that facility (hereafter, the "maximum gross design capacity"), which means the highest total power output that can be achieved and maintained by the facility as designed at any time during the potential operation of the electric facility, but does not include any facility, regardless of its maximum gross design capacity, which is either of the following:

i. A "qualifying facility," ("QF") as defined by the Federal Energy Regulatory Commission (FERC) in its regulations, 18 C.F.R. 292.101(b)(1), implementing and interpreting the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§2601-2645 (1982); or

ii. An independent power production facility which would be a QF but for its failure to meet the operating and efficiency standards necessary for QF status, as specified in FERC regulations, 18 C.F.R. 292.203(b)(i).

3. Multiple electric power generating facilities which individually fail to meet the maximum gross design capacity, as set forth in paragraph 2. above, or otherwise fail to expand the capacity of an existing public utility facility by 25 percent shall be aggregated and their total capacity utilized in determining whether they require compliance with this chapter, if the facilities are to be constructed or developed as part of a common plan, or if they are connected to the same switching station, even if they do not occupy the same or contiguous tracts of land.

4. For the purposes of this definition, all facilities, structures, storage tanks, pipelines or transmission lines or interconnection equipment appurtenant to the electric facility shall also be considered a part of the facility and shall be included in any application for a certificate of need and in all environmental, economic and other studies required by this chapter.

. . .

14A:14-3.1 Submission

[(a) Each applicant shall provide the Department with a Notice of Intent at least one year prior to the anticipated submission of an Application for a certificate of need.

1. The Notice of Intent shall be submitted to the Department in accordance with the requirements of N.J.A.C. 14A:14-1.2;

2. The applicant shall publish in such newspapers of general circulation as the Commissioner shall designate a notice indicating that a Notice of Intent was filed.]

(a) If growth in peak demand for electric power exceeds the expected demand forecast of a utility in two or more consecutive years, or in three out of five years, or rises by three percent or more in any single year, the electric utility shall notify the Division in writing of such condition within 30 days.

(b) Within 90 days after providing the notification required in (a) above, the electric utility shall file and initiate a Notice of Intent with the Division, unless the electric utility demonstrates to the Division Director the continued ability of the electric utility to meet the reasonable needs of ratepayers without seeking additional supplies of electric power, due to the adequacy of any or a combination of the following:

1. Existing electric power generating capacity, owned, operated or under contract to the utility;

2. New or expected electric power generating capacity, including power from a "qualifying facility" and independent power production facilities; and/or

3. Energy conservation measures or initiatives designed to reduce demand growth.

(c) The demonstration of adequacy required under (b) above shall be made through clear and convincing evidence and may include testimony at any public hearings which the Division Director deems necessary or useful for making the required findings of adequacy. If such findings cannot be met, or if, after 120 days, the electric utility has failed to carry its burden of proving adequacy, the utility shall forthwith file a Notice of Intent.

TRANSPORTATION

TRANSPORTATION OPERATIONS

The following proposals are authorized by Hazel Frank Gluck, Commissioner, Department of Transportation.

Submit comments by October 6, 1988 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

(a)

Restricted Parking and Stopping Routes U.S. 9 in Ocean County and N.J. 71 in Monmouth County.

Proposed Amendment: N.J.A.C. 16:28A-1.7 and 1.38.

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Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
Proposal Number: PRN 1988-442.
The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along Routes U.S. 9 in Howell Township, Monmouth County, and N.J. 71 in Borough of Manasquan, Monmouth County, for the safe and efficient flow of traffic, the enhancement of safety, well-being of the populace and the safe on or off loading of passengers at established bus stops.

Based upon requests from local government officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of no parking bus stop zones along Routes U.S. 9 in Howell Township, Monmouth county, and N.J. 71 in the Borough of Manasquan, Monmouth County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7 and 1.38 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish no parking bus stop zones along Routes U.S. 9 in Howell Township, Monmouth County, and N.J. 71 in the Borough of Manasquan, Monmouth County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on or off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local governments will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendments primarily affect the motoring public.

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

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. in accordance with parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-35. (No change.)

36. Along the southbound (westerly) side in Howell Township, Monmouth County:

i. Near side bus stops:

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

(4) West Farms Road—Beginning at the northerly curb line of West Farms Road and extending 135 feet northerly therefrom.

ii. Mid-block bus stops:

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

[(3) West Farms Road—Beginning 150 feet south of the southerly curb line of West Farms Road and extending 135 feet southerly therefrom.]

iii. (No change.)

37.-38. (No change.)

16:28A-1.38 Route 71

(a) The certain parts of State highway Route 71 described in this subsection are designed and established as "no parking" zones where stopping [and] **or** standing [are] **is** prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-9. (No change.)

10. No stopping or standing in the City of Asbury Park, Monmouth County:

i. (No change.)

ii. At taxi stands along (Main Street) west side.

(1) From a point 35 feet north of the northerly curb line of Second Avenue to a point 25 feet northerly therefrom.

[(b) In accordance with the provisions of N.J.S.A. 39:4-138.1, the certain parts of State highway Route 71 described in (b) of this section are designated and established as "No parking" zones.

1. No parking—loading zones in the City of Asbury Park, Monmouth County:

i. Along the westerly (southbound) side (Main Street):

(1) Between points 30 feet south of, and 70 feet south of the southerly curb of Lake Avenue;

(2) Between points 25 feet south of, and 65 feet south of the southerly curb line of Asbury Avenue.

2. No stopping or standing at taxi stands in the City of Asbury Park, Monmouth County:

ii. Along (Main Street) west side:

(1) From a point 35 feet north of the northerly curb line of Second Avenue to a point 75 feet northerly therefrom.]

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

[(d)]**(c)** The certain parts of State highway Route 71 described in this subsection are designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established [l]Loading [z]Zones:

1. No parking—Loading [z]Zone in the City of Asbury Park, Monmouth County:

i. (No change.)

ii. Along the westerly (southbound) side (Main Street):

(1) Between points 30 feet south of, and 70 feet south of the southerly curb line of Lake Avenue;

(2) Between points 25 feet south of, and 65 feet south of the southerly curb line of Asbury Avenue.

(d) The certain parts of State highway Route 71 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the northbound (easterly) side in the Borough of Manasquan, Monmouth County:

i. Mid-block bus stop:

(1) Main Street—Beginning 128 feet north of the northerly curb line of Main Street and extending 135 feet northerly therefrom.

2. Along the southbound (westerly) side in the Borough of Manasquan, Monmouth County:

i. Near side bus stop:

(1) Main Street—Beginning at the northerly curb line of Main Street and extending 105 feet northerly therefrom.

(a)

Speed Limits
Route U.S. 9 in Atlantic County and Ocean County
Proposed Amendment: N.J.A.C. 16:28-1.41.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.
Proposal Number: PRN 1988-443.
The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 16:28-1.41(a)2 will revise speed limit zones along Route U.S. 9 in the cities of Somers Point, Linwood, Northfield, Pleasantville, Absecon, Port Republic and in Galloway Township, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon request from local government officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the revision of speed limit zones in Atlantic County was warranted.

The proposed amendment N.J.A.C. 16:28-1.41(b)12 and 14 will set a speed limit between Route 72 and Lakewood Avenue and between Manor

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Drive and Barneget Township line for the enhancement of safety and the well-being of the populace. In addition, a school speed zone will be established along Route U.S. 9 in Stafford Township, Ocean County, in zone 14 within the Southern Regional High School Zone, for the safety of children during recess when their presence is clearly visible from the roadway or while they are going to or leaving school during opening or closing hours.

Based upon a request from local government officials, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of the speed limits and a school speed zone in Stafford Township, Ocean County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.41, based upon the requests from local government officials and the traffic investigations.

Social Impact

The proposed amendment to N.J.A.C. 16:28-1.41(a)2 will revise speed limit zones along Route U.S. 9 in the Cities of Somers Point, Linwood, Northfield, Pleasantville, Abescon, Port Republic and in Galloway Township, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

The proposed amendment N.J.A.C. 16:28-1.41(b)12 and 14 will set certain speed limits for the enhancement of safety and the well-being of the populace and establish a school speed zone along Route U.S. 9 in Stafford Township, Ocean County, in zone 14 within the Southern Regional High School zone for the safety of children during recess, when their presence is clearly visible from the roadway or while they are going to or leaving school during opening or closing hours. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of speed limit zone signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28-1.41 Route U.S. 9 including Parts of Route 35 and 444

(a) The rate of speed designated for the certain parts of State highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. (No change.)

2. For both directions of traffic in Atlantic County:

i. In the City of Somers Point:

(1) Zone 1: 45 miles per hour between the Beesley's Point Bridge Company-New Jersey Department of Transportation jurisdictions line and County Route 559 (mileposts 31.90 to 32.55); thence

(2) Zone 2: 35 miles per hour between County Route 559 and Route N.J. 52 (mileposts 32.55 to 33.15); thence

(3) Zone 3: 40 miles per hour between Route N.J. 52 and the City of Somers Point-City of Linwood line (mileposts 33.15 to 34.47); thence

ii. In the City of Linwood:

(1) 40 miles per hour between the City of Somers Point-City of Linwood line and West Avenue (mileposts 34.47 to 34.98); thence

(2) Zone 4: 45 miles per hour between West Avenue and Monroe Avenue (mileposts 34.98 to 35.93); thence

(3) Zone 5: 40 miles per hour between Monroe Avenue and the City of Linwood-City of Northfield line (mileposts 35.93 and 36.96).

iii. In the City of Northfield:

(1) 40 miles per hour between the City of Linwood-City of Northfield line and Mill Road except with a 25 miles per hour School Speed zone in the Mill Road 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 (mileposts 36.96 to 37.62); thence

(2) Zone 6: 35 miles per hour between Mill Road and Jackson Avenue except with a 25 miles per hour School Speed Zone in the Mill Road 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 (mileposts 37.62 to 38.38); thence

(3) Zone 7: 40 miles per hour between Jackson Avenue and the City of Northfield-City of Pleasantville line (mileposts 38.38 to 38.88); thence

iv. In the City of Pleasantville:

(1) 40 miles per hour between the City of Northfield-City of Pleasantville line and Tilton Road (mileposts 38.88 to 38.99); thence

(2) Zone 8: 35 miles per hour between Tilton Road and Noah's Road (mileposts 38.99 to 39.55); thence

(3) Zone 9: 30 miles per hour between Noah's Road and Route U.S. 322 (mileposts 39.55 to 39.87); thence

(4) Zone 10: 35 miles per hour between Route U.S. 322 and West Adams Avenue (mileposts 39.87 to 40.37); thence

(5) Zone 11: 40 miles per hour between West Adams Avenue and West Reading Avenue (mileposts 40.37 to 40.90); thence

(6) Zone 12: 35 miles per hour between West Reading Avenue and West California Avenue (City of Pleasantville-City of Absecon line) (mileposts 40.90 to 41.81); thence

v. In the City of Absecon:

(1) 35 miles per hour between West California Avenue (City of Pleasantville-City of Absecon line) and 450 feet north of West California Avenue (mileposts 41.81 to 41.90); thence

(2) Zone 13: 45 miles per hour between 450 feet north of West California Avenue and 500 feet south of Orchard Street except with a 35 miles per hour School Speed zone in the Holy Spirit High 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 (mileposts 41.90 to 42.47); thence

(3) Zone 14: 35 miles per hour between 500 feet south of Orchard Street and 25 feet north of Ohio Avenue (mileposts 42.47 to 42.71); thence

(4) Zone 15: 25 miles per hour between 250 feet north of Ohio Avenue and West Church Street (mileposts 42.71 to 42.90); thence

(5) Zone 16: 35 miles per hour between West Church Street and Route N.J. 157 (mileposts 42.90 to 43.77); thence

(6) Zone 17: 45 miles per hour between Route N.J. 157 and the City of Absecon-Township of Galloway line (mileposts 43.77 to 44.15); thence

v. In Galloway Township:

(1) Zone 18: 45 miles per hour between the City of Absecon-Township of Galloway line and East Brook Avenue (mileposts 44.15 to 44.52); thence

(2) Zone 19: 50 miles per hour East Brook Avenue and 450 feet north of Sommers Town Lane except with a 35 miles per hour School Speed zone in the Oceanville 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 (mileposts 44.52 to 46.48); thence

(3) Zone 20: 45 miles per hour between 450 feet north of Sommers Town Lane and 1225 feet north of Leeds Point Road (County Road 618) (mileposts 46.48 to 47.16); thence

(4) Zone 21: 50 miles per hour between 1225 feet north of Leeds Point Road (County Road 618) and milepost 48 (mileposts 47.16 to 48.00); thence

(5) Zone 22: 45 miles per hour between Mileposts 48 and Old New York Road (County Road 610) (mileposts 48.00 to 48.63); thence

(6) Zone 23: 50 miles per hour between Old New York Road (County Road 610) and the Township of Galloway-City of Port Republic line (mileposts 48.63 to 51.34); thence

vi. In the City of Port Republic:

(1) Zone 24: 50 miles per hour between the Township of Galloway-City of Port Republic line and the Garden State Parkway (mileposts 51.34 to 52.36).

(b) The rate of speed designated for State highway Route U.S. 9, including parts of Route 444 (and excluding Garden State Parkway Authority sections) described in this subsection shall be established

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and adopted as the maximum legal rate of speed for both directions of traffic:

1.-11. (No change.)

12. 35 miles per hour between Route 72 and Lakewood Avenue, Stafford Township (mileposts 70.40 to 70.86); thence

13. (No change.)

14. 50 miles per hour between Manor Drive and Barnegat Township line (mileposts 71.14 to 73.21); thence

i. 35 miles per hour school speed zone within the Southern Regional High School zone in Stafford Township, Ocean County, 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.

Renumber existing 14. through 31. as **15. through 32.** (No change in text.)

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Supplemental Annuity Collective Trust Lump Sum Distributions

Proposed Amendments: N.J.A.C. 17:8-3.3

Authorized By: Douglas R. Forrester, Secretary, Supplemental Collective Trust Council.

Authority: N.J.S.A. 52:18A-111.

Proposal Number: PRN 1988-429.

Submit comments by October 6, 1988 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front St.
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will allow a participant in the Supplemental Annuity Collective Trust (SACT) who is retiring or withdrawing from his or her account to receive 90 percent (instead of the current 75 percent) of his or her lump sum distribution payment, based upon the last computed equity value of the account. The remaining balance will be paid to the retiring or withdrawing member upon the final evaluation of the equity values.

Social Impact

The proposed amendment will affect current and future participants in the SACT program when they retire or withdraw from their accounts. This amendment will allow such retiring or withdrawing participants to receive a larger percentage of their lump sum distribution at an earlier time.

Economic Impact

The proposed amendment will not have any adverse effect upon the SACT program or the participants in the program. The net effect of the proposed amendment would be that the greater portion of the amount due to a retiring or withdrawing participant will be paid sooner without increasing the liability of the program itself.

Regulatory Flexibility Statement

Since the rules of the Division of Pensions only impact upon public employers and/or employees, this proposed amendment will not have any effect upon small businesses, or private industry in general.

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

17:8-3.3 Withdrawal or retirement; effective date and form

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

(c) In the event that an eligible participant elects a lump sum payment of his or her account and the determination of the unit value is delayed past the normal valuation date, the participant will be advised that an amount up to [75] **90** percent of his or her last computed equity may be paid initially and the balance paid[,] once the unit value has been established.

(d) (No change.)

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

New Jersey Cigarette Tax Act Drop Shipments; Prepackaging

Proposed Amendment: N.J.A.C. 18:6-7.13

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:50-1 and 56:7-31.

Proposal Number: PRN 1988-440.

Submit comments by October 6, 1988 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The purpose of the proposed amendment is to provide that wholesale dealers may not acquire prepackaged cigarettes for sale to their retail accounts when such prepackaging results in a price rebate or concession from the supplier who performs the prepackaging.

Social Impact

The proposed amendment will end uncertainty which existed under the rule before the amendment. Prepackaging is only forbidden by law where a rebate or concession is granted to the wholesaler under the circumstances of each case (see N.J.S.A. 56:7-20). Thus, this amendment will inform wholesale dealers and their suppliers that there is no longer a per se violation by a prepackaging arrangement.

Economic Impact

The proposed amendment will only state the statutory prohibition against prepackaging which results in a price rebate or concession. There is no impact on State revenue and no affect on the price of cigarettes in New Jersey.

Regulatory Flexibility Statement

The amendment will apply to small businesses, as well as to businesses employing more than 100 people. Any action to exempt small businesses would not be in compliance with applicable statutes; therefore, the provisions of this amendment must be uniformly applied.

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

10:6-7.13 Drop shipments; **prepackaging**

(a) All wholesale dealers licensed pursuant to the New Jersey Cigarette Tax Act, may not have cigarettes intended for sale or delivery to retail accounts, drop shipped [or prepackaged] by the supplier.

(b) A wholesale dealer may not acquire cigarettes prepackaged for a retail account by a supplier when such prepackaging results in a price rebate or concession from the supplier.

[(b)]**(c)** Wholesale dealers must acquire cigarettes in [bulk, transfer same to] their own storage facilities and do all billing [and packaging] necessary to the final transfer of the cigarettes to their retail accounts.

[(c)]**(d)** The drop shipping or prepackaging of any cigarettes by the supplier**, contrary to the provisions of (a), (b) and (c) above,** for a wholesale dealer's retail accounts is prohibited, and considered a violation of the New Jersey Unfair Cigarette Sales Act.

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(a)

DIVISION OF TAXATION

Transfer Inheritance Tax and Estate Tax
Proposed New Rules: N.J.A.C. 18:26-6.1 and 8.1
Proposed Repeals and New Rules: N.J.A.C. 18:26-6.2 and Appendix A
Proposed Amendments: N.J.A.C. 18:26-2.5, 2.7, 5.9, 5.17, 5.19, 6.3, 7.10, 8.6, 8.7, 8.12, 9.4, 9.10 and 12.2

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:50-1.
Proposal Number: PRN 1988-435.

Submit comments by October 6, 1988 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 18:26 are necessary to conform the rules to match legislative changes in statutes, take into account court decisions, or to simply correct reference or technical language errors contained in the current rules.

A phase-down of transferees subject to the inheritance tax came with the enactment of P.L. 1985, c.57 on February 27, 1985, applicable retroactively to January 1, 1985. This legislative change had a direct impact on N.J.A.C. 18:26-2.5, 2.7, 6.1, 6.2 and 6.3.

Briefly, the provisions of the phase-down legislation provide that, effective in estates of decedents dying on and after January 1, 1985, benefits passing to a surviving spouse are totally exempt from the tax. Provision was also made for the amount of exemption granted to all other Class "A" transferees to increase on an annual basis, beginning with estates of decedents dying on and after July 1, 1985, and, effective with estates of decedents dying on and after July 1, 1988, all Class "A" transferees would be totally exempt from the tax.

The law further provided that Class "C" transferees would be entitled to an exemption in the amount of $25,000 effective with estates of decedents dying on and after July 1, 1988.

Proposed amendments are necessary to reflect specific provisions of P.L. 1985, c.57 and to reflect the proper cross-reference in N.J.A.C. 18:26-6.3 which changes as a result of these proposed amendments.

Proposed amendments to N.J.A.C. 18:26-5.9, 5.17 and 5.19 are necessary to correct erroneous cross-references contained in the current rules. The amendments will correctly refer to N.J.A.C. 18:26-6.16 instead of N.J.A.C. 18:26-6.17.

The proposed amendment of N.J.A.C. 18:26-7.10 relating to executor's and administrator's expense is necessary because of legislative changes in the applicable statute. P.L. 1983, c.394, regarding fiduciary commissions, was approved December 14, 1983 and revised the rates to be applied in determining allowable commissions. Full text of the change is included as a proposed amendment.

The amendment of N.J.A.C. 18:26-8.1 is required to correctly establish responsibility and accountability for the proper initial processing of inheritance tax data and reports, as well as to indicate standard procedure.

The proposed amendment of N.J.A.C. 18:26-8.6 regarding final assessment bills confirms that no formal bill or analysis of tax is required when Form L-5 is used pursuant to N.J.A.C. 18:26-8.7.

The proposed amendment of N.J.A.C. 18:26-8.7 relating to pre-audit payment of inheritance tax clarifies the necessity of filing a completed Form L-5 and Form L-2 or L-3. The amendment further states that a formal receipt, tax bill, or analysis of tax is not issued when Form L-5 is used to file a return and that return is accepted as filed.

The proposed amendment of N.J.A.C. 18:26-8.12 regarding a life estate in realty held by the entirety provides for the inclusion of real property which was the subject of an inter-vivos transfer by the decedent.

The proposed amendment of N.J.A.C. 18:26-9.4 clarifies that when a Form L-5 is used, it should be filed directly with the Inheritance Tax Branch in Trenton.

The proposed amendment of N.J.A.C. 18:26-9.10 regarding how the tax is payable merely corrects an erroneous zip code.

N.J.A.C. 18:26-12.2 relates to administration of transfer inheritance tax and New Jersey estate tax. Opinion No. 10 of the Committee on the Unauthorized Practice of Law was modified by the Supreme Court of New Jersey on April 14, 1986 (see *In re Application of the New Jersey Society of Certified Public Accountants,* 102 N.J. 231 (1986)).

The modification permits the preparation and filing of New Jersey transfer inheritance tax returns by qualified Certified Public Accountants, licensed in the State of New Jersey. N.J.A.C. 18:26-12.2 was previously amended to conform with this decision. However, conditions, as mandated by the Court, which must be complied with by a Certified Public Accountant before he or she commences work on a New Jersey transfer inheritance tax return were inadvertently omitted from the original amendment. The proposed amendment properly provides for inclusion of these conditions.

Social Impact

Adoption of these proposed amendments will serve to inform and assist taxpayers and their representatives in understanding and meeting the requirements of New Jersey transfer inheritance tax as they currently exist. The amendments will help to make clear recent legislative changes and to advise the general public of the policies and procedures in the Transfer Inheritance Tax Branch, Division of Taxation.

Class "A" transferees are exempt from the tax, effective with estates of decedents dying on or after July 1, 1988. However, there has been no change in New Jersey estate tax laws and estates of resident decedents are still subject to the estate tax regardless of the classification of the beneficiaries.

Economic Impact

There is no appreciable economic impact since the State of New Jersey will receive the same amount of tax under the Transfer Inheritance Tax Act.

Regulatory Flexibility Statement

The proposed amendments relate to New Jersey transfer inheritance tax rules. These taxes do not apply to the conduct of small businesses in the State. These taxes are imposed on the transfer of property from estates of deceased individuals. Thus a regulatory flexibility analysis is not required.

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

18:26-2.5 Rates for Class "A" transferee

(a) (No change.)

(b) Transfers to Class "A" transferees where the decedent dies on or after July 1, 1978[,] **through June 30, 1985, except as provided in (c) below,** are taxed at the following rates:

1. (No change.)

(c) Transfers to a spouse are totally exempt where the decedent dies on or after January 1, 1985.

(d) Transfers to Class "A" transferees, other than a spouse, where the decedent dies on or after July 1, 1985 through June 30, 1986, are taxed at the following rates:

1. On any amount in excess of—

$ 50,000 up to 100,000	**3%**
100,000 up to 150,000	**4%**
150,000 up to 200,000	**5%**
200,000 up to 300,000	**6%**
300,000 up to 500,000	**7%**
500,000 up to 700,000	**8%**
700,000 up to 900,000	**9%**
900,000 up to 1,100,000	**10%**
1,100,000 up to 1,400,000	**11%**
1,400,000 up to 1,700,000	**12%**
1,700,000 up to 2,200,000	**13%**
2,200,000 up to 2,700,000	**14%**
2,700,000 up to 3,200,000	**15%**
3,200,000	**16%**

(e) Transfers to Class "A" transferees, other than a spouse, where the decedent dies on or after July 1, 1986 through June 30, 1987, are taxed at the following rates:

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1. On any amount in excess of—

$ 150,000 up to 200,000	**5%**
200,000 up to 300,000	**6%**
300,000 up to 500,000	**7%**
500,000 up to 700,000	**8%**
700,000 up to 900,000	**9%**
900,000 up to 1,100,000	**10%**
1,100,000 up to 1,400,000	**11%**
1,400,000 up to 1,700,000	**12%**
1,700,000 up to 2,200,000	**13%**
2,200,000 up to 2,700,000	**14%**
2,700,000 up to 3,200,000	**15%**
3,200,000	**16%**

(f) Transfers to Class "A" transferees, other than a spouse, where the decedent dies on or after July 1, 1987 through June 30, 1988, are taxed at the following rates:

1. On any amount in excess of—

$ 250,000 up to 300,000	**6%**
300,000 up to 500,000	**7%**
500,000 up to 700,000	**8%**
700,000 up to 900,000	**9%**
900,000 up to 1,100,000	**10%**
1,100,000 up to 1,400,000	**11%**
1,400,000 up to 1,700,000	**12%**
1,700,000 up to 2,200,000	**13%**
2,200,000 up to 2,700,000	**14%**
2,700,000 up to 3,200,000	**15%**
3,200,000	**16%**

(g) Transfers to all Class "A" transferees, where decedent dies on or after July 1, 1988, are totally exempt.

18:26-2.7 Rates of Class "C" transferee

(a) In the case of a transfer to a Class "C" transferee, **where the decedent dies prior to July 1, 1988,** the rates are as follows:

On any amount up to $1,100,000	11%
On any amount in excess of $1,100,000 up to $1,400,000	13%
On any amount in excess of $1,400,000 up to $1,700,000	14%
On any amount in excess of $1,700,000	16%

(b) In the case of a transfer to a Class "C" transferee, where the decedent dies on or after July 1, 1988, the rates are as follows:

1. On any amount in excess of—

$ 25,000 up to 1,100,000	**11%**
1,100,000 up to 1,400,000	**13%**
1,400,000 up to 1,700,000	**14%**
1,700,000	**16%**

18:26-5.9 Certain profit sharing and retirement plans

The proceeds of a profit sharing or retirement plan payable at the date of death of a decedent to a beneficiary named by the decedent or in accordance with the preference schedule of beneficiaries is deemed to be a transfer which takes effect at or after death and is as such subject to the tax, except for the exemption provided by N.J.A.C. [18:26-6.17] **18:26-6.16**.

18:26-5.17 Proceeds of retirement contracts

The proceeds of a retirement contract purchased on the installment plan are subject to the New Jersey Inheritance Tax when the decedent dies prior to the date of retirement and the payments are returned to either his estate or to a designated beneficiary, except for the exemption provided by N.J.A.C. [18:26-6.17] **18:26-6.16**.

18:26-5.19 Annuity contracts

(a) (No change.)

(b) Annuity payable under certain trusts and plans which are exempt under Section 2039(c) of the Internal Revenue Code of 1954 may not be exempt for New Jersey Inheritance Tax purposes. The treatment to be accorded payments made under such trusts and plans depends upon the facts and circumstances which exist in each case. (See N.J.A.C. [18:26-6.17] **18:26-6.16**.)

18:26-6.1 [(Reserved)] **Class "A" transfers**

(a) In instances where the decedent dies prior to July 1, 1978, the transfer of property having an aggregate clear market value of $5,000 or less which is transferred to a father, mother, grandparent, husband, wife, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(b) In instances where the decedent dies on or after July 1, 1978 through June 30, 1985, except as provided in (c) below, the transfer of property having an aggregate clear market value of $15,000 or less which is transferred to a father, mother, grandparent, husband, wife, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(c) Transfers to a spouse are totally exempt where the decedent dies on or after January 1, 1985.

(d) In instances where the decedent dies on or after July 1, 1985 through June 30, 1986, the transfer of property having a clear market value of $50,000 or less which is transferred to a father, mother, grandparent, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(e) In instances where the decedent dies on or after July 1, 1986 through June 30, 1987, the transfer of property having an aggregate clear market value of $150,000 or less which is transferred to a father, mother, grandparent, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(f) In instances where the decedent dies on or after July 1, 1987 through June 30, 1988, the transfer of property having an aggregate clear market value of $250,000 or less which is transferred to a father, mother, grandparent, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(g) Transfers to all Class "A" transferees, where decedent dies on or after July 1, 1988, are totally exempt.

[18:26-6.2 Class "A" transfers

(a) In instances where the decedent dies prior to July 1, 1978, the transfer of property having an aggregate clear market value of $5,000 or less which is transferred to a father, mother, grandparent, husband, wife, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(b) In instances where the decedent dies on or after July 1, 1978, the transfer of property having an aggregate clear market value of $15,000 or less which is transferred to a father, mother, grandparent, husband, wife, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.]

18:26-6.2 Class "C" transfers

In instances where the decedent dies on or after July 1, 1988, the transfer of property having an aggregate clear market value of $25,000 or less which is transferred to a brother or sister of decedent, a wife or widow of a son of a decedent or a husband or widower of a daughter of a decedent is exempt from the New Jersey transfer inheritance tax.

18:26-6.3 Dower or curtesy

(a) (No change.)

(b) The exemption for dower or curtesy is in addition to the exemption provided for in [Section 6.2 of this Chapter] **N.J.A.C. 18:26-6.1**.

18:26-7.10 Executor's and administrator's expenses

(a) In the absence of a judgment of the court exercising jurisdiction over the probate of an estate, the deduction for executor's or administrator's commissions shall be determined as of the date of death of [testator] **decedent** as follows:

First	[$100,000]	**$200,000**	5 percent
Next	[400,000]	**800,000**	3½ percent
[Next	500,000		3 percent]
Excess over	1,000,000		2 percent

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provided, however, that where the amount claimed is less than that determined by the application of the rates set forth above, only such amount as claimed shall be allowed; and provided, further, where a formal accounting is not to be filed that, if in the discretion and judgment of the Director, it should appear that the claim for an allowance of executor's or administrator's commissions is in an amount greater than that which results from application of the above rates, he shall allow such amount as is deemed appropriate after having considered the risk, pain and trouble experienced by the fiduciary in the discharge of his or its duties and in this connection the fiduciary shall file an affidavit of services rendered in support of the claim.

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

18:26-8.1 [(Reserved)]**Assessments in general**

Upon the filing of a return with the District Supervisor in the county in which the decedent was a resident, in the case of a resident decedent, or with the Transfer Inheritance Tax Bureau, in the case of a nonresident decedent, the District Supervisor of the county in which the property is situated shall appraise the real and tangible personal property of a decedent and he or she shall forward the return with his or her appraisals and all related data to the Transfer Inheritance Tax Bureau where the final assessment is made.

18:26-8.6 Final assessment bills

(a) Upon completion of the assessment, a bill showing the aggregated amount of tax, the names of the taxable beneficiaries and the tax assessed against each will be forwarded to the executor, administrator or other representative of the estate, **except when returns are filed pursuant to N.J.A.C. 18:26-8.7, when no bill is issued**.

(b) (No change.)

18:26-8.7 Pre-audit payment of inheritance tax; resident decedent's estate returns

(a) The representative of an estate may file form L-2 or L-3 (see N.J.A.C. 18:26-9.4(a)2 and 3) **and a completed form L-5 directly to New Jersey Inheritance Tax, CN-249, Trenton, NJ 08646** together with a certified or cashier's check in full payment of the tax and interest, if any, as computed by the taxpayer on form L-5, and immediately receive necessary waivers, unless the distribution or valuation of the estate involves:

1.-2. (No change.)

3. Contingencies requiring compromise[.]; **or**

4. Marital deduction.

(b) Returns filed pursuant to this section may be subject to selective audit, and if errors or omissions are found, resulting in an additional tax, a bill for same will be forwarded. Selective audit may be instituted by the bureau within six months of the date of receipt by the bureau of form L-5. **Returns accepted as filed result in no receipt or bill being issued.**

18:26-8.12 Life estate in realty held by the entirety

(a) When real property is devised **or transferred** to a husband and wife as tenants by the entirety each having a vested life estate in common with the other for their joint lives with a vested estate in fee in the entire remainder subject to defeasance, as to the one first dying, the value of such property for New Jersey Inheritance Tax purposes is ascertained as follows:

1.-2. (No change.)

18:26-9.4 Resident decedents' returns

(a) In the case of a resident decedent, all returns must be filed on one of the following forms and accompanied by a copy of the decedent's will, if such decedent died testate, as well as a copy of the decedent's income tax return (form 1040 or 1040A) filed with the Internal Revenue Service for the last full year preceding his date of death.

1. (No change.)

2. Form L-2: May be used in resident estates where letters testamentary or of general administration have been granted and assets can be listed in the space provided. It must be filed with the District Supervisor of the county of which the decedent died a resident **except when filed pursuant to N.J.A.C. 18:26-8.7**.

3.-4. (No change.)

18:26-9.10 How tax is payable

(a) (No change.)

(b) No District Supervisor or employee of his office is permitted to accept any payment of the tax and/or interest. Any payment[s] of the tax or interest received at the office of the District Supervisor is immediately returned to the sender thereof with instructions that the payment is to be forwarded to the Transfer Inheritance Tax Bureau, Trenton, New Jersey [08625] **08646**. The accural of interest is tolled only upon receipt by the Bureau in Trenton, New Jersey or payment of the tax and only to the extent of the payment on account.

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

18:26-12.2 Administration of Transfer Inheritance Tax and New Jersey Estate Tax

(a) The Act is administered by the Director through the Transfer Inheritance Tax Bureau of the Division of Taxation in the Department of the Treasury.

1. No Inheritance Tax report on the estate of a resident decedent will be accepted nor negotiation entered into with regard to the estate matters of a resident decedent unless such estate is represented by:

i.-iii. (No change.)

iv. A certified public accountant of the State of New Jersey, provided such accountant is designated for such purpose, in writing, by any of the persons enumerated in (a)ii or iii above[.] **subject to the condition that the client be notified, in writing, before the certified public accountant commences work on the return, that review of the return by a qualified attorney may be desirable because of the possible application of legal principles to the preparation of the tax return. A copy of the properly executed notification must be filed with the inheritance tax return.**

2.-3. (No change.)

[APPENDIX A.
William R. Mulholland, Jr.
Superintendent
Transfer Inheritance Tax
Post Office Box 1919
Trenton, N.J. 08646

1. DISTRICT SUPERVISORS—INHERITANCE TAX

Atlantic—Patrick T. McGahn, Jr. ..... 1421 Atlantic Avenue, Atlantic City, N.J. 08401 609-345-3261

Bergen—Thomas F. Foley ..... Administrative Bldg., Hackensack, N.J. 07601 201-646-2060

Burlington—James C. Ayrer ..... 515 High Street, Burlington, N.J. 08016 609-386-4720

Camden—Thomas A. Cucinotta .... 1500 Kings Highway North, Cherry Hill, N.J. 08002 609-795-6116

Cape May—Harry J. Gibbons ..... 217 East Pine Avenue, Wildwood, N.J. 08260 (no phone)

Cumberland—Harry R. Adler ..... 80 W. Broad Street, Bridgeton, N.J. 08302 609-451-1731

Essex—Inheritance Tax Bureau ..... 1100 Raymond Blvd., Rm. 101 M, Newark, N.J. 07102 201-648-3486

Gloucester—John S. Holston, Jr. ..... 62 North Broad Street, Woodbury, N.J. 609-848-5858

Hudson—Malcolm J. Robbins ..... 921 Bergen Avenue, Jersey City, N.J. 07306 201-653-3633

Hunterdon—Sanford N. Groendyke ..... 38 Main Street, High Bridge, N.J. 08829 201-638-8233

Mercer—Donald R. Bryant ..... 28 W. State Street—Rm. 707, Trenton, N.J. 08608 609-882-1422

Middlesex—Franklin F. Feld ..... 46 Bayard Street, New Brunswick, N.J. 08901 201-249-7418

Monmouth—Peter L. Graham ..... Old Mill Shopping Plaza, 2100 Highway 35, Sea Girt, N.J. 08750 201-449-0210

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Morris—R. Wayne Stickel ..... 229 Main Street, Chatham, N.J. 07928 201-635-5200

Ocean—Henry L. Gertner ..... 256 Second Street, Lakewood, N.J. 08701 201-363-1122

Passaic—Harold Leib ..... 35 Church Street, Rm. 203, Paterson, N.J. 201-684-4602

Salem—Philip W. Taylor ..... 34 North Main Street, Woodstown, N.J. 08098 609-769-0276

Sussex—Peter J. Barry ..... 120 Route 183, Stanhope, N.J. 07874 201-347-1630

Somerset—A. Dix Skillman ..... County Administrative Bldg., Somerville, N.J. 08876 201-725-4700

Union—Harold Simon ..... 272 N. Broad Street, Elizabeth, N.J. 07208 201-355-1782

Warren—Harold A. Searles ..... 301 Mill Street, Belvidere, N.J. 07823 201-475-2701

As amended, R.1972 d.133, eff. June 21, 1972.
See: 4 N.J.R. 168(a).
As amended, R.1973 d.298, eff. October 18, 1973.
See: 5 N.J.R. 393(e).

2. INVESTIGATORS

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APPENDIX A
Emil A. Petrecca, Jr.
Chief
Transfer Inheritance Tax
50 Barrack Street, CN 249
Trenton, NJ 08646

DISTRICT SUPERVISORS—INHERITANCE TAX

Atlantic— Howard Kupperman	1125 Atlantic Avenue, Suite 416 Atlantic City, NJ 08401 (609) 344-9023
Bergen— Inheritance Tax D.O.	50 Main Street Hackensack, NJ 07600 (201) 488-3377
Burlington— Ronald E. Bookbinder	P.O. Box 429 235 High Street Burlington, NJ 08016 (609) 386-4720
Camden— Marco M. Agostini	1500 Kings Highway North Cherry Hill, NJ 08002 (609) 795-6116, 6117
Cape May— Harry J. Gibbons	715 Pittsburgh Avenue Cape May, NJ 08204 (609) 884-3530
Cumberland— Harry R. Adler	P.O. Box 537, 80 West Broad Street Bridgeton, NJ 08302 (609) 451-1731
Essex— Judith Carboni	1100 Raymond Boulevard, Rm. 101M Newark, NJ 07102 (201) 648-3486
Gloucester— Arthur J. McDonald Jr.	62 North Broad Street Woodbury, NJ 08096 (609) 848-5858
Hudson	Transfer Inheritance Tax CN249 Trenton, NJ 08646
Hunterdon— Sallie Pisani	R.D. #1, Box 240A (Mailing Address) Annandale, NJ 08801 (201) 735-6689 Landsdown Road Clinton, NJ
Mercer— Marvin A. Van Hise, Jr.	3490 U.S. Highway #1 Princeton, NJ 08540 (609) 987-8500
Middlesex— Franklin F. Feld	46 Bayard Street, 4th Floor New Brunswick, NJ 08901 (201) 745-3214
Monmouth— Peter L. Graham	Old Mill Shopping Plaza 2100 Highway 35 Sea Girt, NJ 08750 (201) 449-0210
Morris— Carl A. Frahn	229 Main Street Chatham, NJ 07928 (201) 635-5200
Ocean— Kenneth B. Fitzsimmons	503 Brick Boulevard Brick, NJ 08723 (201) 920-0253
Passaic— Thomas Melani	2208 Route 208 South Fair Lawn, NJ 07410 (201) 791-4117
Salem— Harold L. Crouch	18 North Main Street Woodstown, NJ 08098 (609) 769-3730
Somerset— John F. Richardson	P.O. Box 3000 County Administrative Building Somerville, NJ 08876 (201) 231-7135
Sussex— Peter J. Barry	P.O. Box 685 120 Route 183 Stanhope, NJ 07874 (201) 347-1630
Union— Harold Simon	272 North Broad Street Elizabeth, NJ 07208 (201) 355-1782
Warren— Harold A. Searles	Manunka Chunk R.D. #1, Box 1783 Columbia, NJ 07832 (201) 475-4497

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ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Allocation of Water Supply Costs for Emergency Water Projects

Proposed Readoption: N.J.A.C. 7:1D

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

Authority: P.L. 1981, c.28 and P.L. 1981, c.29.

DEP Docket Number: 034-88-08.

Proposal Number: PRN 1988-458.

Submit comments by October 6, 1988 to:
Mark Benevenia, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN-402
Trenton, New Jersey, 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:1D expires on December 1, 1988. The Department of Environmental Protection (Department) has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department proposes to readopt the rules without change.

The rules provide a mechanism for reimbursement to the State of the costs of certain emergency water supply projects originally constructed in response to the drought of 1980-82. These projects were constructed to provide supplies to the drought-striken portions of the State. Funds for the construction of the emergency water supply projects were awarded by the State to the following water purveyors: Jersey City Water Department, Newark Water Department, North Jersey District Water Supply Commission, Hackensack Water Company, Passaic Valley Water Commission, Elizabethtown Water Company, and the Commonwealth Water Company. The rules set forth the terms and conditions of reimbursement to the State by the beneficiaries of the projects.

The rules were promulgated pursuant to P.L. 1981, c.28, and P.L. 1981, c.29, which authorized the Department in coordination with the Board of Public Utilities to develop a program to charge any water supply user which benefits from any water supply project constructed with funds from the Clean Water Fund created pursuant to the "Clean Water Bond Act of 1976" (P.L. 1976, c.92) and from any water supply interconnection facility constructed with funds from the Natural Resources Bond Act of 1980 (P.L. 1980, c.70) for the full costs. The rules also established the base for the reimbursement percentage allocation of costs of the Bolstering Interconnection between Elizabethtown Water Company and the Newark System, the George Washington Bridge Interconnection, and the Great Notch Interconnection Multiple Exchange Facilities among the following water purveyors: North Jersey District Water Supply Commission, Hackensack Water Company, Jersey City Water Department, Elizabethtown Water Company, Commonwealth Water Company, Passaic Valley Water Commission, and the Newark Water Department. In addition, the rules established the time period in which the costs of the aforementioned projects shall be paid back to the State, the manner in which said payments shall be made, and the interest to be charged. The rules also provided for the Department to make an annual accounting of the payments. Finally, the rules provided for the recovery of the purveyor's costs through the rate-making process.

The rules have enabled the State to obtain reimbursement of part of the funds awarded for the construction of the emergency water supply projects built in response to the drought of 1980-82. It is necessary to readopt the rules because the payback period specified in the funding award extends beyond the expiration date of the rules.

A summary of the provisions of the chapter follows:

N.J.A.C. 7:1D-1.1 sets forth the scope and authority of the chapter.

N.J.A.C. 7:1D-1.2 states the rules are to be liberally construed to effectuate their purpose.

N.J.A.C. 7:1D-1.3 states that the purpose of the rules is to establish a repayment program for applicable water purveyors.

N.J.A.C. 7:1D-1.4, provides that if any part of the rules is found invalid, the remainder of the rules shall not be affected.

N.J.A.C. 7:1D-1.5 defines the terms which are used in the chapter.

N.J.A.C. 7:1D-1.6 allocates the share of the reimbursement among the water systems which benefitted from the projects.

N.J.A.C. 7:1D-1.7 sets forth the rate of interest and accompanying procedures to be utilized by purveyors.

N.J.A.C. 7:1D-1.8 governs the specific terms of reimbursement, provides for a payback period, and sets forth annual accounting requirements.

N.J.A.C. 7:1D-1.9 sets forth procedures governing how the costs relate to the rates charged by the water systems.

N.J.A.C. 7:1D-1.10 lists the projects and the amounts to be paid.

N.J.A.C. 7:1D-1.11 provides that the State reserves all rights to seek reimbursement for the costs of projects.

Social Impact

The readopted rules will have a positive effect on the people and water purveyors of the State by facilitating and maintaining an adequate water supply, thus promoting residential, business and industrial stability and improving public safety and welfare. Stabilized water systems are essential in dealing with a complex interrelated society. The State no longer can act in isolation but must deal with regional concerns. Therefore, the benefits derived herein aid not only those directly affected but also those within the region and the State as a whole.

Economic Impact

The readopted rules will continue to have a minor economic impact on the users of the named purveyors in the form of higher water rates than would have existed without the listed water projects. However, this cost is far outweighed by the health and safety benefits and savings to the public. These benefits have been evidenced by the greater availability of water during water emergencies by the facilitation of its transmission. Moreover, since these projects fostered the regionalization of water supply, they allowed for the more efficient transmission of water, which resulted in increased availability and flexibility of water supply for the public during the 1980-82 and 1985-86 droughts. Finally, the readopted rules will ensure and facilitate the efficient use of water supply projects in the event of a future water emergency thereby helping to assure water supplies for industrial and commercial enterprises.

Environmental Impact

The readopted rules will continue to have a positive effect on the environment in that the water projects included promote regionalization of water supply and provide drought insurance capability. This regionalization aids those areas of the State which experience water supply problems during water emergencies, by improving water quality and water quantity conditions.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these rules would not impose reporting, recordkeeping or other compliance requirements on small businesses because the required reimbursement and accounting procedures apply only to the seven purveyors referenced in the rules who are not considered small businesses under the provisions of the Regulatory Flexibility Act, since they each employ more than 100 people.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:1D.

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(a)

DIVISION OF WATER RESOURCES

Statewide Water Quality Management Planning

Proposed Repeal: N.J.A.C. 7:15

Proposed New Rules: N.J.A.C. 7:15

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

Authority: N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 58:11A-1 et seq.

DEP Docket Number: 033-88-08.

Proposal Number: PRN 1988-461.

Public hearings concerning this proposal will be held on:

Thursday, October 20, 1988 at 10:00 A.M.
Auditorium, Haddonfield Borough Hall
242 Kings Highway East (between Haddon Avenue and Potter Street)
Haddonfield, New Jersey

Monday, October 24, 1988 at 2:00 P.M.
Morris County Extension Office
Rutgers University Cooperative Extension
West Hanover Avenue (corner of West Hanover Avenue and Raynor Road)
Morris Township, New Jersey

Submit comments by November 10, 1988 to:

Rachel Lehr, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (the "Department") adopted the present rules, N.J.A.C. 7:15, in 1984. As a result of the Department's experience in implementing that chapter, the Department decided to undertake a comprehensive review of the rules. The Department is now proposing changes and additions sufficiently extensive to warrant the proposed repeal of the present chapter, concurrently with proposal of the new rules at N.J.A.C. 7:15.

Under the present rules, the Department adopted a Statewide Water Quality Management Program Plan (Statewide WQM Plan) on December 5, 1985. The Statewide WQM Plan, in concert with the new rules, contains the written provisions of the Continuing Planning Process (CPP) conducted by the Department pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 13:1D-1 et seq. The proposed rules serve two basic functions. Subchapters 1 through 3 serve the first of these functions, which is to set forth the Department's general regulatory framework for Water Quality Management Planning activities. Subchapters 4 and 5 serve the second basic function of this chapter, which is to prescribe specific policies and procedures concerning wastewater management. Subchapters 4 and 5 supplement other Department rules pertaining to wastewater management, including, but not limited to, New Jersey Pollutant Discharge Elimination System rules (N.J.A.C. 7:14A), sewer system and wastewater treatment plant rules (N.J.A.C. 7:9-1), standards for individual subsurface sewage disposal systems (N.J.A.C. 7:9A), Surface Water Quality Standards (N.J.A.C. 7:9-4), wastewater discharge requirements (N.J.A.C. 7:9-5), Ground Water Quality Standards (N.J.A.C. 7:9-6), and rules concerning financial assistance for wastewater treatment facilities (N.J.A.C. 7:22).

Due to the complexity of the rules, an extended public comment period of 65 days is provided. This extended period is intended to provide adequate time for review and comment and to avoid the necessity to extend the comment period at a later date. Highlights from each subchapter of the proposed rules follow; except where stated otherwise, citations are to the proposed rules rather than to the present rules. The general purpose of the rules is set forth in N.J.A.C. 7:15-1.3.

N.J.A.C. 7:15-1.1 identifies the chapter's general subject matter. The construction section at N.J.A.C. 7:15-1.2 was expanded to promote implementation of the Water Quality Planning Act, Water Pollution Control Act, and N.J.S.A. 13:1D-9; the purpose section at N.J.A.C. 7:15-1.3 was rewritten to emphasize basic provisions of these statutes. The severability section at N.J.A.C. 7:15-1.4 is continued with minor changes. N.J.A.C. 7:15-1.5 defines over 30 new terms (some taken or adapted from Chapter III of the present Statewide WQM Plan), and modifies or deletes many definitions in present N.J.A.C. 7:15-1.5. Policies from Chapter III of the Plan contained in modified form elsewhere in the proposed rules include "Policy on Permitting of Domestic Wastewater Treatment Facilities", "Policy on Wastewater Management Plans", "Policy for Interim Construction, Expansion, Upgrade and Unplanned Wastewater Treatment Facilities" ("Planning Policies" only), and "Policy on Incorporation of 201 Facilities Plans" (see N.J.A.C. 7:15-3.4(k), 4.1 through 4.3, and 5). This reorganization of the Statewide WQM Plan, and its incorporation in this chapter by reference at N.J.A.C. 7:15-2.2(a), serve to simplify the legal structure of the Plan. There is also a public notice in this issue of the New Jersey Register of the Department's proposal to repeal Chapter III of the Statewide WQM Plan (see 20 N.J.R. 2327(a)).

N.J.A.C. 7:15-2.1 and 2.2 identify the Statewide WQM Plan and this chapter as the written provisions of the CPP. N.J.A.C. 7:15-2.1 was rewritten to emphasize CPP components required by the Water Quality Planning Act, the Clean Water Act (33 U.S.C. §§1251 et seq.), or Federal regulations at 40 CFR 130.5. As one means of addressing the Department's statutory supervision, integration, and related responsibilities (N.J.S.A. 58:11A-2, 58:11A-7), N.J.A.C. 7:15-2.2 prohibits areawide WQM Plans from conflicting with specified components of the Statewide WQM Plan and the other provisions of the proposed rules. N.J.A.C. 7:15-2.3 and 2.4 identify WQM planning responsibilities of the Department and designated planning agencies, and were revised to achieve greater consistency with the Water Quality Planning Act, address responsibilities imposed on the Department by 40 CFR 130.5, and withdraw certain responsibilities from designated planning agencies that were not assigned to them by the Water Quality Planning Act.

N.J.A.C. 7:15-3.1 requires that projects, activities, and Department permits be consistent with WQM Plans and this chapter, identifies projects and activities requiring detailed "consistency determination review" (making changes to Table 1 in present N.J.A.C. 7:15-3.1), and identifies Statewide WQM Plan components used in consistency reviews. N.J.A.C. 7:15-3.2 sets forth revised procedures for consistency determination review; the terms "consistent", "not consistent", and "inconsistent" retain their present N.J.A.C. 7:15-3.2 meanings. N.J.A.C. 7:15-3.2(c)4 allows the Department to issue permits in some cases without issuing separate consistency determinations. N.J.A.C. 7:15-3.3 provides for conflict resolution conferences which may also be waived by the Department. N.J.A.C. 7:15-3.4 establishes revised procedures for amending Statewide and areawide WQM Plans. Only the Department can process amendments that address effluent limitations, total maximum daily load, State or Federal programs, or actions regulated by the Solid Waste Management Act. To expedite amendment of areawide WQM plans, the New Jersey Register notice requirement is eliminated, and a 60 day period is established for endorsements. A special expedited amendment procedure is made available for public schools, health, and correctional facilities, and for treatment works on margins of depicted sewer service areas. N.J.A.C. 7:15-3.5 requires periodic rather than annual review of plans, allows limited changes to plans to be adopted as "revisions" (without advance notice) rather than as "amendments", and provides for certification of areawide plans by the governor or his designee. New provisions at N.J.A.C. 7:15-3.6 and 3.7 set forth policies concerning coordination of WQM planning with programs for the New Jersey Coastal Zone (including the Hackensack Meadowlands District) and Pinelands. New provisions at N.J.A.C. 7:15-3.8 and 3.9 establish a one year time limit for procedural challenges to WQM Plan amendments, and appeal procedures for Departmental decisions made pursuant to this chapter.

Subchapter 4 is new. To ensure long term accountability and responsibility in the operation of specified new or expanded domestic treatment works (DTW), N.J.A.C. 7:15-4.1 allows permits under N.J.A.C. 7:14A for such DTW only if a "governmental entity" or "sewerage agency" is the sole permittee or co-permittee, and is a wastewater management agency identified in an areawide WQM Plan. (The rule's definition of "governmental entity" includes school districts.) N.J.A.C. 7:15-4.2 identifies projects and activities deemed to be not inconsistent with WQM plans and this chapter, including: upgrades of treatment works to improve effluent quality; treatment works whose sole purpose is to abate existing pollution problems; expansions of treatment works to flows permitted on December 5, 1985; "interim" treatment works to be abandoned or incorporated at a definite time into other treatment works; and emergency activities. N.J.A.C. 7:15-4.3 identifies treatment works that require amendments to areawide WQM Plans to be eligible for Department permits, or for financial assistance under the Clean Water Act or N.J.A.C.

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7:22. This section also requires that WQM Plan amendments use existing regional DTW where appropriate, and avoid unsound sewer service area modifications to evade sewer connection bans. N.J.A.C. 7:15-4.4 allows construction in depicted future sewer service areas of individual residential septic systems if future connection is guaranteed, and on the same basis, certain other small DTW (individual wastewater management plans may impose additional requirements: see N.J.A.C. 7:15-5.19). N.J.A.C. 7:15-4.5 limits financial assistance for DTW under the Clean Water Act or N.J.A.C. 7:22 to Wastewater Management Agencies identified in areawide WQM Plans.

The new Subchapter 5 concerns "wastewater management plans", which are short, concise documents, adopted as amendments to areawide WQM Plans, that describe present and future wastewater management at a municipal or regional level. N.J.A.C. 7:15-5.1 identifies WQM Plan amendments requiring preparation or amendment of such wastewater management plans. N.J.A.C. 7:15-5.2 provides that existing wastewater management plans remain in effect and establishes a transition period. N.J.A.C. 7:15-5.3 contains general policies about "wastewater management plan responsibility", which is mainly the duty to submit and periodically update a wastewater management plan for a specific "wastewater management plan area". N.J.A.C. 7:15-5.4 allows designated planning agencies to request such responsibility for their planning areas. Where such responsibility is not so requested, N.J.A.C. 7:15-5.5 through 5.8 assign such responsibility to governmental units in this order: Passaic Valley Sewerage Commissioners (for the statutory district); sewerage and municipal authorities (for statutory districts); joint meetings (for service areas in member municipalities); and municipalities (within their boundaries). Municipalities and municipal authorities that do not perform "sewerage-related functions" are exempt. Criteria in N.J.A.C. 7:15-5.6 assign responsibility for locations within two or more authority districts (giving priority to county utilities authorities and regional sewerage authorities). N.J.A.C. 7:15-5.9 provides that alternative assignments of wastewater management plan responsibility, differing from N.J.A.C. 7:15-5.4 through 5.8, shall be made only by amendments or revisions to areawide WQM Plans, and contains general principles for such assignments. N.J.A.C. 7:15-5.10 through 5.13 identify some possible alternatives: linkages to financial assistance for sewerage facilities or to complete sewer service areas, assignments of joint wastewater management plan responsibility to two or more governmental units, and voluntary assignment of responsibility. N.J.A.C. 7:15-5.11 requires automatic expansion of wastewater management plan areas to include complete sewer service areas. To assist identification of wastewater management plan responsibility, N.J.A.C. 7:15-5.14 requires the Passaic Valley Sewerage Commissioners (PVSC), sewerage and municipal authorities, and joint meetings to submit information about district boundaries and member municipalities.

N.J.A.C. 7:15-5.15 identifies required contents of wastewater management plans in general terms; N.J.A.C. 7:15-5.16 through 5.20 contain specific requirements. N.J.A.C. 7:15-5.16 and 5.17 require descriptions and maps of existing jurisdictions, wastewater service areas, and specific DTW and environmental features. N.J.A.C. 7:15-5.18 requires descriptions and maps of future wastewater service areas and specific DTW necessary to meet anticipated 20 year needs. Wastewater management plans shall provide for cost-effective, environmentally sound wastewater management, including regional management where appropriate, and with certain exceptions shall serve future land uses shown in municipal or county master plans. Under N.J.A.C. 7:15-5.19, wastewater management plans may require connection guarantees and installation of collection sewers when individual residential septic systems or certain other small DTW are built in sewer service areas. N.J.A.C. 7:15-5.20 contains specifications for text and graphics, and provides that environmental features maps are for informational, not regulatory, purposes. N.J.A.C. 7:15-5.21 prohibits overlap of wastewater management plan areas. N.J.A.C. 7:15-5.22 and 5.23 require those who prepare wastewater management plans to seek comments and endorsements from specified parties, and set forth submission and adoption procedures for wastewater management plans. N.J.A.C. 7:15-5.24 establishes submission schedules for wastewater management plans. Designated planning agencies, PVSC, county utilities authorities, regional sewerage authorities, and multi-county joint meetings shall submit wastewater management plans within one year; other governmental units shall submit wastewater management plans within two to five years depending on location. Updated wastewater management plans shall be submitted at least once every six years from the date of the previous submission. Alternative schedules may be established by amendments or revisions to WQM Plans.

Social Impact

The Department expects that generally positive social impacts will result from the proposed new rules. The simplified legal structure of the Statewide WQM Plan will be easier to understand and implement. Systematic procedures for evaluating projects and activities for consistency with WQM Plans (proposed N.J.A.C. 7:15-3.1 and 3.2) will promote Plan implementation. Allowing the Department to issue permits without issuing separate consistency determinations (proposed N.J.A.C. 7:15-3.2(c)4) will benefit some permit applicants through faster permit processing.

The general public will benefit from WQM plan amendment procedures that allow public comment on proposed amendments and allow interested persons to propose their own amendments (proposed N.J.A.C. 7:15-3.4). Applicants for WQM plan amendments will benefit from streamlining and simplification of the plan amendment process through elimination of the New Jersey Register notice requirement and the establishment of a 60 day time period for endorsements (proposed N.J.A.C. 7:15-3.4(g)3 and 4). The average time needed to process routine plan amendments will be reduced by about two months. Special amendment procedures will expedite permits for public schools, health care, and correctional facilities, and for treatment works on margins of depicted sewer service areas (proposed N.J.A.C. 7:15-3.4(h)). The benefits received by applicants as a result of these timesavings should be passed on to the general public through lower development costs.

The NJPDES permittee requirement (proposed N.J.A.C. 7:15-4.1) will help to ensure that NJPDES permit provisions are met and that environmental damage is prevented or minimized. Treatment works and wastewater management plan requirements in proposed N.J.A.C. 7:15-4.3 and 7:15-5 should result in more cost-effective, environmentally sound wastewater management, better integrated with municipal and county master plans. Insofar that wastewater management plans promote implementation of master plans, such plans will reinforce positive or negative social impacts of such master plans. Wastewater management plans will assist State and local planning processes by identifying, on a regularly updated basis, existing and proposed sewerage facilities and sewer service areas in most or all of the State. The 20-year horizon for wastewater management plans, the requirement for their updating every six years, and the provisions for their amendment will minimize their limiting effects on the land supply for uses that need sewer service.

The NJPDES permittee and wastewater management plan requirements may have adverse impacts on some applicants for NJPDES permits. A few applicants may be unable to obtain permits or related WQM Plan amendments because no governmental entity or sewerage agency agrees to be a co-permittee (the proposed rules remove this problem for school districts by adding them to the definition of "governmental entity"), or to submit a wastewater management plan. Some applicants may secure such co-permittees or wastewater management plans only after significant delays or concessions. The general public may feel some of these impacts through higher development costs. Over a five year period, however, the proposed rules should generally satisfy the need for wastewater management plans and should serve to insure the proper long-term operation and maintenance of DTW, thereby providing a positive social benefit to the residents of this State. The Passaic Valley Sewerage Commissioners and many sewerage authorities, municipal authorities, joint meetings, and municipalities will be required to periodically submit wastewater management plans (except where this duty is assumed by designated planning agencies or assigned to other parties with Department consent). The proposed rules minimize the workload by establishing requirements for wastewater management plans that are much less detailed than the requirements for 201 Facilities Plans prepared by many of these governmental units.

Economic Impact

The Department expects positive and negative economic impacts from the proposed new rules. Treatment works and wastewater management plan requirements in proposed N.J.A.C. 7:15-4.3 and 7:15-5 should result in more cost-effective wastewater management. Insofar that wastewater management plans promote implementation of municipal and county master plans, wastewater management plans will reinforce positive or negative economic impacts of such plans. The 20-year horizon for wastewater management plans, the requirement for their updating every six years, and the provisions for their amendment should minimize their limiting effects on the land supply for uses that require sewer service. Insofar that wastewater management plans deny sewer service to lands otherwise eligible for such service, wastewater management plans will limit the land supply available for intensive uses that require sewer service, and affect the location of new development for such uses (by channeling

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development towards depicted sewer service areas with adequate sewerage capacity, and away from other locations). These limitations and alterations will have complex effects on economic factors such as real property values and tax revenues, public service expenditures, and housing, labor, retail, and other markets.

The Passaic Valley Sewerage Commissioners and many sewerage authorities, municipal authorities, joint meetings, and municipalities will be required to periodically submit wastewater management plans (except where this duty is assumed by designated planning agencies or assigned to other parties with Department consent). The Department estimates that the average cost of preparing a wastewater management plan will be between $5,000 and $15,000, and that about 275 wastewater management plans would be prepared over five years in response to the proposal. The estimated total Statewide cost for preparing wastewater management plans should be between $1.4 million and $4.1 million over five years, or between $275,000 and $825,000 on an annual average basis. In addition, the Department will require about $200,000 annually to administer the wastewater management plan program. After the initial five year period, further costs would be incurred to update each wastewater management plan at least once every six years. In most cases, the costs of preparing wastewater management plans will ultimately be borne by sewer users and local taxpayers. Where developers choose to subsidize preparation of wastewater management plans, the cost may be reflected in lower profits and wages in the building industry, in higher prices for new development, and in reduced land prices paid by developers to landowners.

The discussion of "Social Impact" above reviewed expected social impacts of the proposed rules on applicants for Department permits and WQM plan amendments. These social impacts are mainly economic in nature and are noted here by reference; they include positive and adverse economic impacts on various parties. For example, applicants for WQM plan amendments will benefit economically from streamlined and simplified plan amendment procedures in proposed N.J.A.C. 7:15-3.4 (through reduced project delay costs) and some applicants for Department permits will benefit economically from having their projects deemed to be not inconsistent with WQM plans under proposed N.J.A.C. 7:15-4.2 (through reduced project delay costs and exemption from plan requirements). Conversely, the NJPDES permittee and wastewater management plan requirements in proposed N.J.A.C. 7:15-4.1 and 5.1 will have adverse economic impacts on some applicants for NJPDES permits (because their projects are prevented, delayed, or otherwise made more expensive by such requirements). Over a five-year period, the proposed new rules should generally satisfy the need for wastewater management plans, however, and provide a general positive economic benefit. Proposed N.J.A.C. 7:15-4.5 provides that financial assistance for treatment works under the Clean Water Act or N.J.A.C. 7:22 may be awarded only to Wastewater Management Agencies identified in WQM Plans. Such identification is a routine process that generally creates no practical difficulties.

Environmental Impact

The Department expects generally positive environmental impacts from the proposed new rules. Systematic procedures for evaluating projects and activities for consistency with WQM plans (proposed N.J.A.C. 7:15-3.1 and 3.2) will help to ensure that environmental protection requirements in WQM plans are followed. The NJPDES permittee requirement (proposed N.J.A.C. 7:15-4.1) will help to ensure that NJPDES permits provisions are met and that environmental damage is prevented or minimized. Special consistency provisions (proposed N.J.A.C. 7:15-4.2) will expedite permits for treatment works upgrades to improve effluent quality, and for treatment works whose sole purpose is to abate existing pollution problems. The treatment works and wastewater management plan requirements in proposed N.J.A.C. 7:15-4.3 and 7:15-5 should result in more environmentally sound wastewater management. To the extent that wastewater management plans promote implementation of municipal and county master plans, wastewater management plans will reinforce positive or negative environmental impacts of such master plans.

Regulatory Flexibility Statement

Parts of these proposed new rules would apply to many small businesses that seek Department permits, amendments to WQM Plans, or construction of domestic treatment works (DTW). The average amendment procedural cost to a small business of complying with this chapter is expected to be about $200.00. Most of the costs incurred due to these rules will be incurred by public agencies having wastewater management plan responsibility. All small business applicants for Department permits will be subject to the provision in proposed N.J.A.C. 7:15-3.1(a) that the Department shall not issue permits for projects or activities that conflict with WQM plans or this chapter. Some such applicants may need the services of professional engineers or other professionals to design acceptable projects and activities. Many such applicants will be required to submit proposals for consistency determination review under proposed N.J.A.C. 7:15-3.2, and will need the services of professional engineers or planners to prepare such submissions.

Small businesses that seek construction of DTW identified in proposed N.J.A.C. 7:15-4.1 will need to secure a governmental entity or sewerage agency NJPDES permittee or co-permittee for that DTW. Small businesses that seek construction of treatment works that are inconsistent with areawide WQM plans, or that apply for amendments to such plans for other reasons, will have to submit information and undertake actions required of applicants by proposed N.J.A.C. 7:15-3.4(g), or follow plan amendment procedures used by designated planning agencies. If a requested amendment requires preparation of a wastewater management plan under proposed N.J.A.C. 7:15-5.1, the small business will have to arrange for an appropriate governmental unit to submit a wastewater management plan. Small businesses that seek construction of certain small DTW in sewer service areas will have to provide connection guarantees required by proposed N.J.A.C. 7:15-4.4(b). Wastewater management plans may extend this guarantee requirement to construction of individual residential septic systems, and may require installation of collection system sewers for use when sewer service becomes available (proposed N.J.A.C. 7:15-5.19). Such installation would require the services of professional engineers.

In developing these proposed new rules, the Department has balanced the need to protect the public health, safety, and general welfare against the adverse economic impact of the rules on small businesses, and has determined that use of different regulatory approaches for small businesses may endanger the public health, safety, and general welfare. Therefore, the rules do not include exemptions or other approaches specifically targeted at small businesses. However, to the extent that small businesses are more likely than large businesses to seek construction of small treatment works that do not trigger requirements in proposed N.J.A.C. 7:15-4.1, 4.3, and 5.1, these sections will have less impact on small businesses than on large businesses. Also, as discussed under "Social Impact" above, the rules include provisions that will benefit many applicants for Department permits and WQM Plan amendments, including many small business applicants.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 7:15.

Full text of the proposed new rules follows:

CHAPTER 15
STATEWIDE WATER QUALITY MANAGEMENT PLANNING

SUBCHAPTER 1. GENERAL PROVISIONS

7:15-1.1 Scope

(a) This chapter prescribes water quality management policies and procedures established pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 13:1D-1 et seq. Specifically, this chapter prescribes policies and procedures concerning the following subjects:

1. The content of the continuing planning process ("CPP") and its relationship to this chapter and the Statewide Water Quality Management ("WQM") Plan;

2. The relationship between the Statewide, areawide, and county water quality management (WQM) plans and this chapter;

3. The role of the Department and designated planning agencies in WQM planning activities;

4. The review of projects and activities for consistency with WQM plans and this chapter, including the issuing of consistency determinations for specified kinds of projects;

5. The preparation, adoption, amendment, revision, and certification of WQM plans;

6. The adoption of other Department rules, wastewater facilities priority systems and project priority lists, sludge management plans, effluent limitations, wastewater management plans, 201 Facilities Plans, and other documents in WQM Plans;

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7. Coordination of WQM planning with Coastal Zone, Hackensack Meadowlands, and Pinelands programs;

8. Mechanisms to resolve conflicts among State agencies, designated planning agencies, applicants, and other parties affected by this chapter;

9. Selected aspects of wastewater management, including NJPDES permittees required for certain new or expanded domestic treatment works; treatment works deemed to be not inconsistent with WQM plans and this chapter; WQM plan amendment requirements for treatment works not identified in WQM plans; construction of individual septic systems and other small domestic treatment works in future sewer service areas; and eligibility for financial assistance.

10. The identification of WQM plan amendments that require the adoption or amendment of wastewater management plans in areawide WQM plans;

11. The assignment of the duty to prepare and update wastewater management plans to certain sewerage agencies and municipalities, and the establishment of alternative assignments of such wastewater management plan responsibility; and

12. The required contents of wastewater management plans, and schedules and procedures for their submission, adoption, and updating.

7:15-1.2 Construction

This chapter shall be liberally construed to permit the Department to discharge its statutory functions, and to effectuate the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., N.J.S.A. 13:1D-9, the Statewide WQM Plan, and the areawide WQM plans.

7:15-1.3 Purpose

(a) The purpose of this chapter is to:

1. Implement the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 13:1D-9;

2. Establish policies, procedures and standards which, wherever attainable, help to restore and maintain the chemical, physical and biological integrity of the waters of the State, including groundwaters, and the public trust therein, to protect public health, to safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial and other uses of water;

3. Prevent, control, and abate water pollution;

4. Conserve the natural resources of the State, promote environmental protection, and prevent the pollution of the environment of the State;

5. Encourage, direct, supervise and aid areawide WQM planning;

6. Integrate and unify the Statewide and areawide WQM planning processes, and provide for continuing WQM planning;

7. Ensure that projects and activities affecting water quality are developed and conducted in a manner consistent with this chapter and adopted WQM Plans;

8. Coordinate and integrate WQM plans with related Federal, State, regional and local comprehensive land use, functional and other relevant planning activities, programs and policies;

9. Develop and implement water quality programs in concert with other social and economic objectives;

10. Provide opportunities for public participation in the WQM planning process;

11. Prepare, administer, and supervise Statewide, regional and local plans and programs concerning conservation and environmental protection, including plans and programs concerning sewerage facilities;

12. Encourage, direct and aid in coordinating State, regional and local plans and programs concerning conservation and environmental protection, including plans and programs concerning sewerage facilities, in accordance with a unified Statewide Plan formulated, approved and supervised by the Department;

13. Supervise sanitary engineering facilities within the State; and

14. Encourage the development of comprehensive regional sewerage facilities that serve the needs of the regional community and that conform to the adopted areawide WQM plan applicable to that region.

7:15-1.4 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.

7:15-1.5 Definitions

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

"Actual flow" means the volume of sewage and other wastes that a DTW receives; actual flow shall be determined by the arithmetic average of the metered daily volumes of waste received at a DTW for the preceding period of three consecutive calendar months. Where peak flows have been determined by the Department to be seasonal in nature, the seasonal peak flow period shall be used in determining actual flow.

"Adoption" means the adoption by the Department of Statewide WQM Plans or amendments or revisions thereof and the adoption by the Governor or his designee of areawide plans or amendments or revisions thereof pursuant to this chapter.

"Amendments" means changes to the Statewide and areawide WQM plans that may be proposed and adopted under N.J.A.C. 7:15-3.4.

"Areawide plan" or "areawide WQM plan" means the areawide WQM plan authorized in Section 5 of the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), and Sections 208 and 303 of the Clean Water Act, 33 U.S.C. §1251 et seq.

"Authority" means a sewerage authority as defined in N.J.S.A. 40:14A-3(5), or a municipal authority as defined in N.J.S.A. 40:14B-3(5).

"Best Management Practices (BMPs)" means the methods, measures, or practices to prevent or reduce the amount of pollution from point or non-point sources, including structural and nonstructural controls, and operation and maintenance procedures.

"BWQP" means the Bureau of Water Quality Planning in the Division of Water Resources.

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection or his or her designee.

"Consistency determination" means the written statement by the Department under N.J.A.C. 7:15-3.2, as to whether a project or activity listed in N.J.A.C. 7:15-3.1(b) is consistent, not inconsistent, or inconsistent with adopted WQM Plans and this chapter.

"Continuing planning process" or "CPP" means the Statewide planning process conducted by the Department of Environmental Protection as authorized in Section 7 of the Water Quality Planning Act (N.J.S.A. 58:11A-7).

"County utilities authority" means any public body created by a county governing body pursuant to N.J.S.A. 40:14B-4a, or any sewerage authority or county sewer authority reorganized as a county utilities authority pursuant to N.J.S.A. 40:14B-6b.

"County water quality management plan" or "County WQM plan" means a county plan prepared by a county planning board pursuant to Section 5 of the Water Quality Planning Act (N.J.S.A. 58:11A-5).

"CPI application" means the formal application for a permit from the Department.

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

"Designated area" means an area designated by the Governor as an areawide WQM planning area pursuant to Section 4 of the Water Quality Planning Act (N.J.S.A. 58:11A-4).

"Designated management agency" means an agency designated in an adopted WQM plan to implement one or more of the policies, objectives, and recommendations of that plan.

"Designated planning agency" means an agency designated by the Governor to conduct areawide WQM planning pursuant to Section 4 of the Water Quality Planning Act (N.J.S.A. 58:11A-4).

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, landfill, excavation, roads, sewers and other infrastructure and any use or change in the use of any building

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or other structure, or land or extension of use of land. Phased development shall be considered as a single project.

"Director" means the Director of the Division of Water Resources.

"District" means either or both of the following, depending on the context: the district of a sewerage authority as defined in N.J.S.A. 40:14A-3(6), or the district of a municipal authority as defined in N.J.S.A. 40:14B-3(6). For purposes of N.J.A.C. 7:15-5.14(a)1, 5.6(a)2i and 5.18(i), "district" shall also mean the Passaic Valley Sewerage District.

"Division" means the Division of Water Resources in the New Jersey Department of Environmental Protection.

"Domestic treatment works" or "DTW" means a publicly or privately owned treatment works and shall include a treatment works processing domestic wastes together with any ground water, surface water, storm water or industrial process wastewater that may be present.

"Drawings and/or plans" means those drawings, site plans and/or blueprints prepared by a professional engineer or professional planner, as appropriate, which portray the development specifications of the site project or activity.

"DTW" means domestic treatment works.

"Emergency activities" means activities that are necessary to be performed in response to sudden or unexpected occurrences or conditions, in order to prevent loss of life, personal injury, severe property damage, or severe environmental damage.

"Environmentally sensitive areas" means those areas identified in a Statewide or areawide WQM plan as land areas possessing characteristics or features which are important to the maintenance or improvement of water quality, or to the conservation of the natural resources of the State.

"Freshwater wetlands" means freshwater wetland as defined at N.J.S.A. 13:9B-3 and N.J.A.C. 7:7A-1.

"Governmental entity" means a Federal, state, county or municipal government or school district whose jurisdiction is partially or entirely within New Jersey.

"Industrial/commercial" means any project or activity engaged in manufacturing, production or sales of services or products.

"Industrial treatment works" means an industrial treatment works as defined at N.J.A.C. 7:14A-1.9.

"Interim connection," "interim construction" or "interim expansion" means interim connection, construction or expansion of wastewater facilities as described in N.J.A.C. 7:15-4.2(a)4.

"Joint meeting" means a joint meeting as defined in N.J.S.A. 40:63-69.

"Load allocation" means the portion of a total maximum daily load that is not allocated to a point source of pollution.

"Major modification" means a significant alteration, expansion or other change that may reasonably be expected to affect the quantity of flow treated or the quality of the effluent discharged to the waters of the State or to a publicly owned treatment works.

"Multi-county joint meeting" means any joint meeting whose membership includes municipalities in two or more counties.

"Municipal authority" means a municipal authority as defined in the Municipal and County Utilities Authorities Law at N.J.S.A. 40:14B-3(5), and shall include a municipal utilities authority created by one or more municipalities and a county utilities authority created by a county.

"Municipal government" means a city, town, borough, village, township or other municipal government created by State law, which has an elected governing body, a chief executive, and municipal public officials including a municipal clerk, tax assessor, and tax collector.

"NJPDES" means the New Jersey Pollutant Discharge Elimination System established in N.J.A.C. 7:14A.

"NJPDES discharge permit" means a permit issued by the Department under N.J.A.C. 7:14A for a discharge to surface water or a discharge to ground water.

"Non-designated area" means an area not designated by the Governor as an areawide WQM planning area pursuant to Section 4 of the Water Quality Planning Act (N.J.S.A. 58:11A-4).

"Non-point source" means a contributing factor to water pollution that cannot be traced to a specific discernible confined and discrete conveyance.

"Passaic Valley Sewerage Commissioners" means the body described by that name under N.J.S.A. 58:14-2.

"Passaic Valley Sewerage District" means the sewerage district now or hereafter described by that name under N.J.S.A. 58:14-1 et seq.

"Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Process waste water" means process waste water as defined at N.J.A.C. 7:14A-1.9.

"Regional sewerage authority" means any sewerage authority created by the governing bodies of two or more municipalities pursuant to N.J.S.A. 40:14A-4(c).

"Regional wastewater management plan area" means a wastewater management plan area that includes land in two or more municipalities.

"Revisions" means changes to WQM plans under N.J.A.C. 7:15-3.5 that are necessary for one or more of the purposes set forth at N.J.A.C. 7:15-3.5(a).

"Sewerage agency" means the Passaic Valley Sewerage Commisioners, a sewerage authority, a municipal authority or a joint meeting.

"Sewerage authority" means a sewerage authority created pursuant to the Sewerage Authorities Law, N.J.S.A. 40:14A-1 et seq.

"Site-specific pollution control plan" means a plan that details necessary structures or measures designed to control one or more specified pollutants or sources of pollution from a site.

"State" means the State of New Jersey.

"State Water Quality Inventory Report" means the biennial report prepared by the Department, pursuant to Section 305 of the Clean Water Act, 33 U.S.C. §§1251 et seq., which inventories and assesses the quality of surface and ground waters of the State.

Statewide Water Quality Management Plan" or "Statewide WQM Plan" (formerly known as the Statewide Water Quality Management Program Plan) means the plan that, together with this chapter, directs and coordinates water quality planning and implementation activities for the entire State, and contains the written provisions of the CPP pursuant to Section 7 of the Water Quality Planning Act (N.J.S.A. 58:11A-7).

"Total maximum daily load" means a total maximum daily load formally established pursuant to Section 7 of the Water Quality Planning Act (N.J.S.A. 58:11A-7) and Section 303(d) of the Clean Water Act, 33 U.S.C. §§1251 et seq.

"Treatment works" means treatment works as defined at N.J.A.C. 7:14A-1.9.

"Treatment works approval" means an approval issued pursuant to N.J.S.A. 58:10A-6b and N.J.A.C. 7:14A-12.

"201 Facilities Plans" means the plans for wastewater facilities prepared pursuant to Section 201 of the Clean Water Act, 33 U.S.C. §§1251 et seq.

"201 Facilities Planning agencies" means those agencies which are responsible for conducting 201 facilities planning, pursuant to Section 201 of the Clean Water Act, 33 U.S.C. §§1251 et seq.

"209 Basin Plans" means water resources plans adopted pursuant to Section 209 of the Clean Water Act, 33 U.S.C. §§1251 et seq.

"Upgrade" means a modification of a domestic or industrial treatment works to improve the quality of effluent discharged to surface water or ground water.

"USEPA" means the United States Environmental Protection Agency.

"USGS quadrangle map" means any of the set of topographic maps published by the United States Geological Survey at 1:24,000 scale and known as "quadrangles" or "quads".

"Wasteload allocation" means the portion of a total maximum daily load that is allocated to a point source.

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"Wastewater management agency" means a governmental entity or sewerage agency designated in an areawide WQM plan to plan, construct, or operate domestic treatment works.

"Wastewater management plan" or "WMP" means a written and graphic description of existing and future wastewater-related jurisdictions, wastewater service areas, and selected environmental features and domestic treatment works.

"Wastewater management plan area" or "WMP area" means the geographic area for which a governmental unit or other person has "wastewater management plan responsibility" as defined in N.J.A.C. 7:15-5.3(b).

"Water quality based effluent limitations" means water quality based effluent limitations established pursuant to the Department's Surface Water Quality Standards (N.J.A.C. 7:9-4), including, but not limited to, wasteload allocations.

"Water quality limited segment" means any segment of a waterway where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. §§1251 et seq.

"Water quality management plans" or "WQM plans" means the plans prepared pursuant to Sections 208 and 303 of the Clean Water Act, 33 U.S.C. §§1251 et seq., and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., including the Statewide, areawide, and county WQM Plans.

"WMP" means wastewater management plan.

"Work programs and plans" means those documents that detail the specific work activities proposed as part of a water quality management program.

"WQM plan" means water quality management plan.

SUBCHAPTER 2. PLANNING REQUIREMENTS

7:15-2.1 Continuing planning process (CPP)

(a) The Department shall conduct a continuing planning process (CPP) whose written provisions shall be contained, directly or by reference, in the Statewide WQM Plan and this chapter. In conducting the CPP the Department shall:

1. Integrate and unify the Statewide and areawide water quality management planning processes;

2. Encourage, direct, supervise and aid areawide water quality management planning;

3. Coordinate and integrate WQM plans with related Federal, State, regional and local comprehensive land use, functional and other relevant planning activities, programs and policies;

4. Identify aspects of the CPP that have been delegated to other State, Federal, interstate, or local agencies;

5. Provide opportunities for meaningful public participation in the water quality management planning process;

6. Conduct a Statewide assessment of water quality. (The State Water Quality Inventory Report shall be the principal water quality assessment component of the Statewide WQM Plan.);

7. Establish water quality goals and water quality standards for the waters of the State; and

8. Develop a Statewide implementation strategy to achieve the water quality standards and objectives and meet the requirements of Section 303(e) of the Clean Water Act (33 U.S.C. §§1251 et seq.), which shall include, but not be limited to:

i. The determination of effluent limitations and schedules of compliance at least as stringent as those required by the Clean Water Act (33 U.S.C. §§1251 et seq.);

ii. The identification of water quality limited segments;

iii. The determination of total maximum daily loads, wasteload allocations, and load allocations for pollutants;

iv. The incorporation of areawide and county WQM plans, applicable 209 Basin Plans, 201 Facilities Plans, and wastewater management plans;

v. The amendment and revision of WQM plans, including schedules for such amendment and revision;

vi. An inventory and ranking of needs, in order of priority, for the construction of wastewater facilities;

vii. The determination of priorities for the issuance of discharge permits;

viii. Methods for controlling all residual wastes from any water treatment processing; and

ix. Adequate authority for intergovernmental cooperation in water quality management activities.

(b) In order to accomplish one or more of the requirements of (a) above, the CPP may also include or otherwise address, but not be limited to, one or more of the following:

1. Identification of existing or potential surface or ground water pollution problems, caused by point or nonpoint sources;

2. Evaluation of programs for water pollution control based upon factors that may include, but not be limited to, technical feasibility; cost-effectiveness; public acceptability; economic, social or environmental impact; or legal, institutional, managerial or financial capability;

3. Technical measures, regulatory programs, or non-regulatory programs for point or nonpoint source water pollution control, protecting water resources, protecting environmentally sensitive areas, or other water quality related issues;

4. Designation of management agencies to implement one or more provisions of WQM plans; and

5. Other measures necessary to implement WQM plans.

7:15-2.2 Relationship between the Statewide, areawide and county Water Quality Management Plans

(a) The Statewide WQM Plan and this chapter contain the written provisions of the CPP. The Statewide Plan and this chapter direct and coordinate water quality management planning and implementation activities for the entire State and serve as a guide for areawide planning. The Statewide Water Quality Management Program Plan adopted by the Commissioner on December 5, 1985 and all subsequent amendments and revisions thereto are hereby incorporated by reference into this chapter. This chapter is included within the Statewide WQM Plan.

NOTE: The Statewide Water Quality Program Plan may be inspected at the Bureau of Water Quality Planning, Division of Water Resources, Department of Environmental Protection, 401 East State Street, Trenton, New Jersey, or the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

(b) The areawide WQM plan is the basis by which the Department and the designated planning agencies conduct selected water quality management planning activities for a particular "area" or section of the State which has either designated or non-designated area status.

(c) If any elements of any areawide WQM plan conflict with any component of the Statewide WQM Plan identified under N.J.A.C. 7:15-3.1(f) or with this chapter, such elements shall be of no legal effect and shall be superseded by this chapter and the Statewide WQM Plan to the extent that such conflict exists.

(d) All WQM plans shall be consistent with State statutes and rules and to the extent they are not consistent shall have no legal force and effect.

(e) Every county planning board may conduct a county-wide water quality management planning process and prepare a county WQM plan.

1. County WQM plans shall not be in conflict with the Statewide WQM Plan, appropriate areawide WQM plans, or this chapter. If any elements of any county WQM plan conflict with the Statewide WQM Plan, appropriate areawide WQM plans, or this chapter, such elements shall be superseded by the Statewide WQM Plan, areawide WQM plans, or this chapter to the extent that such conflict exists.

2. Each county planning board that prepares or changes a county WQM plan shall transmit a copy of that plan or change to the BWQP, and to any designated planning agency whose designated area includes part or all of the subject geographic area;

3. Consistency of projects and activities with county WQM plans shall be required under N.J.A.C. 7:15-3.1 or 3.2, only to the extent that county WQM plans or components thereof are adopted into areawide WQM plans pursuant to N.J.A.C. 7:15-3.4 or 3.5

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7:15-2.3 Role of the Department

(a) The Department shall:

1. Conduct a CPP and prepare a Statewide WQM Plan;

2. Prepare areawide WQM plans for non-designated areas:

3. Revise and amend the Statewide WQM Plan as necessary;

4. Coordinate and direct the activities of designated planning agencies;

5. Review and approve areawide work programs;

6. To the maximum extent feasible, act as a resource for designated planning agencies and county planning boards, providing them with technical assistance, and information on best management practices and pollution control technologies;

7. Require the preparation and updating of wastewater management plans, and provide for their review and adoption into areawide WQM Plans;

8. Establish and administer policies, procedures, standards, criteria, and rules for water quality and wastewater management issues;

9. Identify water quality limited segments;

10. Establish total maximum daily loads, wasteload allocations, load allocations, and water quality based effluent limitations;

11. Prepare a biennial State Water Quality Inventory Report, and other reports required from the State under the Clean Water Act, 33 U.S.C. §§1251 et seq.;

12. Perform consistency determination reviews, and otherwise ensure that projects and activities affecting water quality do not conflict with WQM plans or this chapter.

13. Delegate aspects and responsibilities of the CPP to other State, Federal, interstate, county or local agencies, and also withdraw or transfer such delegations as necessary; and

14. Make recommendations to the Governor regarding designation of planning agencies and planning areas under N.J.S.A. 58:11A-4.

7:15-2.4 Role of designated planning agencies

(a) The designated planning agencies shall:

1. Prepare, revise, and amend the areawide WQM plans for their designated areas;

2. Fulfill all responsibilities assigned to them under this chapter, the Statewide WQM Plan, the areawide WQM plan, their charter, any grant agreement, approved work program, and any agreement with the State;

3. Carry out other responsibilities as agreed with or assigned by the Department under N.J.A.C. 7:15-2.3; and

4. Ensure that the areawide WQM plan shall not be in conflict with any component of this chapter or the Statewide WQM Plan and shall not otherwise conflict with State statutes or duly promulgated rules.

(b) The Department and the designated planning agencies shall coordinate their work in shared river basins or sub-basins, and shall refer any conflicts concerning such coordination to the Commissioner for his mediation.

(c) If a previously designated area becomes a non-designated area as a result of action by the Governor, the Department shall conduct areawide water quality management planning for that area.

SUBCHAPTER 3. PLAN ASSESSMENT, AMENDMENT AND ADOPTION

7:15-3.1 Water quality management plan consistency requirements

(a) All projects and activities affecting water quality shall be developed and conducted in a manner that does not conflict with this chapter or WQM plans. The Commissioner shall not undertake, nor shall he or she authorize through the issuance of a permit, any project or activity that conflicts with applicable sections of a WQM plan or with this chapter. For purposes of N.J.A.C. 7:15-3.1 through 3.3, "permit" includes permits, approvals, certifications, and similar actions.

(b) The Department shall not grant permits for the following projects and activities before a formal consistency determination review under N.J.A.C. 7:15-3.2 has been completed:

1. New surface water or ground water discharges, or existing surface or ground water discharges proposing major modifications, that require individual NJPDES discharge permits under N.J.A.C. 7:14A and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.;

2. Treatment works that require treatment works approvals under N.J.A.C. 7:14A-12 and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.;

3. Actions regulated by the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.;

4. Actions that require Type "B" wetland permits under N.J.A.C. 7:7-2.2;

5. Construction of the following new solid waste facilities, other than hazardous waste facilities and minor expansions of solid waste facilities, regulated by N.J.A.C. 7:26:

i. New sanitary landfills other than vertical expansion;

ii. New solid waste transfer stations;

iii. New solid waste composting or co-composting facilities over one acre, but excluding leaf composting facilities;

iv. New resource recovery facilities and new solid waste materials recovery facilities; and

v. New solid waste incinerators and thermal destruction facilities;

6. Sanitary landfill closures where leachate collection and control is required under N.J.A.C. 7:26;

7. Construction of new hazardous waste facilities regulated by N.J.A.C. 7:26;

8. Waterfront development activities regulated under N.J.S.A. 12:5-3, for residential developments of 25 units or greater, and for industrial, commercial, and mixed use (including residential) developments having wastewater flows of 20,000 gallons per day or more; extensions or modifications to existing projects when the cumulative total for the project is greater than 24 units, or greater than or equal to 20,000 gallons per day;

9. Construction of 50 or more realty improvements regulated under the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq.; and

10. Adoption or amendment of environmental health ordinances to control water pollution under the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq.;

(c) The following projects and activities do not require a formal consistency determination review under N.J.A.C. 7:15-3.2, but shall still not conflict with WQM plans:

1. Approved and non-approved water supply connections regulated by the Safe Drinking Water Act, N.J.S.A 58:12A-1 et seq.;

2. Construction or repair of dams regulated by N.J.S.A. 58:4-2 et seq.;

3. Well drilling regulated by N.J.S.A. 58:4A-14 et seq.;

4. Actions regulated by the Air Pollution Control Act (1954), N.J.S.A. 26:2C-9.2;

5. Renewals or modifications of existing permitted activities that do not propose major modifications, as determined by the Department;

6. Actions that require Type "A" wetland permits under N.J.A.C. 7:7-2.2;

7. Stream encroachments regulated under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.;

8. Waterfront development activities regulated under N.J.S.A. 12:5-3, other than those identified in (b)8 above;

9. Water lowering regulated under N.J.S.A. 23:5-29 or N.J.S.A. 58:4-9;

10. Construction or operation of water systems regulated by the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.;

11. Diversion of surface or ground waters regulated by the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.;

12. Activities that require freshwater wetlands permits, open water fill permits, or transition area waivers under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.;

13. Discharges that require water quality certifications under N.J.S.A. 58:10A-5.b and Section 401 of the Clean Water Act, 33 U.S.C. §§1251 et seq.;

14. Actions regulated by N.J.A.C. 7:26 other than actions identified in (b)5 and 6 above and actions pertaining to hazardous waste, including;

i. Collection and haulage of solid waste;

ii. Operation of solid waste facilities;

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ii. Permit renewals for solid waste facilities not proposing major expansions;

iv. Vertical expansions of sanitary landfills;

v. Construction of new solid waste composting and co-composting facilities under one acre;

vi. Construction of new leaf composting facilities;

vii. Sanitary landfill closure where leachate collection and control is not required; and

viii. Disruption of sanitary landfills, where such disruption does not require construction of new sanitary landfills or treatment and disposal of leachate;

15. Hazardous waste activities regulated by N.J.A.C. 7:26 but not identified in (b)7 above, including collection and haulage of hazardous waste, operation of hazardous waste facilities, and permit renewals for hazardous waste facilities not proposing major modifications;

16. Removal or remedial actions performed by the Department or by Federal agencies, or by their agents, under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§9601 et seq., or other statutes authorizing Department or Federal removal or remedial actions for hazardous substances; and

17. Any other activity regulated by the Department but not identified in (b) above or deemed to be not inconsistent under N.J.A.C. 7:15-4.2.

(d) The Department shall conduct the consistency determination review or other consistency review for a Department permit concurrently with the Department's review of the permit application. The Department shall not issue the permit if the Department finds the project or activity to be inconsistent with a WQM plan or this chapter.

(e) At the request of any person who intends to apply for a Department permit, the Department shall informally discuss with such person the consistency of such person's proposed project or activity with WQM plans and this chapter. Information provided by the Department in such discussions is for guidance only, and is not binding on the Department.

(f) Except as expressly provided in this chapter or in an areawide WQM plan, the only components of the Statewide WQM Plan that shall be used in performing consistency determination reviews and other consistency reviews are the following:

1. This chapter; and

2. Statewide Sludge Management Plans, District Sludge Management Plans, and sludge management rules that are promulgated or approved by the Department pursuant to N.J.S.A. 13:1E-1 et seq.

(g) Interested parties may comment on the consistency of Department permits with WQM plans and this chapter through the appropriate draft or final permit public review and comment process. Such comments shall be taken into consideration prior to the issuance of a final permit.

7:15-3.2 Procedures for consistency determination reviews

(a) Requests for consistency determination review shall, where applicable, include but not be limited to the following information:

1. A narrative description of the project, including county and municipality, lot and block, type of development or activity, number of dwelling units, anticipated population, anticipated wastewater flow, availability and identification of existing treatment works, proposals for new treatment works (include proposed owner and operator of treatment works, and, for DTW, permittees under N.J.A.C. 7:15-4.1), and location of discharge;

2. A United States Geological Survey quadrangle map showing the approximate boundaries of the project site and discharge location; and

3. Drawings and/or plans which illustrate the description under (a)1 above.

(b) Based upon potential negative water quality impacts of the project, the Department may require the narrative description under (a)1 above to also include potential water quality impacts and a site-specific pollution control plan. Amendments to areawide WQM plans may also expressly require such inclusion for specific categories of projects in specific geographic areas.

(c) The Department shall perform consistency determination reviews in accordance with the following procedure:

1. Upon receipt of a complete request for consistency determination review, and, where a Department permit is sought, a complete permit application, the Department shall review the appropriate WQM plan and this chapter to determine whether the project or activity is consistent with the written provisions of the plan and this chapter. This review shall include, but not be limited to, the following plan components where applicable:

i. Population forecasts;

ii. Wastewater flow projections;

iii. Availability of DTW;

iv. Identification of appropriate DTW;

v. Identification of appropriate wastewater service area;

vi. Identification of appropriate project management agency;

vii. Use of Best Management Practices for pollution control;

viii. Identification of areas suitable or unsuitable for development with consideration of environmentally sensitive areas; and

ix. Other water quality based policies, goals, objectives, or recommendations.

2. The Department shall complete this review within 90 days of receipt of a complete request for consistency determination review and, where a Department permit is sought, a complete permit application.

3. Upon completion of the review, the Department shall, except as provided in (c)4 below, issue a consistency determination. This determination shall state that the project or activity is either consistent, not inconsistent, or inconsistent with the WQM plan and this chapter.

i. A project or activity shall be determined to be consistent if it is in accordance with the written provisions of the WQM plan and this chapter.

ii. If the WQM plans and this chapter do not contain provisions precluding a project or activity, then this shall be interpreted to mean that the project or activity is not inconsistent. A finding of not inconsistent is equivalent in effect to a finding of consistent.

iii. A finding of inconsistent means that the project or activity is in conflict with the written provisions of a WQM plan or this chapter.

4. If the Department finds a project or activity to be consistent or not inconsistent, then the Department may issue a statement of this finding to the applicant or may issue the permit without issuing a written consistency determination.

5. Except as provided in (c)6 below, all Department findings made for Department permits under (c)4 above shall be valid only for the permit application for which the consistency determination review was sought.

6. If a project or activity requires more than one Department permit, and if the Department makes a finding under (c)4 above for one of those permits, that finding shall be vaild for the remaining Department permits unless:

i. The project or activity has ceased to be consistent or not inconsistent, because of an amendment made to the WQM plan or this chapter after the initial finding; or

ii. The Department denies a permit in response to comments received under N.J.A.C. 7:15-3.1(g).

7. If the Department finds a project or activity to be inconsistent, then the Department shall notify the applicant in writing of the reasons for this finding. The applicant may request a resolution of the conflict. The conflict resolution procedure is presented in N.J.A.C. 7:15-3.3.

7:15-3.3 Procedures for resolution of conflicts in plan consistency

(a) The following procedures shall be followed where the Department has found a proposed project or activity to be inconsistent with a WQM plan or this chapter, and the applicant chooses to resolve the conflict.

1. The applicant may formally request a resolution of conflict by writing to the BWQP within 30 days of receipt of notification. This request shall include, but not be limited to:

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i. Description of project;
ii. Description of conflict; and
iii. Proposed resolution of conflict.

2. The applicant shall meet with the BWQP within a reasonable period of time to examine and resolve mutual differences in a resolution conference.

3. As a result of the resolution conference, the applicant may either revise his or her project or activity to conform with the WQM plan and this chapter, seek an amendment to the WQM plan under N.J.A.C. 7:15-3.4 or appeal the decision under N.J.A.C. 7:15-3.9.

4. The Department may waive the requirement for a conflict resolution conference in cases where the Department determines that such a conference would be unlikely to be useful.

7:15-3.4 Water quality management plan amendment procedures

(a) The Department and the designated planning agencies shall propose amendments to the Statewide and areawide WQM Plans whenever such amendments are necessary or desirable. Amendments may be proposed for various reasons, such as to implement or comply with applicable State or Federal law; respond to new circumstances; improve the economic, social, or environmental impact of WQM plans; or resolve issues disclosed through the consistency review or conflict resolution procedure.

(b) Procedures for amendment of the Statewide WQM Plan are as follows:

1. Water quality related provisions in present and future rules adopted by the Department shall be considered to be part of the Statewide WQM Plan. Such provisions may not be adopted, amended, or repealed through the WQM plan amendment process under (b)4 below.

2. Priority systems, intended use plans and project priority lists for wastewater facilities that are developed by the Department and accepted by the United States Environmental Protection Agency (USEPA) pursuant to USEPA regulations, or that otherwise are developed by the Department under N.J.A.C. 7:22, shall be considered to be part of the Statewide WQM Plan. Such priority systems and project priority lists shall be adopted or revised in accordance with USEPA regulations and N.J.A.C. 7:22, as appropriate, and shall not be adopted or revised through the WQM plan amendment process under (b)4 below.

3. Statewide Sludge Management Plans, District Sludge Management Plans and sludge management rules that are promulgated or approved by the Department pursuant to N.J.S.A. 13:E-1 et seq., and shall not be promulgated, revised, updated, or approved through the WQM plan amendment process under (b)4.

4. Components of the Statewide WQM Plan other than (b)1 through 3 above may be amended by using the procedure specified in (g) below, except that the Commissioner shall render the final decision identified in (g)9 below.

(c) Areawide WQM plans for designated areas may be amended by designated planning agencies pursuant to their approved procedures for plan amendment. The Department may amend the areawide WQM plan for any non-designated area, pursuant to the procedures under (g) below. Amendments or provisions thereof for any areawide WQM plan whose specific purpose or effect is to address projects or activities covered by (i) and (j) below, or that are either proposed, constructed, operated or conducted by the State or Federal government, or that are regulated by the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), shall be processed only by the Department, regardless of whether the areawide WQM plan is for a designated area or non-designated area.

(d) Procedures for plan amendment developed by the designated planning agencies shall be consistent with this section and approved by the Department. Such procedures shall include, but need not be limited to, provisions that:

1. Allow any interested person to submit to the designated planning agency written, documented petitions to amend the areawide WQM Plan;

2. Provide for review by the Department of all proposed amendments prior to public notice;

3. Allow the Department to identify parties that shall be requested to endorse proposed amendments, such parties being in addition to any parties identified by the designated planning agency;

4. Provide for publication of public notice of proposed amendments in a newspaper of general circulation in the designated area; and

5. Provide for adequate public comment periods and opportunities for public hearings before the designated planning agency decides whether to approve an amendment.

(e) Every designated planning agency shall, within 90 days of the effective date of this subchapter, submit for Department approval plan amendment procedures that have been revised for consistency with this section. Such procedures shall identify the newspaper in which public notices of plan amendments shall be published. All plan amendment procedures that the Department approved before that effective date, but that are not revised and approved by the Department as being consistent with this section, shall become void 180 days after that effective date.

(f) Within 15 days of approving an amendment, a designated planning agency shall submit to the BWQP a copy of the amendment, together with background information for that amendment. WQM plan amendments approved by designated planning agencies are valid only upon the subsequent adoption of such amendments by the Governor or his designee.

(g) Except as provided in (h) below, the Department procedure for amendment of areawide WQM plans is as follows:

1. For amendments which are the Department's responsibility under (c) above, any interested person may petition the Department to amend the areawide WQM plan, or the Department may propose to amend the areawide WQM plan on the Department's own initiative. Requests for amendments shall be submitted in writing to the Bureau of Water Quality Planning (BWQP), Division of Water Reources, CN 029, Trenton, New Jersey 08625.

2. Requests for amendments shall include, but need not be limited to, a detailed description of the proposed amendment, including documentation substantiating the need for the amendment and other documentation as determined by the Department. Within a reasonable period of time, not to exceed 180 days of receiving such requests, the Department shall review such requests and shall either:

i. Disapprove the amendment request, and return it to the applicant; or

ii. Return the amendment request to the applicant for additional information or other necessary changes; or

iii. Decide to proceed further with the amendment request.

3. The Department shall notify the applicant in writing of its decision under (g)2 above. If the Department's decision is to proceed further with the amendment request under (g)2iii above, then the applicant shall request endorsements under (g)4 below, and shall give public notice by publication in a newspaper of general circulation at the applicant's expense. The Department shall maintain a list identifying the newspaper that shall be used for this purpose in each planning area. In cases where such Department decisions include a requirement for a non-adversarial public hearing, the public notice shall provide at least 15 days notice of the hearing.

4. Requirements concerning endorsement of plan amendments are as follows:

i. As part of each notification of a decision under (g)2iii above, the Department may identify a list of parties that may be affected by, or otherwise have a substantial interest in, approval of the proposed amendment, and that shall be asked to endorse the proposed amendment. Within 15 days of receiving such notification, the applicant shall submit by certified mail (return receipt requested) a copy of the proposed amendment to these parties, with a request that they endorse the proposed amendment within 60 days of their receipt of the request.

ii. An endorsement shall include a statement that the party concurs with, or does not object to, the proposed amendment. Tentative, preliminary, or conditional statements shall not be considered to be endorsements. An endorsement by a governmental unit shall be in the form of a resolution by that unit's governing body.

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iii. The applicant shall promptly forward to the BWQP a copy of all endorsements and comments received, and a copy of all requests for endorsement (with return receipts) sent to parties that did not provide endorsements or comments within 60 days of their receipt of such requests.

iv. Where a party identified under (g)4i above refuses to endorse or does not act on an endorsement, the reasons, if known, for that refusal or inaction shall be considered in making decisions under (g)8 and 9 below.

5. When the Department proposes to amend the areawide plan on its own initiative, the Department shall give public notice by publication in a newspaper of general circulation in the planning area, and may hold a public hearing or request endorsements as if the Department were an applicant under (g)3 and 4 above.

6. Interested parties, including, but not limited to, those from which endorsements are requested under (g)4i or 5 above, may submit written comments to the BWQP within 30 days of the date of the public notice. Interested parties may request that the public comment period be extended up to 30 additional days, and such extensions may be granted to the extent they appear necessary. Requests for such extensions shall be submitted in writing to the BWQP within 30 days of the date of the public notice.

7. Parties may also request that the Department hold a non-adversarial public hearing; such requests shall be submitted in writing to the BWQP within 30 days of the date of the public notice. If there is significant interest, as determined by the Department, in holding a public hearing, then a public hearing will be held within 45 days of the date on which the public comment period was to have ended. A public notice providing at least 15 days notice of the hearing will be published in two newspapers of general circulation and mailed to each person who responded to the initial public notice or was requested to endorse the amendment, and the public comment period will be extended until 15 days after the hearing. Except when the Department proposes to amend areawide WQM plans on its own initiative, the applicant shall, at the applicant's expense, provide for publication and mailing of the public notice, secure a court stenographer, and provide three copies of a verbatim transcript of the hearing to the BWQP.

8. If any data, information or arguments submitted during the public comment period or in response to a request for an endorsement appear to raise substantial new questions concerning a proposed plan amendment, the Department may:

i. Reopen or extend the public comment period to give interested persons an opportunity to comment on the information or arguments submitted;

ii. Disapprove the proposed amendment and, where applicable, return it to the applicant;

iii. Return the amendment request to the applicant for necessary changes and reproposal under this section; or

iv. Prepare a new proposed plan amendment, appropriately modified, for proposal under this section.

9. Except where the Department has already disapproved or returned the proposed amendment under (g)8 above, the Governor or his designee shall render a final decision on the amendment within 60 days of the end of the public comment period or, if a public hearing is held, within 60 days of the public hearing. The Governor or his designee shall either:

i. Adopt the amendment as proposed;

ii. Adopt the proposed amendment with minor changes that do not effectively destroy the value of the public notice; or

iii. Disapprove the proposed amendment and, where applicable, return it to the applicant.

10. The Department shall provide written notification of the decision of the Governor or his designee to the applicant where applicable, and to each person who submitted comments or requested notice of the final decision.

11. The Department shall retain the administrative record for WQM Plan amendments for the following periods of time:

i. For each amendment adopted under (g)9 above, a period of not less than three years from the effective date of the amendment.

ii. For each proposed amendment disapproved or returned under (g)2, 8, or 9 above, a period of not less than one year from the date of disapproval or return.

(h) For amendments identified in (h)3 below, the Department may modify the plan amendment procedure specified in (g) above in the manner set forth in (h)1 and 2 below. Except as provided in (h)1 and 2 below, the entire procedure specified in (g) above remains applicable to such amendments.

1. In lieu of the endorsement requirements in (g)3 and 4 above, the Department shall identify a list of potentially affected or interested parties that shall receive notice of the proposed amendment, but that need not be asked to endorse the proposed amendment. Within five days of receiving such a list, the applicant shall submit by certified mail (return receipt requested) to these parties a copy of the proposed amendment and a copy of the public notice that will be published in a newspaper pursuant to (g)3 above. The applicant shall promptly forward to the BWQP a copy of all letters (with return receipts) sent to these parties under this paragraph. For sewers and pumping stations identified in (h)3ii below, endorsements are still required from owners or operators of affected DTW.

2. Instead of the 30 day period specified for these actions in (g)6 and 7 above, interested parties may take the following actions within 10 working days of the date of the public notice:

i. Submit written comments on the proposed amendment to the BWQP:

ii. Submit written requests that the public comment period be extended up to 30 additional days; or

iii. Submit written requests that the Department hold a non-adversarial public hearing.

3. The modifications set forth in (h)1 and 2 above shall be available only for amendments whose sole purpose is to address the following projects:

i. Schools, health care facilities, or correctional facilities, if such schools or facilities are publicly owned or operated; or

ii. New sewers or pumping stations to serve a project or activity that is partially within a future sewer service area depicted in an areawide WQM plan, if such sewers or pumping stations would convey wastewater from such project or activity to the existing DTW whose sewer service area is depicted in that WQM plan, and if a resolution of endorsement is received from the owner or operator of that DTW. If a project or activity is partially or entirely within two or more depicted sewer service areas, the new sewers or pumping stations may convey wastewater to one or more such existing DTW, provided that resolutions of endorsement are received from the owners or operators of the affected DTW in each of the sewer service areas.

iii. Notwithstanding (h)3ii above, the modifications set forth in (h)1 and 2 above shall not be available for sewers or pumping stations whose construction would violate N.J.A.C. 7:14A-12.21, or that would convey wastewater to DTW whose capacity must by statute, rule or other legal requirement be reserved for other projects or activities. The Department may require the applicant to provide proof from the owner or operator of DTW that would receive the conveyed flow that capacity is available for the applicant's project or activity. This paragraph applies whether treatment works approvals are sought for both construction and operation, or for construction only, of sewers or pumping stations.

(i) Effluent limitations, including, but not limited to, water quality based effluent limitations, and schedules of compliance established in accordance with N.J.A.C. 7:15-3.1 as NJPDES permit conditions under N.J.A.C. 7:14A-8.6 shall be considered to be part of the areawide WQM plans. NJPDES permit conditions shall be modified only through the procedures specified in the Department's New Jersey Pollutant Discharge Elimination System rules (N.J.A.C. 7:14A), in accordance with applicable Department rules, and shall not be modified through the WQM plan amendment process under (c) or (g) above. This subsection, however, shall not preclude the adoption of effluent limitations or schedules of compliance in areawide WQM plans under (c) or (g) above, prior to the establishment of such effluent limitations or compliance schedules as new or revised NJPDES permit conditions.

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(j) Total maximum daily loads, wasteload allocations, load allocations, and listings of water quality limited segments established by the United States Environmental Protection Agency (USEPA) pursuant to 40 CFR 130.7(D) shall be considered to be part of areawide WQM plans, but the Governor or his designee may adopt more stringent requirements in such plans pursuant to the procedures in (g) above. The Governor or his designee may also adopt these WQM plan elements under (g) above in the absence of USEPA action to establish such elements.

(k) Water quality management planning related documentation in present and future 201 Facilities Plans that are approved by the Department and USEPA after May 31, 1975 shall constitute amendments to areawide WQM plans. This documentation may include, but is not limited to: selected facilities alternative, future design capacity and flows, treatment levels, sewer service areas, septage management areas, sludge and septage management and disposal plans, environmental constraints mapping, identification of management agencies, and grant conditions. Itemized abstracts of the appropriate documentation shall be available at the Division of Water Resources. Water quality management planning related documentation in 201 Facilities Plans completed on or prior to May 31, 1975 may be adopted into areawide WQM plans on a case-by-case basis under (c) or (g) above.

7:15-3.5 Water quality management plan review, revision, and certification

(a) The Department and the designated planning agencies shall periodically review Statewide and areawide WQM Plans in order to propose appropriate amendments under N.J.A.C. 7:15-3.4, and to prepare appropriate revisions under this section.

(b) The Department and the designated planning agencies shall prepare revisions to Statewide and areawide WQM Plans under this section whenever such revisions are necessary to:

1. Correct, clarify, or update erroneous, unclear, or outdated statements in Statewide and areawide WQM Plans;

2. Transfer or assign wastewater management plan responsibility under N.J.A.C. 7:15-5.13; or

3. Revise schedules for submission of wastewater management plans under N.J.A.C. 7:15-5.24(g).

(c) The documents that are automatically adopted into the Statewide or areawide WQM Plans under N.J.A.C. 7:15-3.4(b)1 through 3, (i), and (j) shall not be revised under this section.

(d) The procedure for revision of Statewide and areawide WQM plans is as follows:

1. The Governor or his designee shall adopt revisions to areawide WQM plans and the Commissioner shall adopt revisions to the Statewide WQM Plan. Such revisions shall take effect immediately, unless the adoption notice specifies otherwise.

2. The Department shall, on an annual basis, make publicly available a list of adopted revisions to WQM plans. Under N.J.A.C. 7:15-3.4, interested parties may submit petitions to amend WQM plans to repeal or modify such revisions.

(e) Designated planning agencies shall revise areawide WQM Plans in accordance with procedures established by such agencies and approved by the Department. All revisions to areawide WQM plans are valid only upon their adoption by the Governor or his designee.

(f) The Governor or his designee shall certify adopted WQM Plans in accordance with United States Environmental Protection Agency regulations.

7:15-3.6 Coordination with Coastal Zone and Hackensack Meadowlands programs

(a) In accordance with N.J.A.C. 7:7E-1.2(g), the Department's Rules on Coastal Resources and Development, N.J.A.C. 7:7E, including, but not limited to, provisions concerning the Hackensack Meadowlands Development Commission at N.J.A.C. 7:7E-1.5(a) and 7:7E-3.43, shall provide the basic policy direction for WQM planning in the New Jersey Coastal Zone defined at N.J.A.C. 7:7E-1.2(b), including, but not limited to, the Hackensack Meadowlands District described in N.J.S.A. 13:17-4.

(b) In accordance with N.J.A.C. 7:15-3.4(b)1, the water quality related provisions of N.J.A.C. 7:7E, including but not limited to N.J.A.C. 7:7E-8.4, are part of the Statewide WQM Plan.

(c) Under N.J.A.C. 7:7E-8.4 and Section 307(f) of the Coastal Zone Management Act, 33 U.S.C. §§1451 et seq., and the Department's Coastal Management Program incorporates by reference all requirements established by or pursuant to the Clean Water Act, 33 U.S.C. §§1251 et seq., including all requirements contained in this chapter and in WQM plans.

(d) For WQM plan amendments relating to the Hackensack Meadowlands District, the consultation requirement in N.J.S.A. 13:17-9(c) shall be met as follows:

1. For amendments processed under N.J.A.C. 7:15-3.4(b)4 or (c), the Hackensack Meadowlands Development Commission shall be requested to endorse such amendments under N.J.A.C. 7:15-3.4(g)3 and 4 or N.J.A.C. 7:15-3.4(d)3, as appropriate.

2. For other amendments to WQM plans under N.J.A.C. 7:15-3.4(b)1 through (b)3, (i), (j), or (k) that automatically incorporate Department or USEPA actions taken through rulemaking proceedings or water polluton control programs, the consultation requirement in N.J.S.A. 13:17-9(c) shall be addressed, as necessary, through those rulemaking proceedings or programs, and shall not be independently addressed under this section.

7:15-3.7 Coordination with Pinelands program

(a) In accordance with N.J.S.A. 13:18A-8, 16 U.S.C. §471i(f), and the "Water Resources Planning" element (page 221) of the "Surface and Groundwater Resources Program" contained in Chapter Seven of the Comprehensive Management Plan adopted by the Pinelands Commission on November 21, 1980, comments shall be sought from the Pinelands Commission on proposed WQM plan amendments pertaining to the Pinelands Area defined at N.J.S.A. 13:18A-11 or the Pinelands National Reserve defined at 16 U.S.C. §471i(c), to ensure that such amendments are consistent with the intent and programs of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. §471i.

(b) For WQM plan amendments processed under N.J.A.C. 7:15-3.4(b)4 or (c), the Department shall seek comments from the Pinelands Commission before making the decision required by N.J.A.C. 7:15-3.4(g)2 or 7:15-3.4(d)2, as appropriate.

(c) For other amendments to WQM plans under N.J.A.C. 7:15-3.4(b)1 through (b)3, (i), (j), or (k), that automatically incorporate Department or USEPA actions taken through rulemaking proceedings or water pollution control programs, any need to seek comments from the Pinelands Commission shall be addressed, as necessary, through those rulemaking proceedings or programs, and shall not be independently addresssed under this section.

7:15-3.8 Validity of water quality management plan amendments

(a) No WQM plan amendment hereafter adopted by the Governor or his designee is valid unless adopted in substantial compliance with this chapter. A proceeding to contest any WQM plan amendment on the ground of noncompliance with the procedural requirements of this chapter shall be commenced within one year from the adoption date of the amendment.

(b) A proceeding to contest any WQM plan amendment adopted by the Governor or his designee prior to the effective date of this subchapter, on the ground of noncompliance with the procedural requirements of this chapter as it existed prior to that effective date, shall be commenced within one year from the effective date of this subchapter.

7:15-3.9 Appeals of Department decisions

(a) Within 20 calendar days from the conflict resolution conference held pursuant to N.J.A.C. 7:15-3.3 or from the receipt by the applicant of a written notification from the Department of the decision of the Department made pursuant to N.J.A.C. 7:15-3.3(a)4, 3.4(g)2i or ii or 8ii through iv, the applicant may request an adjudicatory hearing to contest the finding of inconsistency or other Department decision by submitting a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the applicant and its authorized representative if any;

2. The applicant's factual position on each question alleged to be at issue, its relevance to the Department's decision, specific reference

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to contested factors as well as suggested revised or alternative provisions;

3. Information supporting the applicant's factual position and copies of other written documents relied upon to support the request for a hearing;

4. An estimate of the time required for the hearing (in days and/or hours); and

5. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) A hearing request not received within 20 days after the conflict resolution conference of after receipt by the applicant or a written notification from the Department of the decision of the Department, shall be denied.

(c) During the pendency of the review and hearing on a Department decision made pursuant to this chapter, the challenged Department decision shall remain in full force and effect, unless a stay is granted by the Director upon formal request by the applicant.

(d) If the appellant fails to include all the information required by (a) above, the Department may deny the hearing request.

(e) If it grants the request for a hearing, 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.

(f) Appeals of decisions made by designated planning agencies under this subchapter shall be made to a court of competent jurisdiction.

SUBCHAPTER 4. WATER QUALITY AND WASTEWATER MANAGEMENT POLICIES AND PROCEDURES

7:15-4.1 Permittees for new or expanded domestic treatment works

(a) After December 5, 1985, the Department shall not, except as provided in (c) below, issue a permit under N.J.A.C. 7:14A for the following new or expanded DTW unless a governmental entity or sewerage agency is either the sole permittee or co-permittee under N.J.A.C. 7:14A for that DTW, and is identified as a Wastewater Management Agency in an areawide WQM Plan:

1. DTW that, using subsurface sewage disposal systems or any other means, serve more than one property, dwelling unit, commercial unit, or other premises, whether or not such DTW require NJPDES discharge permits; and

2. Any other DTW that require NJPDES discharge permits.

(b) For purposes of this section, a "new or expanded DTW" means:

1. A DTW that was not in existence or under construction on or before December 5, 1985; or

2. A DTW whose actual or proposed capacity exceeds the capacity identified for that DTW in the areawide WQM Plan that was in effect on December 5, 1985.

(c) This section does not apply to the following new or expanded DTW:

1. Sewers or pumping stations; or

2. New or expanded DTW whose only new or expanded components handle sludge only, except as may be required in N.J.A.C. 7:14C.

7:5-4.2 Projects and activities deemed to be not inconsistent with WQM plans and this chapter

(a) The following treatment works are deemed to be not inconsistent with WQM plans and this chapter:

1. Upgrades of domestic or industrial treatment works, including upgrades accomplished through construction of new treatment works at the same location. However, where levels of treatment are specified in areawide WQM Plans, upgrades that are not designed to achieve such treatment levels shall be deemed to be not inconsistent only if such upgrades are in accordance with approved compliance schedules that provide for the future achievement of such treatment levels, and that are included in NJPDES discharge permits, court orders, or Department enforcement documents such as administrative orders or administrative consent orders.

2. Treatment works whose sole purpose is to abate an existing pollution problem, if such treatment works are required by the Department.

3. Expansions of domestic or industrial treatment works up to flows identified in areawide WQM plans, or to flows allowed in permits under N.J.A.C. 7:14A that were in effect on December 5, 1985, whichever are higher.

4. Interim construction on interim expansion of, or interim connection with, domestic or industrial treatment works that are required by law to be abandoned or incorporated at a definite time into other treatment works:

i. That are under construction:

ii. For which contracts or Federal or State financial assistance have been awarded for construction; or

iii. Whose construction is required by court order or Department order, or by a consent agreement to which the Department is a party.

(b) The initial performance of emergency activities, including, but not limited to, emergency activities allowed by emergency permits issued pursuant to N.J.A.C. 7:14A-2.2, is deemed to be not inconsistent with the WQM plans and this chapter. The Department may require the results of an emergency activity to be removed or modified after such initial performance, in order to obtain conformance with a WQM plan or this chapter.

7:15-4.3 Treatment works not identified in Water Quality Management Plans

(a) Except as provided in N.J.A.C. 7:15-4.2 or 4.4, the following treatment works are considered to be inconsistent with the areawide WQM plan, and shall require an amendment to that plan to be eligible for treatment works approvals, NJPDES discharge permits, or financial assistance under the Clean Water Act, U.S.C. §§1251 et seq., or under N.J.A.C. 7:22.

1. New domestic or industrial treatment works, or expansions of existing domestic or industrial treatment works, if such new treatment works or expansions are not identified in the existing areawide WQM plan, are not sewers or pumping stations, require a NJPDES discharge permit, and would:

i. Directly discharge to surface waters, or onto the land surface (for example, spray irrigation or overland flow facilities); or

ii. Have a design capacity of 2000 gallons per day or larger.

2. New DTW that would conflict with or be outside of future sewer service areas depicted in the areawide WQM plan.

(b) The provisions of (a) above apply whether treatment works approvals are sought for both construction and operation, or for construction only, of treatment works.

(c) This section does not apply to the following treatment works:

1. Activities identified under N.J.A.C. 7:14A-12.4 as not requiring treatment works approval;

2. Treatment works components that handle sludge only; or

3. Industrial treatment works that do not handle process waste water or domestic wastes.

(d) In preparing amendments to areawide WQM plans, the following policies shall be adhered to:

1. Existing regional DTW shall be used where appropriate. Expansion or upgrading of existing regional DTW is generally preferable to construction of additional DTW that would produce additional direct discharges to surface water at new locations.

2. Where a sewer connection ban is in effect under N.J.A.C. 7:14A-12.21 on a DTW, the sewer service area for that DTW shall not be altered unless such alteration would, even in the absence of the sewer connection ban, be cost-effective, environmentally sound, and feasible from the engineering standpoint.

7:15-4.4 Individual septic systems and other small domestic treatment works in sewer service areas

(a) Subject to the provisions of (b) below and of N.J.A.C. 7:15-5.19, depiction of future sewer service areas in wastewater management plans or elsewhere in areawide WQM plans shall not be construed to prohibit the lawful construction in such areas of the following DTW:

1. Individual septic systems for individual residences pursuant to N.J.A.C. 7:9A; or

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2. Other DTW that would have a design capacity of less than 2,000 gallons per day, and use either subsurface sewage disposal systems or other sewage disposal systems that would not directly discharge to surface water or onto the land surface.

(b) DTW identified in (a) above shall be constructed in depicted sewer service areas only if adequate guarantees are provided before such construction that the depicted sewer service will be used when it becomes available, and that any discharge to ground water will then be discontinued.

7:15-4.5 Eligibility for financial assistance

Financial assistance under the Clean Water Act, 33 U.S.C. §§1251 et seq., or under N.J.A.C. 7:22, for planning, design, or construction of DTW shall be awarded only to Wastewater Management Agencies identified in a Statewide or areawide WQM Plan.

SUBCHAPTER 5. WASTEWATER MANAGEMENT PLANNING REQUIREMENTS

7:15-5.1 Wastewater management plan requirement for water quality management plan amendments

(a) If a proposed WQM plan amendment under N.J.A.C. 7:15-3.4(c) or (g) includes a DTW not identified in the existing WQM plan, or includes an expansion of an existing DTW above the capacity identified in the existing WQM plan, or modifies a wastewater service area delineation in the existing WQM plan, the Governor or his designee shall adopt the amendment only if the amendment otherwise complies with this chapter and consists of, or includes, a wastewater management plan (WMP), or an amendment to a wastewater management plan, that identifies such DTW, expansion, or modified delineation.

(b) The requirement in (A) above applies only to:

1. Wastewater service area modifications that directly affect 10 or more acres, or the disposition of 20,000 gallons or more per day of wastewater; or

2. DTW that requires a NJPDES discharge permit, and that:

i. Directly discharge to surface waters, or onto the land surface (e.g., spray irrigation or overland flow facilities); or

ii. Have a design capacity of 20,000 gallons per day or larger.

7:15-5.2 Validity of previously adopted or recently prepared Wastewater management plans.

(a) Wastewater management plans adopted between June 1, 1985 and the effective date of this subchapter shall remain in effect as wastewater management plans in the appropriate areawide WQM plans without the need for further adoption procedures.

(b) The Governor or his designee may, under N.J.A.C. 7:15-3.4, adopt any wastewater management plan that meets the requirements of the former "Policy on Wastewater Management Plans" that was part of the Statewide WQM Plan that the Department adopted on December 5, 1985, but that does not meet the procedural or substantive requirements of this subchapter, if a draft of that wastewater management plan was submitted to the Department prior to the effective date of this chapter.

7:15-5.3 Wastewater management plan areas and wastewater management planning responsibility: general statement

(a) A "wastewater management plan area" ("WMP area") is the geographic area for which a governmental unit or other person has "wastewater management planning responsibility" as defined in (b) below.

(b) N.J.A.C. 7:15-5.4 through 5.8 identify governmental units that have "wastewater management plan responsibility" ("WMP responsibility") for the wastewater management plan areas specified in those sections, unless alternative assignments of wastewater management plan responsibility are established under N.J.A.C. 7:15-5.9. "Wastewater management plan responsibility" means the duty to:

1. Prepare, submit, and periodically update a wastewater management plan for the wastewater management plan area; and

2. Provide comments on proposed amendments to wastewater management plans under N.J.A.C. 7:15-5.23(c).

(c) Wastewater management plans shall be prepared, submitted, and periodically updated only by the governmental units or other persons that have wastewater management plan responsibility for the corresponding wastewater management plan areas. Such governmental units or other persons shall submit wastewater management plans in accordance with the procedures specified in N.J.A.C. 7:15-5.23(a) or (b), as appropriate, and in accordance with the schedule specified in N.J.A.C. 7:15-5.24. A governmental unit or other person may meet its responsibility to prepare and submit wastewater management plans by submitting wastewater management plans prepared by another party on behalf of that governmental unit or person.

(d) N.J.A.C. 7:15-5.4 through 5.13 apply notwithstanding any statements about wastewater planning responsibility contained in management agency designations or WQM Plans, or amendments thereto, issued or adopted before the effective date of this subchapter.

(e) The identification under this subchapter of wastewater management plan areas and assignments of wastewater management plan responsibility does not, by itself, establish or change the designations of 201 facilities planning areas or 201 facilities planning agencies. Such designations may be established or modified only by specific provisions for that purpose in amendments to areawide WQM plans under N.J.A.C. 7:15-3.4, including but not limited to provisions in wastewater management plans under N.J.A.C. 7:15-5.18(h).

7:15-5.4 Responsibility of designated planning agencies

A designated planning agency shall have wastewater management plan responsibility for a wastewater management plan area consisting of all or part of its designated area, if the governing body of that agency adopts and submits to the BWQP a resolution requesting such responsibility within 60 calendar days of the effective date of this subchapter. In wastewater management plan areas identified in such resolutions, no other governmental units shall have wastewater management plan responsibility under N.J.A.C. 7:15-5.5 through 5.8.

7:15-5.5 Responsibility of Passaic Valley Sewerage Commissioners

The Passaic Valley Sewerage Commissioners have wastewater management plan responsibility for a wastewater management plan area consisting of the entire Passaic Valley Sewerage District. No other governmental unit shall have such responsibility for any part of that District under N.J.A.C. 7:15-5.6 through 5.8.

7:15-5.6 Responsibility of sewerage authorities and municipal authorities

(a) Except as provided in (b) or (e) below or in N.J.A.C. 7:15-5.4 or 5.5, every sewerage authority and every municipal authority has wastewater management plan responsibility for a wastewater management plan area consisting of that authority's entire district.

(b) A municipal authority does not have wastewater management plan responsibility if that municipal authority does not perform sewerage-related functions in at least part of its district, and does not request wastewater management plan responsibility. Except as provided in (c) below, a municipal authority performs "sewerage-related functions" if it:

1. Owns, leases, constructs, operates, or maintains sewerage facilities, or is a party to a contract providing for or relating to sewerage facilities;

2. Regulates the construction or use of sewerage facilities;

3. Is a permittee or co-permittee under N.J.A.C. 7:14A for a DTW, or has applied to be such a permittee or co-permittee;

4. Seeks WQM plan amendments for sewerage facilities;

5. Receives or seeks to receive Federal or State financial assistance for sewerage facilities; or

6. Is required by statute, rule, contract, court order, Department order, consent agreement, or other legal obligation to perform any of the activities listed in (b)1 through 5 above.

(c) The activities listed in (b)1 through 6 above shall not be considered "sewerage-related functions" if such activities are:

1. Performed solely to carry out the municipal authority's water supply, solid waste, chemical or hazardous waste, or hydroelectric power functions; or

2. Pertain solely to sewage that arises on property owned or leased by the municipal authority, and that is conveyed to sewerage facilities not owned, leased, operated, or maintained by the municipal authority.

(d) The Department may, at any time, send a letter to any municipal authority, requesting that authority to declare in writing to the

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BWQP whether or not that authority performs any of the sewerage-related functions listed under (b) and (c) above, and whether or not that authority requests wastewater management plan responsibility. If that authority does not make such a declaration within 90 calendar days of receipt of the letter, the Department shall, in the absence of information to the contrary, presume that the authority performs sewerage-related functions or requests wastewater management plan responsibility.

(e) Where there is overlap between the districts of two or more authoritites that would otherwise have wastewater management plan responsibility for their entire districts under this section, wastewater management plan responsibility in the overlap is assigned by the following criteria:

1. If only one of the authorities is a county utilities authority, only that county utilities authority has wastewater management plan responsibility in the overlap.

2. If none of the authorities is a county utilities authority, and if only one of the authorities is a regional sewerage authority, only that regional sewerage authority has wastewater management plan responsibility in the overlap.

3. If both of the conditions in (e)1 or 2 above are not met, and if only one of the authorities owns, leases, operates, or maintains a DTW that requires a NJDPES permit, and that is located within or serves all or part of the overlap, then only that authority has wastewater management plan responsibility in the overlap.

4. If none of the conditions in (e)1, 2, of 3 above is met, arrangements shall be made under N.J.A.C. 7:15-5.9 to assign wastewater management plan responsibility in the overlap to a single governmental unit.

(f) For purposes of (e) above, "overlap" exists when the district of one authority is partially or completely within, or identical to, the district of one or more other authorities.

(g) When wastewater management plan responsibility is assigned under (e) above to an authority or other governmental unit that also has wastewater management plan responsibility outside the overlap, the entire geographic area for which the authority or other governmental unit has wastewater management plan responsiblity shall constitute a single wastewater management plan area.

7:15-5.7 Responsibility of joint meetings

(a) Except as provided in (b) below, every joint meeting has wastewater management plan responsibility for a wastewater management plan area consisting of the entirety of all municipalities that are members of that joint meeting.

(b) No joint meeting has wastewater management plan responsibility for any location that:

1. Is within a wastewater management plan area for which another governmental unit has wastewater management plan responsibility under N.J.A.C. 7:15-5.4 through 5.6; or

2. Does not generate sewage that is received by any sewerage facilities owned, leased, operated, or maintained by the joint meeting, and is not projected to generate such sewage in the 20 year projection period of the wastewater management plan.

7:15-5.8 Responsibility of municipalities

(a) Except as provided in (e) below, every municipality that performs sewerage-related functions in at least part of the municipality has wastewater management plan responsibility for a wastewater management plan area consisting of the entire municipality.

(b) Except as provided in (c) below, a municipality performs "sewerage-related functions" if the municipality either:

1. Owns, leases, constructs, operates, or maintains any sewerage facilities, under N.J.S.A. 40:63-1 et seq. or other statutes:

2. Is a party to a contract providing for or relating to sewerage facilities under N.J.S.A. 40:63-1 et seq., 40:14A-23, 40:14B-49, 58:27-1 et seq., or other statutes;

3. Has an ordinance under N.J.S.A. 40:63-6 that provides for, establishes, or alters a general system of sewerage;

4. Has an ordinance under N.J.S.A. 40:63-53 requiring buildings to be connected with sewers;

5. Has an ordinance under N.J.S.A. 40:55D-37 requiring approval of either subdivisions or site plans or both;

6. Has a zoning ordinance under N.J.S.A. 40:55D-62 that includes standards for the provision of sewerage facilities;

7. Has a master plan under N.J.S.A. 40:55D-28 that includes a utility service plan element for sewerage and waste treatment;

8. Has a capital improvements program under N.J.S.A. 40:55D-30 that includes sewerage projects;

9. Has an ordinance under N.J.S.A. 40:56-1 for undertaking sewerage improvements as local improvements;

10. Has a sewerage district under N.J.S.A. 40:63-32 through 40 or N.J.S.A. 40A:18-1 et seq.;

11. Has granted an unexpired franchise to a public utility to provide sewerage service regulated under N.J.S.A. 48:1-1 et seq.;

12. Has an ordinance regulating sewerage facilities under N.J.S.A. 40:48-2;

13. Is a permittee or co-permittee under N.J.A.C. 7:14A for DTW, or has applied to be such a permittee or co-permittee;

14. Seeks WQM plan amendments for DTW;

15. Receives or seeks to receive Federal or State financial assistance for DTW; or

16. Is required by statute, rule, contract, court order, Department order, consent agreement, or other legal obligation to perform any of the activities, or adopt any of the ordinances, plans, or other programs, listed in (b)1 through 15 above.

(c) The activities listed in (b)1, 2, 8, 13, 14, and 15 above shall not be considered "sewerage-related functions" if they:

1. Pertain solely to sewage that arises on property owned or leased by the municipality, and that is conveyed to sewerage facilities not owned, leased, operated, or maintained by that municipality; or

2. Are performed by the municipality solely through the agency of an authority or joint meeting.

(d) The Department may, at any time, send a letter to any municipality, requesting that municipality to delcare in writing to the BWQP whether or not that municipality performs any sewerage-related functions as discussed under (b) and (c) above. If that municipality does not make such a declaration within 90 calendar days of receipt of the letter, the Department shall, in the absence of information to the contrary, presume that the municipality performs sewerage-related functions.

(e) No municipality has wastewater management plan responsibility in any wastewater management plan area for which another governmental unit has wastewater management plan responsibility under N.J.A.C. 7:15-5.4 through 5.7.

7:15-5.9 Alternative assignment of wastewater management plan responsibility: general statement

(a) Alternative assignments of wastewater management plan responsibility, different from those set forth in N.J.A.C. 7:15-5.4 through 5.8, shall be made and subsequently changed if and only if such alternative assignments or changes thereto are adopted as amendments to areawide WQM plans under N.J.A.C. 7:15-3.4(c) or (g), or as revisions to WQM Plans under N.J.A.C. 7:15-5.13 and N.J.A.C. 7:15-3.5. Amendments or revisions that change alternative assignments may establish different alternative assignments, or may restore wastewater management plan responsibilities set forth in N.J.A.C. 7:15-5.4 through 5.8.

(b) N.J.A.C. 7:15-5.10 through 5.13 identify some but not necessarily all of the alternative assignments of wastewater management plan responsibility that may be adopted as WQM Plan amendments or revisions under (a) above.

(c) Except if specifically provided otherwise in the amendment or revision under (a) above, any wastewater management plan responsibility assigned to a governmental unit under (a) above is in addition to, and does not diminish, any wastewater management plan responsibility which that governmental unit already has under N.J.A.C. 7:15-5.4 through 5.8 of this section.

(d) In deciding whether or not to establish or change alternative assignments of wastewater management plan responsibility under (a) above, consideraton shall be given, but not be limited to, the following general principles:

1. The Department shall generally support amendments or transfers that:

i. Establish regional wastewater management plan areas;

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ii. Encourage the development and management of cost-effective, environmentally sound wastewater facilities and wastewater management, including comprehensive regional sewerage facilities and management where appropriate;

iii. Assign, to a governmental unit that will have long-term responsibility to own or operate a DTW that will require a NJPDES discharge permit, the wastewater management plan responsibility for the entire area that is projected to generate sewage that will be conveyed to that governmental unit's DTW:

iv. Assign wastewater management plan responsibility to governmental units rather than to private persons; or

v. Prevent or eliminate geographic overlap of wastewater management plan areas.

2. The Department shall generally oppose amendments or transfers that:

i. The Department considers to be contrary to one or more of the principles expressed in (d)1 above;

ii. Remove wastewater management plan responsibility from a governmental unit or private person, unless another governmental unit or private person already has or receives wastewater management plan responsibility for the subject geographic area;

iii. Include part of a municipality in a wastewater management plan area, but leave the remainder of the municipality outside any wastewater management plan area;

iv. Assign wastewater management plan responsibility, for all or part of a designated planning area, to a designated planning agency that does not request such responsibility, except where such assignment is necessary to resolve wastewater management problems that cannot satisfactorily be resolved at other levels;

v. Assign wastewater management plan responsibility, for all or part of a county, to a county planning board that does not request such responsibility; or

vi. Assign wastewater management plan responsibility to the Department, except as a last resort.

(e) The Department may determine that a governmental unit identified under N.J.A.C. 7:15-5.4 through 5.8 is unable to exercise wastewater management plan responsibility effectively. Upon the adoption of such a determination in an amendment to an areawide WQM plan under (a) above, N.J.A.C. 7:15-5.4 through 5.8 shall be administered without regard to the existence of such governmental unit, or other assignments of wastewater management plan responsibility may be made in the amendment. Such a determination may be rescinded in a subsequent amendment to an areawide WQM plan.

7:15-5.10 Wastewater management plan responsibility as condition for financial assistance

A WQM plan amendment under N.J.A.C. 7:15-5.9 may assign wastewater management plan responsibility to a governmental unit, for the wastewater management plan area identified in that amendment, as a condition of that governmental unit's being eligible to apply for or receive a grant, loan, or other financial assistance for wastewater facilities, if such financial assistance is subject to Department certification or approval.

7:15-5.11 Wastewater management plan responsibility for complete wastewater service area

(a) A WQM plan amendment under N.J.A.C. 7:15-5.9 may assign wastewater management plan responsibility to a governmental unit that is, or has applied to be, a permittee or co-permittee under N.J.A.C. 7:14A for a DTW that requires a NJPDES discharge permit, or that owns, leases, or seeks a WQM plan amendment for such a DTW, for the entire area that generates sewage conveyed to that DTW, or that is projected to generate such sewage in the 20 year projection period of the wastewater management plan.

(b) Every governmental unit or other person that has wastewater management plan responsibility for a wastewater management plan area automatically assumes wastewater management plan responsibility for any additional 20-year sewer service area identified in the wastewater management plan for that wastewater management plan area under N.J.A.C. 7:15-5.18(c)4, upon adoption of that wastewater management plan by the Governor or his designee.

7:15-5.12 Joint wastewater management plan responsibility

A WQM plan amendment under N.J.A.C. 7:15-5.9 may assign joint wastewater management plan responsibility for a unified wastewater management plan area to two or more governmental units that would otherwise have wastewater management plan responsibility for separate but contiguous wastewater management plan areas.

7:15-5.13 Voluntary establishment of wastewater management plan responsibility

(a) With the consent of the Department and of the parties making and receiving the transfer, wastewater management plan responsibility for all or part of a wastewater management plan area may be transferred from one governmental unit or private person to another.

(b) With the consent of the Department and of the party receiving the assignment, wastewater management plan responsibility may be assigned to a governmental unit or private person for a wastewater management plan area for which no other party has wastewater management plan responsibility under this subchapter.

(c) Transfers or assignments of wastewater management plan responsibility under (a) or (b) above do not require WQM Plan amendments under N.J.A.C. 7:15-3.4, but shall be adopted as WQM Plan revisions under N.J.A.C. 7:15-3.5.

(d) This secton shall not be construed to prevent wastewater management plan responsibility from being transferred or assigned by WQM plan amendment under N.J.A.C. 7:15-5.9 and N.J.A.C. 7:15-3.4. Such transfers or assignments may be made without the consent of the affected parties.

7:15-5.14 District boundaries and related information; joint meeting membership

(a) To assist the identification of wastewater management plan responsibility under N.J.A.C. 7:15-5.5 through 5.8, the following information shall be submitted in writing to the BWQP within 120 calendar days after the effective date of this subchapter:

1. The Passaic Valley Sewerage Commissioners, every sewerage authority, and every municipal authority shall:

i. List each municipality that is entirely within their district;

ii. List each municipality, if any, that is partially within their district; and

iii. Submit a map depicting the boundaries of the district within any municipality listed under (a)1ii above, using 1:24,000, United States Geological Survey quadrangle maps as a base.

2. Every sewerage authority and every municipal authority shall also:

i. Identify the date when each municipality listed under (a)1i or ii above became part of the district of that authority; and

ii. Identify the statute under which the authority was created and the date, if any, when the authority was reorganized under N.J.S.A. 40:14B-6.

3. Every joint meeting shall list the municipalities that are members of that joint meeting.

(b) Whenever a new authority or joint meeting is created, or an existing authority is reorganized under N.J.S.A. 40:14B-6, or the district of an existing authority is modified, or an additional municipality becomes a member of an existing joint meeting, such authority or joint meeting shall, by letter to the BWQP, provide or update the information required under (a)2 or 3 above within 120 calendar days of such event.

(c) The Department may at any time request the Passaic Valley Sewerage Commissioners or any authority or joint meeting to update information provided under (a) or (b) above, and such governmental units shall submit such information in writing to the BWQP within 120 calendar days of receiving such request.

(d) To assist the identification of wastewater management plan responsibility, the Department may consult other sources of information, including but not limited to resolutions or ordinances filed in the office of the Secretary of State under N.J.S.A. 40:14A-4 or 40:14B-7.

(e) If an authority or joint meeting cannot identify with reasonable certainty the boundaries of its district or other information required under (a) through (c) above, the authority or joint meeting shall make a written declaration to that effect to the BWQP, and shall provide

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its best estimate. Such estimates, together with any other information obtained under (d) above, shall suffice to define the geographic scope of wastewater management plan responsibility under N.J.A.C. 7:15-5.6 or 5.7.

(f) The Department may exempt a municipal authority from the requirements of this section if that authority makes the declaration identified in N.J.A.C. 7:15-5.6(d).

7:15-5.15 Contents of wastewater management plans; general statement

(a) Each wastewater management plan shall consist of written descriptions and maps of existing and future wastewater-related jurisdictions and wastewater service areas, and of selected environmental features. A wastewater management plan shall also include written descriptions and maps of specified categories of existing and future DTW, if such DTW presently exist or are necessary to meet anticipated wastewater management needs. More specific requirements for these written descriptions and maps are set forth in N.J.A.C. 7:15-5.16 through 5.20.

(b) In accordance with N.J.A.C. 7:15-5.16 through 5.20, each wastewater management plan shall address all types of DTW and all methods of wastewater disposal, including but not limited to surface water discharges and ground water discharges, to the extent that such DTW and methods of wastewater disposal presently exist or are necessary to meet anticipated wastewater management needs.

7:15-5.16 Existing jurisdictions, wastewater service areas, and domestic treatment works

(a) Each wastewater management plan shall include maps of existing wastewater jurisdictions, existing wastewater service areas, and any existing DTW in the categories specified in (a)3 or 5 below. These maps shall depict the following information:

1. The existing boundaries of the wastewater management plan area;

2. The boundaries, within the wastewater management plan area, or within any 20-year sewer service area identified under N.J.A.C. 7:15-5.18(c)4, of the following:

i. Any existing districts, and the existing franchise areas for sewerage service of any public utilities; and

ii. Any areas within the Hackensack Meadowlands District defined at N.J.S.A. 13:17-4, the Pinelands Area defined at N.J.S.A. 13:18A-11, the Pinelands National Reserve defined at 16 U.S.C. §471i(c), or the "coastal area" described in N.J.S.A. 13:19-4.

3. The location, within or outside the wastewater management plan area, of each existing DTW, if any, that is not a sewer or a pumping station, but that receives sewage that arises within or is conveyed into or through the wastewater management plan area, if such DTW requires a NJPDES discharge permit and:

i. Directly discharges to surface waters, or onto the land surface (for example, spray irrigation or overland flow facilities); or

ii. Has a design capacity of 2,000 gallons per day or larger, and stores or disposes of sewage by any means;

4. The location of each existing discharge to surface or ground water from each DTW mapped within the wastewater management plan area under (a)3 above, and the location of any overflow discharges of sewage within the wastewater management plan area;

5. The location of each existing pumping station and major interceptor and trunk sewer, if any, within the wastewater management plan area;

6. Except as provided under (a)9 below, the present sewer service area, within or outside the wastewater management plan area, for each DTW mapped within the wastewater management plan area under (a)3 above, distinguishing the separate area served by each DTW;

7. Except as provided under (a)9 below, the present sewer service area, within the wastewater management plan area, for each DTW mapped outside the wastewater management plan area under (a)3 above, distinguishing the separate area served by each DTW;

8. Any areas within the wastewater management plan area that presently are served only by either or both of the following:

i. Individual septic systems for individual residences; or

ii. Other DTW that have a design capacity of less than 20,000 gallons per day, use either subsurface sewage disposal systems or other sewage disposal systems that have no direct discharge to surface water or onto the land surface and do not have aggregate service areas mapped under (a)9 below;

9. The requirements in (a)6 and 7 above do not apply to DTW that are mapped under (a)3ii above, but that have a design capacity of less than 20,000 gallons per day. However, if two or more such DTW, on a single lot or on two or more adjacent lots, in combination have a design capacity of 20,000 gallons per day or larger, the aggregate service area of such DTW shall be depicted and distinguished from other areas mapped under (a)6 through 8 above.

(b) Each wastewater management plan shall provide the following information, in narrative, outline, or tabular form, for each existing DTW mapped within the wastewater management plan area under (a)3 above:

1. Name and owner of the DTW;

2. Name of any other governmental unit or corporation, if any, responsible for operating the DTW;

3. Location of the DTW within municipality, county, and WQM planning area, and within any district;

4. NJPDES discharge permit number, and latitude and longitude, for any discharges from the DTW;

5. Name of NJPDES permittee and any co-permittee under N.J.A.C. 7:14A for any discharges from the DTW;

6. Name and classification, under N.J.A.C. 7:9-4 and N.J.A.C. 7:9-6, of any surface and ground waters receiving any discharges from the DTW;

7. Estimate of existing residential population served by the DTW within and outside the wastewater management plan area, including any major seasonal fluctuations;

8. Actual flow of wastewater received by the DTW, in millions of gallons per day (MGD), expressed as total flow, as estimated flow arising within and outside the wastewater management plan area, and as estimated flow attributed to each of the following sources: residential, commercial, industrial, and infiltration/inflow; and

9. Existing design capacity and treatment process of the DTW.

(c) Each wastewater management plan shall include the following information, in narrative, outline, or tabular form, for each existing DTW mapped outside the wastewater management plan area under (a)3 above:

1. Name and owner of the DTW;

2. Estimate of existing residential population served by the DTW within the wastewater management plan area, including any major seasonal fluctuations; and

3. Estimated average flow of wastewater conveyed to the DTW from the wastewater management plan area, in millions of gallons per day expressed as total flow and as estimated flow attributed to each of the following sources: residential, commercial, industrial, and infiltration/inflow.

(d) Each wastewater management plan shall state whether or not there are combined sewers in the wastewater management plan area.

(e) For purposes of (a), (b) and (c) above, "existing" or "present" means existing or present at the time the particular wastewater management plan is being prepared or updated, as the case may be.

7:15-5.17 Mapping of environmental features

(a) Each wastewater management plan shall include mapping of each of the following environmental features in the wastewater management plan area, and in any additional sewer service area identified in that wastewater management plan under N.J.A.C. 7:15-5.18(c)4:

1. Coastal wetlands that have been mapped by the Department under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.;

2. Other freshwater and estuarine wetlands, based on the following information sources, in order of preference:

i. Maps prepared by the Department under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-25c;

ii. On-site delineations verified by the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the Pinelands Commission, or the Department, if such verified delineations are made readily available to the governmental unit or other person with wastewater management plan responsibility;

iii. National Wetlands Inventory maps prepared by the United States Fish and Wildlife Service;

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3. Flood prone areas, based on the following information sources in order of preference:

i. Delineations of flood hazard areas made by the Department under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., where such delineations exist;

ii. Delineations of flood hazard areas by the Federal Emergency Management Agency under the National Flood Insurance Program, 42 U.S.C. §§4001-4128;

iii. Within the New Jersey Coastal Zone identified in the Department's Rules on Coastal Resources and Development, N.J.A.C. 7:7E, the 10-foot contour line as specified in N.J.A.C. 7:7E-8.19, where flood hazard areas have been delineated by neither the Department nor the Federal Emergency Management Agency;

4. Public open space and recreation areas that include at least 10 acres of undeveloped land, including:

i. National recreation areas, wildlife refuges, and historical parks administered by the United States Department of the Interior;

ii. State and interstate parks, forests, wildlife management areas, natural areas, and recreation areas administered by the Department or the Palisades Interstate Park Commission; and

iii. County and municipal parks, reservations, preserves, and other conservation or recreation areas;

5. River areas designated under the New Jersey Wild and Scenic Rivers Act, N.J.S.A. 13:8-45 et seq., or the Federal Wild and Scenic Rivers Act, 16 U.S.C. §§1278 et seq.;

6. Category One Waters designated in the Department's Surface Water Quality Standards, N.J.A.C. 7:9-4, based on the Department's maps of such waters; and

7. Surface waters, as mapped on USGS quadrangle maps.

7:15-5.18 Future wastewater jurisdictions, service areas, and domestic treatment works.

(a) In accordance with the provisions of this section, each wastewater management plan shall include a description of wastewater service areas and DTW necessary to meet anticipated wastewater management needs over a 20-year period.

1. Each wastewater management plan shall provide for cost-effective, environmentally sound wastewater management, including existing or new comprehensive regional DTW or regional management where appropriate. Upgrading or expansion of existing regional DTW is generally preferable to construction of additional DTW that would produce additional direct discharges to surface water at new locations.

2. On a case-by-case basis, the Department may require governmental units or other persons that have wastewater management plan responsibility to examine specific wastewater management alternatives as part of the preparation of the wastewater management plan. The Department may require such examination to include analysis of critical economic, social, environmental, or institutional factors pertaining to such alternatives.

(b) Where municipal or county master plans have been adopted and are in effect under N.J.S.A. 40:55D-28 or N.J.S.A. 40:27-2, wastewater service areas and DTW shall, to the maximum extent practicable, be identified in such a manner as to provide adequate wastewater service for the future land uses shown in such master plans, and to be consistent with any sewerage provisions in such master plans. The wastewater management plan shall list all of the municipal and county master plans on which the wastewater management plan is based. However, the requirements of this subsection are subject to the following qualifications and exceptions:

1. Due regard shall be given to any substantial differences between dates associated with future land uses shown in such master plans and the dates corresponding with the 20-year periods required by this section.

2. If, for particular locations, a zoning ordinance or variance under articles 8 or 9 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., allows land development that would generate more wastewater than would the development shown in such master plans, then for some or all of those locations the wastewater management plan may be based on the zoning ordinance or variance rather than on such master plans.

3. If, for particular locations, preliminary or final subdivision or site plan approvals under article 6 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., have allowed land development that would generate more wastewater than would the development shown in such master plans, then for those locations the wastewater management plan shall be based on such approvals rather than on such master plans.

4. Wastewater management plans relating to the New Jersey Coastal Zone, the Hackensack Meadowlands District, the Pinelands Area, or the Pinelands National Reserve are subject to the requirements of N.J.A.C. 7:15-3.6 or 3.7, as appropriate.

5. The wastewater management plan may be inconsistent with such master plans for other compelling reasons, provided that the wastewater management plan specifically identifies such inconsistencies and sets forth such reasons with adequate documentation.

(c) Each wastewater management plan shall include maps of future wastewater service areas, and of specified categories of future DTW, that are necessary to meet anticipated wastewater management needs at the end of the 20-year period. These maps shall depict the following:

1. The location, within or outside the waste water management plan area, of each existing, expanded, or new DTW, if any, that would not be a sewer or a pumping station, but that would receive sewage that would arise within or be conveyed into or through the wastewater management plan area, if such DTW would require a NJPDES discharge permit and:

i. Directly discharge to surface waters, or onto the land surface (for example, spray irrigation or overland flow facilities); or

ii. Have a design capacity of 20,000 gallons per day or larger, and store or dispose of sewage by any means;

2. The location of each discharge to surface or ground water from each DTW mapped within the wastewater management plan area under (c)1 above;

3. The location of each existing, expanded, or new pumping station and major interceptor and trunk sewer, if any, that would convey sewage within the wastewater management plan area;

4. The sewer service area, within or outside the wastewater management plan area, for each DTW mapped within the wastewater management plan area under (c)1 above, distinguishing the separate area to be served by each DTW;

5. The sewer service area, within the wastewater management plan area, for each DTW mapped outside the wastewater management plan area under (c)1 above, distinguishing the separate area to be served by each DTW; and

6. The area, if any, within the wastewater management plan area that would be served only by either or both of the following:

i. Individual septic systems for individual residences; or

ii. Other DTW that would have a design capacity of less than 20,000 gallons per day, and use either subsurface disposal systems or other sewage disposal systems that would have no discharge to surface water.

(d) For each DTW mapped within the wastewater management plan area under (c)1 above, each wastewater management plan shall further identify the future DTW that are necessary to meet wastewater management needs by providing, in narrative, outline, or tabular form, the following information applicable to such DTW at the end of the 20-year period:

1. Owner and, where known, name of the DTW;

2. Name of any other governmental unit or corporation, if any, to be responsible for operating the DTW;

3. Location of the DTW within municipality, county, and WQM planning area, and within any existing district;

4. Latitude and longitude, and, where known, NJPDES permit number for any discharges from the DTW;

5. Name of present or proposed NJPDES permittee and any co-permittee for any discharges from the DTW;

6. Name and present classification, under N.J.A.C. 7:9-4 and N.J.A.C. 7:9-6, of any surface and ground waters that would receive any discharges from the DTW;

7. Estimate of residential population to be served by the DTW within and outside the wastewater management plan area, including any major seasonal fluctuations;

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8. Estimated average flow of wastewater to be received by the DTW, in millions of gallons per day expressed as total flow, as flow arising within and outside the wastewater management plan area, and as flow attributed to each of the following sources: residential, commercial, industrial, and infiltration/inflow; and

9. Design capacity of the DTW.

(e) For each DTW mapped outside the wastewater management plan area under (c)1 above, each wastewater management plan shall further identify the future DTW that are necessary to meet wastewater management needs by providing, in narrative, outline, or tabular form the following information applicable to each DTW at the end of the 20-year period:

1. Owner and, where known, name of the DTW;

2. Estimate of residential population to be served by the DTW within the wastewater management plan area, including any major seasonal fluctuations; and

3. Estimated average flow of wastewater to be conveyed to the DTW from the wastewater management plan area, in millions of gallons per day expressed as total flow and as flow attributed to each of the following sources: residential, commercial, industrial, and infiltration/inflow.

(f) There shall be a reasonable relationship, consistent with (b) above, between sewer service areas identified under (c)4 and 5 above and residential population estimates under (d)7 and (e)2 above. Wastewater flow estimates under (d)8 and (e)3 above shall be based on, and reasonably related to, these sewer service areas and residential population estimates. Where actual, accurate gauging is available for a sewer system already in existence, such gauging shall be used as a basis for such flow estimates, with an allowance for future changes in wastewater flow. The average domestic flow from new residences, exclusive of other flow such as industrial flow, commercial flow, and infiltration/inflow, shall be assumed to be 65 gallons per capita per 24-hour period, except that values different than 65 gallons may be considered for this purpose when supported by adequate engineering data.

(g) Design capacities identified under (d)10 above shall be adequate to accommodate these wastewater flow estimates under (d)8 and (e)3 above. Notwithstanding any design capacity identified in an adopted wastewater management plan, the Department may, in the administration of N.J.A.C. 7:14A or N.J.A.C. 7:22, require a different design capacity in order to accommodate peak wastewater flows or implement other requirements of sound engineering practice.

(h) A wastewater management plan may identify specific changes to assignments of wastewater management plan responsibility under N.J.A.C. 7:15-5.9, or specific changes to 201 facilities planning responsibilities. Such changes shall take effect upon adoption of the wastewater management plan under N.J.A.C. 7:15-5.23. A wastewater management plan may suggest the establishment, modification, or elimination of districts or franchise areas under N.J.S.A. 40:14A-1 et seq., 40:14B-1 et seq., 58:14-1 et seq., or 48:1-1 et seq., but such districts or franchise areas shall be established, modified or eliminated only in the manner provided by law. Inclusion of such suggestions in an adopted wastewater management plan does not, by itself, accomplish such establishment, modification, or elimination.

7:15-5.19 Individual septic systems and other small domestic treatment works in sewer service areas

(a) In sewer service areas depicted under N.J.A.C. 7:15-5.18(c)4 or 5, a wastewater management plan may require the construction of some or all of the DTW identified in N.J.A.C. 7:15-4.4(a)1 or 2 to be accompanied by construction of collection system sewers that would be used when the depicted sewer service becomes available. This requirement shall exist only if it is specifically stated in the wastewater management plan.

(b) A wastewater management plan shall require that some or all individual septic systems for individual residences can be constructed in depicted sewer service areas only if adequate guarantees are provided before such construction that use of such septic systems will be discontinued when the depicted sewer service becomes available.

(c) A wastewater management plan shall not apply requirements under (a) or (b) above to individual septic systems that do not require certifications from the Department under N.J.S.A. 58:11-25.1 or individual permits from the Department under N.J.A.C. 7:14A, unless that wastewater management plan includes adequate arrangements for enforcement of such requirements by one or more substate governmental units.

(d) Estimated wastewater flows under N.J.A.C. 7:15-5.18(d)8 and (e)3 shall include flows that will be received when use of DTW identified in N.J.A.C. 7:15-4.4(a)1 and 2 is discontinued when depicted sewer service becomes available.

7:15-5.20 Specifications for text and graphics

(a) Wastewater management plans should be concise, using the minimum feasible narrative and mapping. All pages, tables, and figures in wastewater management plans shall be legible and numbered.

(b) All maps in wastewater management plans shall use 1:24,000 scale United States Geological Survey quadrangle maps as a base, except that other maps at other scales may be provided as supplements. Each wastewater management plan shall include the following main maps at 1:24,000 scale:

1. A map depicting the existing boundaries of the wastewater management plan area and the existing DTW and service areas identified under N.J.A.C. 7:15-5.16(a)3 through 9;

2. A map depicting future DTW and service areas identified at the end of the 20-year period under N.J.A.C. 7:15-5.18(c)1 through 6. The existing boundaries of the wastewater management plan area shall also be depicted on that map; and

3. One or more maps depicting the existing boundaries of the wastewater management plan area, and the environmental features identified under N.J.A.C. 7:15-5.17. This map shall also state that development in areas mapped as wetlands, flood prone areas, or designated river areas may be subject to special regulation under Federal or State statutes or rules, and that interested persons should check with the Department for the latest information. Depiction of environmental features shall be for general information purposes only, and shall not be construed to define the legal geographic jurisdiction of such statutes or rules.

(c) Any other mapping required by N.J.A.C. 7:15-5.16 through 5.18 may be included on one or more of the main maps listed in (b) above, or on other 1:24,000 scale maps.

7:15-5.21 Geographic overlap between wastewater management plans prohibited

(a) After the effective date of this subchapter, the Governor or his designee shall not adopt a wastewater management plan that maps, under N.J.A.C. 7:15-5.18(c)1 or 4, any DTW or sewer service area outside the existing wastewater management plan area for that wastewater management plan, so long as that DTW or sewer service area is within a separate wastewater management plan area for which a separate, adopted wastewater management plan is in effect.

(b) To avoid geographic overlap prohibited by (a) above, existing assignments of wastewater management plan responsibility may be changed under N.J.A.C. 7:15-5.9, and adopted wastewater management plans may be amended or repealed under N.J.A.C. 7:15-3.4.

7:15-5.22 Consultation and endorsements for wastewater management plans

(a) Every governmental unit or other person that prepares a wastewater management plan or amendment thereof shall, during such preparation, notify and seek comments from and offer to confer with:

1. All governmental units that have regulatory or planning jurisdiction over wastewater or land use in that wastewater management plan area, or in any additional sewer service area identified or being considered for identification under N.J.A.C. 7:15-5.16(a)6 or 5.18(c)4. Such governmental units shall include, but not be limited to: designated planning agencies, governmental units or other persons that have wastewater management plan responsibility, county planning boards, municipal governing bodies and planning boards, sewerage authorities, municipal authorities, joint meetings, the Passaic Valley Sewerage Commissioners, the Hackensack Meadowlands Development Commission, the Pinelands Commission, and the Delaware River Basin Commission, as appropriate.

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2. All governmental units and public utilities, and all vendors of wastewater treatment systems or services under the "New Jersey Wastewater Treatment Privatization Act", N.J.S.A. 58:27-1 et seq., that:

i. Own, lease, operate, or maintain DTW that receive wastewater that arises within, or that is conveyed into or through, that wastewater management plan area, or in any additional sewer service area identified or being considered for identification under N.J.A.C. 7:15-5.16(a)6 or 5.18(c)4;

ii. Are parties to contracts for such DTW;

iii. Are permittees or co-permittees under N.J.A.C. 7:14A for such DTW; or

iv. Are projected in a draft or previously adopted wastewater management plan for that wastewater management plan area to perform activities listed in (a)2 i, ii or iii above.

3. The criteria in (a)2 i through iv above are exclusive of collection facilities for sewage that arises only on nonresidential property owned or leased by the governmental unit, public utility, or vendor.

(b) Under N.J.A.C. 7:15-3.4(g)4, the Department shall generally require endorsements for wastewater management plans to be requested from, at a minimum, the governing bodies of each of the governmental units that are required to be notified under (a) above.

(c) Wastewater management plans relating to the New Jersey Coastal Zone, the Hackensack Meadowlands District, the Pinelands Area, or the Pinelands National Reserve are also subject to the requirements of N.J.A.C. 7:15-3.6 or 3.7, as appropriate.

7:15-5.23 Submission and adoption of wastewater management plans

(a) A governmental unit or other person that has wastewater management plan responsibility, but that is not a designated planning agency or the Department, shall submit wastewater management plans or amendments thereof to the appropriate designated planning agency or to the BWQP, and petition the designated planning agency or the Department, as appropriate, to amend the areawide WQM plan to incorporate the wastewater management plans or amendments thereof in accordance with N.J.A.C. 7:15-3.4.

(b) If a designated planning agency or the Department has wastewater management plan responsibility, then that designated planning agency or the Department shall propose amendments to the areawide WQM plan to incorporate wastewater management plan or amendments thereof in accordance with N.J.A.C. 7:15-3.4.

(c) Governmental units or other persons that do not have wastewater management plan responsibility may nevertheless prepare amendments to wastewater management plans and seek their adoption as amendments to areawide WQM plans under N.J.A.C. 7:15-3.4. Any governmental unit or other person that has wastewater management plan responsibility for the affected area shall be requested to endorse such amendments under N.J.A.C. 7:15-3.4(g)3 or 4, and has the duty to provide comments in response to such requests. In deciding whether to adopt such amendments, the comments, if any, received in response to such requests shall be given particular consideration.

(d) Except for wastewater management plans identified in N.J.A.C. 7:15-5.2(a), wastewater management plans and amendments thereof are valid only upon their adoption by the Governor or his designee as amendments to areawide WQM plans under N.J.A.C. 7:15-3.4.

7:15-5.24 Schedule for submission of wastewater management plans

(a) Each governmental unit or other person that has wastewater management plan responsibility shall periodically prepare and submit wastewater management plans in accordance with N.J.A.C. 7:15-5.23(a) or (b), as appropriate. The first such submission shall be made in accordance with the schedule established in (b) through (e) below. Thereafter, an updated wastewater management plan shall be submitted at least once every six years from the date of the previous submission. Alternative schedules for submission of wastewater management plans may be established and changed under (f) below.

(b) The following governmental units shall submit wastewater management plans within 12 months after the effective date of this subchapter or of the creation of the governmental unit, whichever is later, if such units have wastewater management plan responsibility under N.J.A.C. 7:15-5.4 through 5.7:

1. Designated planning agencies;
2. The Passaic Valley Sewerage Commissioners;
3. County utilities authorities;
4. Regional sewerage authorities; and
5. Multi-county joint meetings.

(c) Other sewerage authorities, municipal authorities, joint meetings, and municipalities that have wastewater management plan responsibility under N.J.A.C. 7:15-5.6 through 5.8 shall submit wastewater management plans during the period specified in the following table or within 12 months of the creation of the governmental unit, whichever is later:

Table I
Wastewater Management Plan Submission Schedule

Location of Wastewater Management Plan	Period of Submission
Burlington, Cape May, Middlesex, Ocean, Passaic, and Union Counties	12 to 24 months after the effective date of this subchapter
Atlantic, Morris, Salem, Sussex, and Warren Counties	24 to 36 months after the effective date of this subchapter
Bergen, Essex, Gloucester, Hunterdon, and Monmouth Counties	36 to 48 months after the effective date of this subchapter
Camden, Cumberland, Hudson, Mercer, and Somerset Counties	48 to 60 months after the effective date of this subchapter

(d) Notwithstanding the schedule in (b) and (c) above, if an entire wastewater management plan area is already addressed by one or more wastewater management plans identified in N.J.A.C. 7:15-5.2, the governmental unit that has wastewater management plan responsibility for that wastewater management plan area under N.J.A.C. 7:15-5.4 through 5.8 shall submit an updated wastewater management plan for that wastewater management plan area 60 to 72 months after the effective date of this subchapter, or within 12 months of the creation of the governmental unit, whichever is later.

(e) Each WQM plan amendment or WQM plan revision that makes or changes alternative assignments of wastewater management plan responsibility under N.J.A.C. 7:15-5.9 shall include a schedule for submission of the corresponding wastewater management plan. This requirement does not apply to automatic expansions of wastewater management plan areas under N.J.A.C. 7:15-5.11(b).

(f) Alternative schedules for submission of wastewater management plans, different from those set forth under (a) through (e) above, shall be established and subsequently changed only if such alternative schedules or changes thereto are adopted as amendments to areawide WQM plans under N.J.A.C. 7:15-3.4, or as revisions to WQM plans under (g) below. Amendments or revisions that change alternative schedules may establish different alternative schedules, or, where reasonable, may restore schedules set forth under (a) through (e) above. Reasons that may justify the establishment or changing of alternative schedules include, but are not limited to:

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1. Coordination of wastewater management plans with the preparation of municipal or county master plans under N.J.S.A. 40:55D-28 or N.J.S.A. 40:27-2, or with reexaminations under N.J.S.A. 40:55D-89;

2. Coordination between adjacent wastewater management plan areas;

3. The need for additional time to perform specific examinations required under N.J.A.C. 7:15-5.18(a)2;

4. Coordination of wastewater management plans with the schedules of the NJPDES programs or of financial assistance programs under N.J.A.C. 7:22; and

5. The need to stagger the submission of wastewater management plans so that the Department can better manage its corresponding workload under N.J.A.C. 7:15-3.4.

(g) With the consent of the Department and of the governmental unit or other person that has wastewater management plan responsibility, an alternative schedule for submission of wastewater management plans may be established and changed by a WQM plan revision under N.J.A.C. 7:15-3.5, rather than by a WQM plan amendment under N.J.A.C. 7:15-3.4.

(h) The Department may at any time request a governmental unit or other person that has wastewater management plan responsibility to submit written reports on the progress that such unit or other person is making in meeting its wastewater management plan responsibility. Such unit or person shall submit such reports to the BWQP within 90 calendar days of receiving such requests.

(i) Each wastewater management plan that updates one or more already existing wastewater management plan shall include:

1. Updated maps and descriptions of the then existing wastewater jurisdictions, service areas, and facilities under N.J.A.C. 7:15-5.16;

2. Updated maps of environmental features under N.J.A.C. 7:15-5.17; and

3. Updated maps and descriptions of future wastewater jurisdictions, service areas, and facilities under N.J.A.C. 7:15-5.18, with due regard to changes in factors discussed in that section, such as adoption of new or amended municipal or county master plans.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council

1988-89 Game Code

Proposed Amendment: N.J.A.C. 7:25-5.7

Authorized By: Fish and Game Council, George McCloskey, Chairman.

Authority: N.J.S.A. 13:1B-29 et seq., specifically 13:1B-30 and 13:1B-32, and 23:1-1 et seq.

DEP Docket Number: 035-88-08.

Proposal Number: PRN 1988-457.

A **public hearing** concerning this proposal will be held on:

September 22, 1988 at 7:30 P.M.
Assunpink Wildlife Management Area
R.D. 3
Eldridge Road
Robbinsville, New Jersey

Submit comments by October 6, 1988 to:

Martin J. McHugh, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The 1988-89 Game Code, N.J.A.C. 7:25-5, states when, under what circumstances, in what location, by what means, and in what amounts and numbers, game birds, game animals and fur-bearing animals may be pursued, taken, killed or possessed.

N.J.A.C. 7:25-5 has provided a system for the protection, propagation, increase, control, and conservation of game birds, game animals, and fur-bearing animals in this State and for their use and development for public recreation and food supply. The system is based on scientific investigation and research.

The proposed amendment to the 1988-89 Game Code is located at N.J.A.C. 7:25-5.7 and includes the following revisions:

1. One turkey hunting area is closed to hunting while additional population restoration work is done. Permit allocations are adjusted for this closure.

2. Boundaries of certain turkey hunting areas are modified by consolidation of two or more turkey hunting areas into fewer expanded areas. In addition, one turkey area boundary is being modified to include counties which previously were closed to turkey hunting. Permit allocations for each modified turkey hunting area are adjusted downward to reduce hunter densities. These changes will result in a net reduction of the total available permits for the areas affected.

Social Impact

Although changes in the turkey hunting area boundaries, the amount of area open to hunting and the turkey hunting permit quotas may inconvenience a small number of people, no adverse social impact is anticipated from the proposed amendment. The anticipated positive social impact includes the improvement of conservation and management of the turkey wildlife resource for the benefit of the regulated community. These adjustments and modifications will reduce hunter conflicts and promote propagation of the species.

Economic Impact

No economic impact is anticipated from the proposed amendment.

Environmental Impact

The proposed amendment will have a positive environmental impact in continuing conservation, management and enhancement of the State's wildlife resources.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendment would not impose reporting, recordkeeping, or other compliance requirements on small businesses because small businesses are not regulated by N.J.A.C. 7:25-5.7.

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

7:25-5.7 Wild turkey (Melegris gallapavo)

(a)-(j) (No change.)

(k) Turkey Hunting Area Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1989 Spring Turkey Hunting Season Permit Quotas are as follows:

1989 SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quotas*	Season Total	Portion of Counties Involved
1	100	500	Sussex
2	120	600	Sussex, Warren
3	80	400	Sussex, Warren
4	100	500	Sussex, Warren, Morris
5	100	500	Sussex
6	150	750	Sussex, Passaic, Bergen
7	150	750	Sussex, Morris, Passaic
8	50	250	Warren, Hunterdon
9	50	250	Warren, Hunterdon, Morris

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10		25		125	Essex, Middlesex, Morris, Somerset, Union
11		25		125	Middlesex, Mercer, Hunterdon, Somerset
[13]		[50]		[250]	[Burlington, Mercer, Monmouth, Ocean]
14		50		250	Burlington, Ocean, Mercer, Monmouth
15		50		250	Burlington, Camden, Atlantic
16	[100]	**60**	[500]	**300**	Burlington, Atlantic, Ocean, Cape May, Cumberland
[17]		[50]		[250]	[Burlington, Ocean]
[18]		[50]		[250]	[Atlantic, Cape May, Cumberland]
20		50		250	Cumberland, Salem
21		50		250	Atlantic, Cumberland, Salem
22	[100]	**0**	[500]	**0**	Atlantic, Cape May, Cumberland
Total	[1,500]	**1,210**	[7,500]	**6,050**	

*Applied to each of the five hunting periods (A,B,C,D,E) in all areas:

A. Monday, April 24, 1989-Friday, April 28, 1989
B. Monday, May 1, 1989-Friday, May 5, 1989
C. Monday, May 8, 1989-Friday, May 12, 1989
D. Monday, May 15, 1989-Friday, May 19, 1989 and Monday, May 22, 1989-Friday, May 26, 1989
E. Saturday, April 29, 1989; Saturday, May 6, 1989; Saturday, May 13, 1989 and Saturday, May 20, 1989

(l) (No change.)

(m) Turkey Hunting Areas are as follows:

1.-11. (No change.)

[12. Turkey Hunting Area No. 13: That portion of Burlington, Mercer, Monmouth and Ocean Counties lying within a continuous line beginning at the intersection of Route 1 and the Delaware River; then east along Route 1 to its intersection with Route 206; then south along Route 206 to its intersection with Route 524; then east along Route 524 to its intersection with Route 195; then east along Route 195 to its intersection with Route 571; then south along Route 571 to its intersection with Route 70; then west along Route 70 to its intersection with Route 73; then north and west along Route 73 to its intersection with the Delaware River; then north along the east bank of the Delaware River to the point of beginning.]

[13.]**12.** Turkey Hunting Area No. 14: [That portion of Burlington and Ocean Counties lying within a continuous line beginning at the intersection of Route 70 and Route 72; then northeast along Route 70 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Route 72; then west along Route 72 to the point of beginning.] **That portion of Burlington, Mercer, Monmouth and Ocean Counties lying within a continuous line beginning at the intersection of Route 1 and the Delaware River; then east along Route 1 to its intersection with Route 206; then south along Route 206 to its intersection with Route 524; then east along Route 524 to its intersection with Route 195; then east along Route 195 to its intersection with Route 34; then south along Route 34 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Route 72; then north and west along Route 72 to its intersection with Route 70; then west along Route 70 to its intersection with Route 38 at Cherry Hill; then west along Route 38 to its intersection with Route 30; then west along Route 30 to the Delaware River; then north along the east bank of the Delaware River to the point of beginning.**

[14.]**13.** Turkey Hunting Area No. 15: [That portion of Atlantic, Burlington and Camden Counties lying within a continuous line beginning at the intersection of Route 70 and 206 at Red Lion; then south along Route 206 to Hammonton; then south along Route 54 from Hammonton to its intersection with the Atlantic City Expressway; then west along the Atlantic City Expressway to its intersection with Route 73; then north along Route 73 to its intersection with Route 70 at Marlton; then east along Route 70 to the point of beginning at Red Lion.] **That portion of Atlantic, Burlington, Camden and Gloucester Counties lying within a continuous line beginning at the intersection of Routes 70 and 206 at Red Lion; then south along Route 206 to Hammonton; then south along Route 54 from Hammonton to its intersection with Route 40 at Buena; then west along Route 40 to its intersection with Route 47; then north and west along Route 47 to its intersection with Route 322; then west along Route 322 to its intersection with the Delaware River; then north along the east bank of the Delaware River to its intersection with Route 30 at Camden; then east along Route 30 to its intersection with Route 38; then east along Route 38 to its intersection with Route 70; then east along Route 70 to the point of beginning.**

[15.]**14.** Turkey Hunting Area No. 16: That portion of Burlington and Atlantic Counties lying within a continuous line beginning at the intersection of [Rt.] **Routes** 206 and 70 at Red Lion; then east along [Rt.] **Route** 70 to its intersection with [Rt.] **Route** 72; then southeast along [Rt.] **Route** 72 to its intersection [with Rt. 563; then south along Rt. 563 to its intersection with the Mullica River; then west along the north bank of the Mullica River to its intersection with Rt. 542; then west along Rt. 542 to its intersection with Rt. 206; then north along Rt. 206 to the point of beginning.] **with the Garden State Parkway; then south along the Garden State Parkway to its intersection with the Mullica River; then east along the south bank of the Mullica River to Great Bay; then east along the south shore of Great Bay to the Atlantic Ocean; then south along the Atlantic Ocean to Sea Isle Boulevard (Route 625) in Sea Isle City; then west along Sea Isle Boulevard to its intersection with Route 9; then north along Route 9 to its intersection with Route 50; then north along Route 50 to its intersection with Route 557; then north and west along Route 557 to its intersection with Route 40; then west along Route 40 to its intersection with Route 54; then north along Route 54 to its intersection with Route 206; then north along Route 206 to the point of beginning.**

[16. Turkey Hunting Area No. 17: That portion of Burlington and Ocean Counties lying with a continuous line beginning at the intersection of Routes 72 and 563; then southeast along Rt. 72 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with the northern bank of the Mullica River; then west along the northern bank of the Mullica River to its intersection with Rt. 563; then north along Rt. 563 to the point of beginning.

17. Turkey Hunting Area No. 18: That portion of Atlantic, Cumberland and Cape May Counties lying within a continuous line beginning at the intersection of Rts. 207 and 542; then east along the south bank of Mullica River; then east along the south bank of the Mullica River to Great Bay; then east along the south shore of Great Bay to the Atlantic Ocean; then south along the Atlantic Ocean to Sea Isle Boulevard (Route 625) in Sea Isle City; then west along Sea Isle Boulevard to its intersection with Rt. 9; then north along Rt. 9 to its intersection with Rt. 50; then north along Rt. 50 to its intersection with Rt. 557; then north and west along Rt. 557 to its intersection with Rt. 552; then west along Rt. 552 to the 552 spur; then west along Rt. 552 spur to its intersection with Rt. 55; then along Rt. 55 to its intersection with Lincoln Avenue (Rt. 655) in Vineland; then north along Lincoln Avenue to its intersection with Rt. 54 at Buena Vista; then north along Rt. 54 to the point of beginning.]

Renumber 18. through 20. as **15. through 17.** (No change in text.)

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HEALTH

The following proposals are authorized by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health; with the approval of the Health Care Administration Board.

(a)

UNCOMPENSATED CARE TRUST FUND
Financial Elements
Proposed Amendment: N.J.A.C. 8:31B-4.37.

Authority: N.J.S.A. 26:2H et seq., specifically 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1988-446.

Submit comments by October 6, 1988 to:
Scott Crawford, Director
Health Care for the Uninsured Program
Department of Health
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

The Uncompensated Care Trust Fund has adopted proposed new rule N.J.A.C. 8:31B-4.37 (published elsewhere in this issue of the New Jersey Register) concurrently with this proposed amendment to N.J.A.C. 8:31B-4.37. These amendments are the results of comments made during the comment period to the newly adopted rule, which was proposed on March 21, 1988 at 20 N.J.R. 595(a).

The proposed text of N.J.A.C. 8:31B-4.37(b)3, a paragraph reserved in the referenced adoption, specified that reduced charge charity care would be provided on a nine-step sliding fee scale at 10 percent intervals between 10 and 90 percent. Commenters considered the number of steps to be administratively burdensome. The Department has reduced the number of steps to four at 20 percent intervals between 20 and 80 percent. This is considered a significant change and, thus, requires republication.

In addition, the original proposed rule would have permitted hospitals to determine a patient eligible for full charity care if the portion of a patient's bill that was the patient's responsibility on the sliding fee scale exceeded 10 percent of the patient's total annual income. Commenters found this burdensome. Moreover, the percentage was set so low that a significant portion of hospital bills in the State would have become charity care. In order to reduce the administrative burden and more appropriately determine eligibility for charity care, this threshold between charity care and reduced charity care has been increased to 30 percent of annual income. This is also considered a significant change and, thus, requires republication.

The original proposed rule specified that charity care eligibility determinations were to be made for New Jersey residents only. N.J.A.C. 8:31B-4.37(d)7 has been added to specify the treatment of non-resident charity care. Out-of-State residents must be treated, if appropriate, but are subject to appropriate collection procedures as specified in N.J.A.C. 8:31B-4.40, except in the instance of an emergency requiring inpatient care.

In response to comments on the previously referenced adoption, a patient's equity in real estate, other than the patient's or family's primary residence, is proposed as an addition to the list of exemplary assets at N.J.A.C. 8:31B-4.37(c)2. Finally, the rule will be amended to provide that a patient's assets will be counted only after the patient has had an opportunity to apply excess assets to his or her hospital bills.

Social Impact

The proposed amendment will have a positive social impact in that it will reduce the administrative burdens on the affected industry. Moreover, it adds clarity to the hospital's understanding as to how to bill out-of-State residents.

Economic Impact

Since the proposed amendment reduces the administrative burden it also should reduce the administrative costs to the hospitals and the State.

Since the nine steps are compressed into four steps, some patients will pay a marginally higher percentage of their care. Some patients will pay marginally less. In no cohort will the difference between the original proposed rule and this amendment be more than 20 percent.

Limiting charity care to the State residents may not have a significant impact on the total amount of uncompensated care provided in the State. This is because out-of-State residents may still have their care paid as bad debt. However, a positive economic impact will occur if this rule prevents out-of-State residents from coming to New Jersey to seek charity care for which they would not be eligible in their own state or county.

Allowing patients to apply for charity care after they have applied excess assets, that is, assets above the assets criteria in N.J.A.C. 8:31B-4.37(c)) will reduce the number of persons who are declared ineligible for charity care because of the assets test. This will have a significant positive impact on the individuals involved and may increase the amount of charity care provided, possibly within a concomitant reduction in bad debt which would mean no net increase in uncompensated care.

Regulatory Flexibility Statement

The proposed amendment affects only those hospitals whose rates are set by the Hospital Rate Setting Commission. There are no hospitals subject to the rule with fewer than 100 full-time employees; therefore, the amendment has no impact on any institution which would qualify as a small business pursuant to section 2 of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

8:31B-4.37 Charity [C]care and [R]reduced [C]charge [C]care for [I] indigent [P]patients

(a) (No change.)

(b) Income eligibility criteria for identifying charity care patients are as follows:

1.-2. (No change.)

3. [(Reserved)] **A person who is eligible for reduced charge health services shall be charged a percentage of the normal charge for health services after any applicable third party has paid; that percentage shall be calculated by the following:**

i. Income as a Percentage of HHS Income Poverty Guideline as adopted by the Department		**Percentage of Charges Paid by Patient**
From	**To**	
151	**175**	**20**
176	**200**	**40**
201	**225**	**60**
226	**250**	**80**

ii. If the percentage of charges for individuals between 150 and 250 percent of the Federal poverty guidelines which is unpaid by other parties and billed to the patient exceeds 30 percent of the person's, or family's if applicable, annual income as calculated by reference to (b) 2 above, this excess will be eligible for treatment as charity care. This 30 percent threshold must be met once per family in a 12 month period.

4. (No change.)

(c) Assets eligibility criteria for identifying charity care and reduced charge charity care patients are as follows:

1. (No change.)

2. Liquid assets are assets which consist of, or which can be readily converted into, cash. This includes, but is not limited to, cash, savings and checking accounts, certificates of deposit, treasury bills, negotiable paper [and] , corporate stocks and bonds, **and equity in real estate, other than the patient's or family's, if applicable, primary residence.**

3. (No change.)

4. **The assets of an applicant for charity care shall be counted only after the applicant has had an opportunity to apply any assets to the hospital charges for which the applicant seeks charity care.**

(d) Eligibility determination for charity care and reduced charge charity care are as follows:

1.-6. (No change.)

7. Persons who are not New Jersey residents may not be screened for charity care pursuant to (d)1 above. Hospitals shall not report care delivered to non-New Jersey residents as charity care unless the care is related to an emergency situation resulting in an inpatient admission. Necessary and appropriate care may not be denied to non-New Jersey residents for failure to meet financial requirements pursuant to N.J.A.C. 8:31B-4.40(a). Hospitals may not report as either bad debt

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or charity care the costs of services delivered to persons who are brought to New Jersey by the hospital or other organization for the purpose of receiving medical care. With that exception, hospitals may report costs associated with care delivered to non-New Jersey residents as bad debt provided appropriate collection procedures are followed pursuant to N.J.A.C. 8:31B-4.40.

(e)-(f) (No change.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) Services

Proposed Amendment: N.J.A.C. 8:33J-1.3

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1988-432.

Submit comments by October 6, 1988 to:
John A. Calabria, Chief
Health Systems Services
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Health, in conjunction with the Health Care Administration Board (HCAB), is proposing to extend the demonstration period for Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) for an additional six month period beyond the two year demonstration period originally established under this subchapter at N.J.A.C. 8:33J-1.3.

The original demonstration period was scheduled to conclude on September 15, 1988; however, since only one of the eight approved demonstration sites has been in operation for the entire two-year length of the NMR/MRI demonstration period, an extension of the demonstration is being sought by the Department of Health. The amendment being proposed at this time is intended to permit the Department to gather additional data on the existing NMR/MRI demonstration sites and consider additional policy alternatives during this additional six month period.

Since the date of operation of the initial NMR/MRI demonstration site in New Jersey was September 15, 1986 (Englewood Hospital), the proposed six month extension will extend the Statewide NMR/MRI demonstration period until on or before March 15, 1989. This additional period of time will allow the Department to gain additional NMR/MRI data; submit proposed amendments to the NMR/MRI Advisory Committee; and obtain approval of rule amendments from the State's planning and rule-making bodies.

The specific amendment being proposed at N.J.A.C. 8:33J-1.3(b) and (c) adds six months to the existing two year demonstration period for NMR/MRI services.

In order to extend this NMR/MRI demonstration period, it is necessary to remove NMR/MRI equipment from consideration in the November 15, 1988 diagnostic imaging certificate of need batching cycle. A companion document, in the form of a Miscellaneous Notice, which is published in this issue of the New Jersey Register deletes consideration of NMR/MRI equipment and services from the next certificate of need batching cycle (November 15, 1988).

Social Impact

Nuclear Magnetic Resonance or Magnetic Resonance Imaging (NMR/MRI) represents a unique imaging modality that is based on the reaction of atomic nuclei to magnetic fields and radiofrequency signals. By detecting signals from resonating nuclei, images of an anatomical area are constructed for diagnostic purposes. Since various tissues produce signals of differing intensity, MRI equipment is able to differentiate between normal and abnormal tissue. As is the case with any imaging modality, however, the quality and reliability of the images being produced are largely dependent on the skill and expertise of the operator of the equipment. At this stage of MRI technology MRI imaging is predominantly an outpatient service, with approximately 75 percent of patients scanned at the State's demonstration sites undergoing their procedures on an outpatient basis.

NMR/MRI has demonstrated its ability to supply diagnostic information that is unavailable from other existing imaging modalities (for example, CT, ultrasound). MRI equipment does not use ionizing radiation and gives every indication of being safe at the magnetic field strengths currently approved for diagnostic imaging by the Federal Drug Administration (FDA). There are contraindications for MRI use because of the attraction of ferromagnetic objects both outside the body (for example, projectile effect) and inside the body (for example, pacemakers, aneurysm clips) to the relatively large magnetic field that surrounds the MRI unit.

Several recent clinical studies, including the completion of the New York State MRI demonstration project, have concluded that MRI can significantly reduce the demand for CT scanning of the brain, brain stem, and spine. Several other applications of MRI technology, including cardiac studies and spectroscopy, remain in the developmental stage. In many instances, MRI is used to supplement information previously gathered by ultrasound or CT scanning.

The Department recognizes the profound impact this technology may have on the health care delivery system. Therefore, it is seeking to have this service develop through an orderly and rational process that is responsive to the real needs (in terms of quality, cost and access) of the State's population. It is not expected that this brief extension of the demonstration period, to allow the NMR/MRI planning process to proceed with additional data, will have any significant social impact.

Economic Impact

The economic impact of NMR/MRI services is largely dependent on the ability of the imaging modality to provide clinically useful information compared to other existing imaging modalities. To a large extent, the clinical utility of NMR/MRI has yet to be fully determined. The average annual operating cost of an MRI facility, according to data compiled by the New York demonstration project, was $950,000.

NMR/MRI has the potential to replace a number of standard diagnostic procedures, including those that are invasive and require brief hospital stays (for example, myelograms). The New York MRI demonstration project estimated a cost saving of from $568.00 to $763.00 per patient (currently undergoing myelogram procedures) should MRI replace myelograms and contrast-enhanced CT as the procedure of choice in the diagnosis of disc disease.

The NMR/MRI unit is estimated to cost from $975,000-$2.3 million, depending on the type of magnet (that is, permanent, resistive, superconducting) and its field strength (from .15 to 2.0 tesla). Appropriate site selection and facility renovation can cost a facility an additional $200,000-$500,000 or more depending on the capabilities desired. The productive life of the NMR/MRI unit is estimated to be approximately five years.

Regulatory Flexibility Statement

This proposed amendment deals only with a plan to extend the NMR/MRI demonstration period by six months. The amendment merely reinforces the rules at N.J.A.C. 8:33J-1, which were enacted to establish the demonstration projects for NMR/MRI. No additional recordkeeping, reporting or other compliance requirements are being proposed by this amendment on the existing eight NMR/MRI providers, two of which are small businesses.

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

8:33J-1.3 Demonstrations

(a) (No change.)

(b) The Statewide demonstration period will begin with the date of operation of the first NMR approved demonstration and will continue for a period of two years **and six months**. However, the demonstration period can be shortened by the Commissioner of Health upon the recommendation of the NMR Advisory Panel (see N.J.A.C. 8:33J-1.4).

(c) Once the demonstration approvals, not to exceed a maximum of eight Statewide, are issued, the Department of Health shall not process any other applications for NMRs until the conclusion of the demonstration period, not to exceed two years **and six months**, beginning with the date of operation of the first NMR demonstration.

(d)-(f) (No change.)

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DIVISION OF HEALTH FACILITIES EVALUATION

For the following proposals, submit comments by October 6, 1988 to:
Wanda J. Marra, Coordinator
Standards Program
Division of Health Facilities Evaluation
Department of Health
CN 367
Trenton, N.J. 08625

(a)

Residential Health Care Facilities Standards for Licensure Proposed Amendment: N.J.A.C. 8:43-4.11

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.
Proposal Number: PRN 1988-430.
The agency proposal follows:

Summary

N.J.A.C. 8:43 contains rules for licensure of residential health care facilities by the Department of Health and serves to protect the health and safety of residents within these facilities. The current text of N.J.A.C. 8:43-4 specifies the requirements for administration of a residential health care facility.

The Department is proposing to amend N.J.A.C. 8:43-4.11(a) by requiring that the temperature of the hot water used by residents for showers, bathing and handwashing not exceed 110 degrees Fahrenheit (43 degrees Celsius). Currently, N.J.A.C. 8:43-4.11(a) states that, in all residential health care facilities, "[a]n adequate and continuous supply of hot water shall be available at all times for bathing, dishwashing, laundry, and general cleaning."

Serious injuries from burns and scaldings have occurred to residents as a result of the use of hot water. Consequently, the Department proposes to amend the existing rules so as to reduce the incidence of injury to residents in residential health care facilities by establishing a maximum temperature for hot water.

Social Impact

The proposed amendment to N.J.A.C. 8:43-4.11(a), would have a beneficial social impact on the residents by reducing the possibility of injury from burns and scaldings. The specificity of the proposed amendment would also benefit providers of residential health care by eliminating ambiguity and the possibility of subjective interpretation of the meaning of "hot water." The use of precise language which states the rule in specific and measurable terms would strengthen the Department of Health's ability to enforce the rule.

Economic Impact

The proposed amendment to N.J.A.C. 8:43-4.11(a) can be implemented in residential health care facilities with no additional cost to the residential health care facilities or the Department. The facilities currently have the means to regulate water temperature. No additional expense will be incurred by the residential health care facilities, since no additional equipment is required. The Department currently monitors the temperature of the hot water when performing licensure surveys.

Adoption of the proposed amendment will contribute to the reduction of health care costs by the elimination of factors which predispose residents of residential health care facilities to accidental injuries from hot water.

Regulatory Flexibility Statement

The Department acknowledges that most residential health care facilities presently licensed have fewer than 100 full-time employees and are, therefore, categorized as small businesses as defined in Section 2 of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, in order to protect the health, safety and welfare of residents in these facilities, it is necessary that the same requirements be imposed on all such facilities, regardless of the number of employees. There will be no changes in recordkeeping and reporting requirements.

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

8:43-4.11 Sanitation

(a) An adequate and continuous supply of hot water shall be available at all times for bathing, dishwashing, laundry and general cleaning.

1. The temperature of the hot water used for showers, bathing and handwashing shall not exceed 110 degrees Fahrenheit (43 degrees Celsius).

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

(b)

Hospital Facilities Standards for Licensure; Confidentiality Proposed Amendment: N.J.A.C. 8:43B-1.10

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.
Proposal Number: PRN 1988-431.
The agency proposal follows:

Summary

The Department proposes to amend N.J.A.C. 8:43B-1.10 of the Manual of Standards for Hospital Facilities. N.J.A.C. 8:43B-1.10 concerns the confidentiality of information obtained through the survey mechanism used to assess facility adherence to licensure rules.

The current N.J.A.C. 8:43B-1.10 was promulgated by the New Jersey State Department of Institutions and Agencies prior to the transfer of responsibility for the licensure and regulation of health care facilities to the New Jersey State Department of Health in 1971 (N.J.S.A. 26:2H-1 et seq.). Consequently, the present form of the rule is both technically incorrect and unclear. The current rule refers, for example, to "[i]nformation received by the Department of Institutions and Agencies through inspection authorized under this Act . . .". The current rule also fails to clearly specify the nature of the information of which it seeks to protect the confidentiality. The Department maintains that the proposed amendment would rectify these shortcomings by purging the rule of outdated terminology and by giving clear expression to the Department's intent that the identity of patients to whom licensure survey information pertains not be disclosed to the public.

Social Impact

Both the right of hospital patients to privacy and the right of potential consumers of hospital services to be informed of events affecting the health and safety of hospital patients are rights supported by the Department. The proposed amendment is intended to establish a reasonable balance between these mutually antagonistic rights in situations in which information of interest to consumers is obtained by the Department through the examination of actual cases involving specific patients. Public disclosure of such information would be permitted only if done so as to preclude the identification of specific patients. The Department contends that the proposed amendment would better serve the residents of New Jersey than does the current rule, which is less clear and less capable of assisting consumers in making informed decisions regarding health care and in obtaining services of high quality.

Adoption of the proposed amendment would not diminish the Department's ability to collect information on which to base actions concerning the licensure of hospital facilities. Licensed hospitals would be similarly unaffected, since N.J.A.C. 8:43B-1.10, as currently written, or as proposed, places no restrictions on the operation of the hospital.

Economic Impact

The economics of the process of hospital facility licensure would not be altered as a result of adoption of the proposed amendment. Both the inspection of hospital facilities and the enforcement of licensure rules would proceed as they do at the present time. Adoption of the proposed amendment would not affect the cost of either of these Departmental activities. The cost of facility operation would not increase, since the proposed amendment addresses the activities of the Department rather than the operation of the facilities which the Department licenses.

The proposed amendment to N.J.A.C. 8:43B-1.10 would provide consumers with access to information which could enhance their capability to make decisions leading to the cost-effective expenditure of money for hospital services.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment to N.J.A.C. 8:43B-1.10 imposes no reporting, recordkeeping, or other compliance requirements on small businesses. In fact, the proposed amendment specifically concerns the actions of the Department of Health alone.

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

8:43B-1.10 Information not to be disclosed

(a) Information received by the Department of [Institutions and Agencies] **Health** through inspection authorized [under this Act] **by N.J.S.A. 26:2H-1 et seq.** shall [be confidential] **not be disclosed to the public in such a way as to permit the identification of the specific patients to whom the information pertains.**

(b) (No change.)

(a)

PUBLIC HEALTH AND ENVIRONMENTAL LABORATORIES

Operation of Clinical Laboratories

Proposed Readoption: N.J.A.C. 8:44

Authorized By: Milton Prystowski, Chairperson, Public Health Council.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1988-445.

A **public hearing** concerning this proposal will be held on:
October 17, 1988 at 9:45 A.M.
Board Room, 1st floor
New Jersey Department of Health
Health and Agriculture Building, Room 805
John Fitch Plaza
Trenton, New Jersey 08625-0360

Submit comments by October 6, 1988 to:
Samuel D. Thompson, Ph.D.
Director, Clinical Laboratory Improvement Service
CN 360
Trenton, New Jersey 08625-0360

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:44 (Chapter IV, State Sanitary Code) expires on November 7, 1988. On September 18, 1978, the Public Health Council adopted rules pertaining to the operation of clinical laboratories, pursuant to its authority under N.J.S.A. 26:1A-7. The rules were subsequently readopted by the Council on November 7, 1983.

The Public Health Council has reviewed this chapter and determined it to be necessary, reasonable and proper for the purpose for which it was originally promulgated and is proposing this readoption without change. A complete review of the chapter is currently underway, and in the near future comprehensive changes will be proposed which reflect the most current, accepted practices regarding clinical laboratory operation. However, in order to avoid expiration, pursuant to Executive Order No. 66(1978), the readoption of the rule without change is now being proposed. The rule will be effective for nine months following the effective date of its readoption, in light of the fact that a comprehensive set of revisions to the rule will be proposed shortly after readoption.

The results of tests performed in clinical laboratories are vital in assisting physicians and other care-givers in making a diagnosis and providing the proper treatment. Thus, adequate testing procedures, accurate reporting of results, and maintenance of proper records is essential in protecting the public's health. Therefore, it is vital that the rules remain effective, in order to ensure that laboratories correctly analyze samples, accurately report them, and maintain records on the test performed.

A summary of this proposed readoption follows:

N.J.A.C. 8:44-2.1 provides definitions for the terms used in the chapter.

N.J.A.C. 8:44-2.2 describes the applicability of the rules and notes that the rules do not apply to (1) performance of anatomic pathology, (2) research and teaching laboratories, (3) laboratories operated by the federal government, and (4) blood banks licensed pursuant to N.J.S.A. 26:2A et seq.

N.J.A.C. 8:44-2.3 describes the duties and minimum qualifications of a laboratory director who shall be responsible for directing the laboratory's operation.

N.J.A.C. 8:44-2.4 describes the supervision personnel necessary for a laboratory to operate, and describes the responsibilities and qualifications of both the general supervisor and technical supervisor.

N.J.A.C. 8:44-2.5 requires that a laboratory may only perform those tests for which it is licensed, shall successfully participate in a proficiency testing program designed to ensure that the laboratory is performing testing in a competent fashion, and may only perform those tests within specialties which the laboratory director or supervisor is qualified. The rule further describes the qualifications the director or supervisor shall have if the laboratory is to perform tests in a given specialty.

N.J.A.C. 8:44-2.6 describes the technical personnel the laboratory shall have, including the qualifications of such personnel.

N.J.A.C. 8:44-2.7 requires that adequate records and facilities be maintained, in order to ensure that testing was done under adequate authority and that adequate reference is kept in regard to individual patients and the tests performed on their behalf.

N.J.A.C. 8:44-2.8 describes the quality control measures a laboratory shall institute in order to assume that accurate testing and reporting of results occurs.

N.J.A.C. 8:44-2.9 and 2.10 provide that the Public Health Council on advice of the Commissioner of Health, may amend, delete or promulgate any rules, so long as the rule is no less stringent than applicable Federal regulations.

N.J.A.C. 8:44-2.11 describes the reporting requirements imposed upon laboratory supervisors.

N.J.A.C. 8:44-2.12 and 2.13 describe the limitations on laboratories which handle live microorganisms or viruses pathogenic to humans, animals, or birds.

Social Impact

Once readopted, the chapter will ensure that clinical laboratories operate in a fashion which will not endanger the public's health, by assuring that tests are adequately performed and reported. Failure to readopt the rules could seriously jeopardize the public health and well being, since there could be no assurance that laboratory procedures were adequately performed, nor test results accurately reported.

Economic Impact

Since this chapter is proposed for readoption without change, there will be no adverse impact on the regulated industry. However, failure to readopt the rules could result in the improper performance of tests or inaccurate reporting or results, which might well result in higher medical care costs as the result of incorrect diagnoses or improper treatment. While compliance with this chapter does entail certain costs for the regulated businesses, such costs are necessary in order to preserve and promote the public health.

Regulatory Flexibility Statement

Most clinical laboratories employ less than 100 employees, and thus are classified as small business, pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, in the interest of public health, regardless of the size of the laboratory, the same requirements must be met, in order to ensure that all tests are properly performed and results reported. As a readoption without amendments, no new requirements are placed on regulated businesses.

Full text of the proposed readopion can be found in the New Jersey Administrative Code at N.J.A.C. 8:44.

HUMAN SERVICES

(b)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual

Realizing Economic Achievement Program

Proposed Amendments: N.J.A.C. 10:81-14

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:10-1 et seq., especially 44:10-13.

Proposal Number: PRN 1988-456.

Submit comments by October 6, 1988 to:
Marion E. Reitz, Director
Division of Public Welfare
CN 176
Trenton, New Jersey 08625

The agency proposal follows:

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Summary

The proposed amendments to N.J.A.C. 10:81-14 enhance the Realizing Economic Achievement (REACH) program, which is designed to provide welfare recipients with special support services and opportunities to gain job skills, experience and the education needed to achieve economic self-sufficiency through full-time employment.

The foundation of the REACH program has been the wide range of programs and services it makes available to participants, through access to comprehensive educational and employment opportunities and a social service network. The proposed amendments broaden the existing program to enable the diverse REACH population to maximize the use of those resources to support the individual and family in their movement toward independence from welfare, while permitting increased flexibility at the local level, as implementation of REACH progresses to include participation of additional counties. Additionally, the amendments will streamline program functions, resulting in reduced paperwork, alleviation of the case management workload and more effective and efficient service provision to REACH participants.

Significant modifications included in the proposed amendments are:

The definition of "lead child care entity" was added at N.J.A.C. 10:81-14.2 to designate the agency or administrative entity in each county which will assist the case manager and REACH participant in obtaining child care.

At N.J.A.C. 10:81-14.3(b)4, a clarification was added which exempts participants in the Teen PROGRESS study from REACH participation and notes that they are subject to the participation requirements of the Teen PROGRESS program.

The requirements for review of an individual temporarily deferred from REACH participation at N.J.A.C. 10:81-14.3(c) were amended to clarify that, unless otherwise specified, monthly review as part of the case management function rather than by the case manager is mandatory. A temporarily deferred individual with a child under two years of age is subject to review as part of the case management function at least every three months. This change reduces the workload caused by the need for monthly reviews while allowing the opportunity for voluntary participation in REACH before the deferral expires. Language was added to clarify that the deferral automatically given to homeless individuals nevertheless allows for REACH participation on a voluntary basis. This clarification was made in recognition of the reality that the support available through REACH, including training and employment opportunities, lead to the wherewithal to afford more stable and permanent housing arrangements. Language was added at N.J.A.C. 10:81-14.3(c)5 to temporarily defer from REACH participation an individual participating in a client-selected training or education program or activity.

Concerning review of excused participation, requirements at N.J.A.C. 10:81-14.3(d) were revised to mandate monitoring of the excused participant once a week up to once a month, depending on the circumstances surrounding the excuse, thereby allowing case management to concentrate their efforts on those cases whose circumstances warrant more frequent review.

Language was added at N.J.A.C. 10:81-14.3(i) to permit mandatory REACH participants scheduled to begin REACH participation, and who are already enrolled in a client-selected training or education program or activity, to use that activity to satisfy REACH participation requirements, provided the activity meets certain conditions for county approval. Should the conditions not be satisfied, the individual may choose one of two alternatives: to continue in the client-selected activity and be temporarily deferred from REACH participation in the client-selected activity and proceed with REACH requirements. This addition encourages REACH participation in programs which are expected to lead to self-sufficiency, while protecting the interests of those individuals who have already invested time and money in other activities.

Clarification was provided at N.J.A.C. 10:81-14.4(b) through (d) to differentiate between the specific responsibilities of the case manager and case management functions which may be performed by support staff. Additionally, the assumption of certain administrative functions which support REACH case management, including, but not limited to, processing of payments for support services and data entry of participant information into automated management information systems, may be performed by entities or agency units designated by the county and the case management agency. These changes leave the case manager more time for direct contact with the REACH participant.

N.J.A.C. 10:81-14.4(f) delineates and explains the components of the REACH program client flow, including: REACH orientation, individual evaluation, temporary deferral, development of the initial and final REACH Agreement, and monitoring of participation as part of the case management function. Language was added to make available to the participant the support services of child care and payment for transportation during orientation, even though a REACH Agreement has not been signed, thus removing a possible barrier to participation.

Of special importance is language added at N.J.A.C. 10:81-14.4(1) authorizing the case management agency to request a waiver for temporary reassignment of certain case management administrative and support functions stated in the REACH program client flow process to another work unit in that agency. For example, orientation and individual evaluation of parents with children under age two are eligible for temporary deferral of up to 18 months could be provided by the income maintenance unit as part of the Aid to Families with Dependent Children (AFDC) eligibility determination. The availability of this waiver will alleviate the temporary increase in workload for the case management agency which may result as AFDC families are phased into REACH, thereby preventing unnecessary delays in the provision of REACH service to participants.

Language was added at N.J.A.C. 10:81-14.5(a) to specify that all REACH participants no longer receiving AFDC will be required to complete and sign a REACH Agreement as a condition of receiving post-employment child care. Those receiving post-AFDC Medicaid at N.J.A.C. 10:81-14.20 should also sign a REACH Agreement, but exceptions may be granted where the participant would be penalized for taking time off from work. In any case, the participant must comply with eligibility requirements for extended Medicaid benefits.

Specifications concerning the REACH Agreement at N.J.A.C. 10:81-14.5(d) were amended to clarify that the REACH Agreement is continuous and has no automatic or periodic expiration date. Updating of the REACH Agreement must occur within two weeks of the ending date of the late REACH activity stated in the Agreement to ensure continuous participation in REACH.

At N.J.A.C. 10:81-14.6(a) language was added to specify the following functions of income maintenance workers concerning the REACH program: provision of an overview of the REACH program to AFDC applicants and recipients; determination of the exempt status of REACH participants; and referral of both AFDC applicants and recipients for REACH orientation if they do not meet the exemption criteria. Dissemination of information by the income maintenance worker will assist AFDC applicants and recipients in achieving a better understanding of the REACH program. Performance of the other stated functions will support the case management function and result in a smoother client flow within the REACH program.

In situations where noncompliance with REACH program requirements is indicated, N.J.A.C. 10:81-14.8 was amended to state that the required number of notification letters to be sent to a participant has been reduced, thus decreasing paperwork and streamlining the sanction process. A conference letter will be sent, asking the participant to come in for a conference, and the amount of time given the participant to respond has been shortened from 20 days to 10 days.

N.J.A.C. 10:81-14.10 was revised to include the term "county selected entity", a general designation that encompasses whichever agency is chosen within the county to provide job search services.

Language was added at N.J.A.C. 10:81-14.11(c) to limit participation of the individual to a cumulative total of nine months in the work supplementation program (WSP) in accordance with Federal rules at 45 CFR 239. N.J.A.C. 10:81-14.11(f) was amended to stipulate the WSP earned income is subject to monthly reporting requirements. The application of the earnings disregards to WSP earned income is delineated at N.J.A.C. 10:81-14.11(g); the notable differences in the usage of these disregards for WSP participants are the elimination of the disregard for child care expenses and the extention of the $30.00 and one-third disregard for the entire nine month period of WSP participation, even if participants have previously exhausted their limit of that disregard.

N.J.A.C. 10:81-14.11(h) explains the WSP wage pool concept. Monies realized from reductions in welfare grants due to WSP participants' employment are diverted to a wage pool used to subsidize on-the-job training positions with employers for other REACH participants. WSP wage pool monies are directly affected by the WSP disregards; more monies to subsidize the pool are generated by the elimination of the child care disregard.

N.J.A.C. 10:81-14.12(c) was changed to clarify the usage of the special $10.00 community work experience program (CWEP) reimbursement allowance. This allowance is authorized for CWEP participants, in addition to child care and transportation payments, for such employment-related items as clothing and personal care items, materials and supplies, and other similar expenses. Language was added at N.J.A.C. 10:81-14.12(e) referencing "good cause" criteria set forth at N.J.A.C.

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10:81-14.8(b) for refusing or failing to participate in CWEP; Federal regulations mandate that "good cause" be established for non-participation in CWEP. An addition was made that requires the case manager to reevaluate participation in CWEP at least once every three months, to ensure that the worksite and CWEP program continue to be suitable activities for the REACH participant.

N.J.A.C. 10:81-14.13(b) was amended to state that REACH orientation may be used to satisfy the special vocational assessment and counselling component which may be required for an individual whose REACH participation is temporarily deferred due to care of a child under age two.

Language was added at N.J.A.C. 10:81-14.14 to clarify that the funding source for REACH OUT will be WSP resources, to the maximum extent feasible.

At N.J.A.C. 10:81-14.15(b) the word "directly" was deleted in the statement concerning educational services available through the REACH program.

N.J.A.C. 10:81-14.18 was changed to incorporate, reorganize and expand child care provisions. Language was added at N.J.A.C. 10:81-14.18(a) to identify the role of the lead child care entity in making child care arrangements for REACH participants and to emphasize that those arrangements should be in the best interests of the child. N.J.A.C. 10:81-14.18(b) was amended to stipulate that the Department of Human Services establishes child care payment rates and procedures. The former term "REACH State-funded child care vouchers" has been changed to "State REACH funds". State REACH funds are not accessed unless the participant's own resources or Federally-matched child care funds are not available or are insufficient to pay the cost of child care. Provisions at N.J.A.C. 10:81-14.18(c) were expanded to include child care payment rates for "special needs" children and full-day rates for school-age children during summers and school vacations. "Special needs" is defined as serious physical, emotional, mental or cognitive conditions for which day care is recommended as part of a treatment plan; such conditions must be verified by medical and/or psychological documentation, or documentation by the case manager, which shall be kept in the case record. Also included is language authorizing payment of transportation costs to and from a day care center for a child whose parent is involved in a REACH training-related activity. A statement was added to indicate that the rates for REACH child care payments are available from the Department of Human Services, the local Division of Youth and Family Services District Office or the county welfare agency.

The provisions concerning duration of child care payments at N.J.A.C. 10:81-14.18(d) were clarified to state that payment for REACH child care will be made for one year, defined as 52 consecutive weeks, during the following periods:

Starting with the first week of participation in a REACH employment-directed activity, not including orientation, evaluation and assessment; and

Starting with the first week of employment (post-employment period). If an unemployed participant becomes ineligible for AFDC for a reason other than employment, payment of child care through the REACH program will continue for the number of weeks remaining in the 52-week period that the participant is employed.

Language was added to clarify that in situations where loss of AFDC eligibility is due to employment (the post-assistance period), payment will continue when need exists, as determined by the case manager's evaluation, and when the participant complies with the stated procedures, including the signing of the REACH Agreement. Should the participant lose employment and return to the assistance rolls within the one year post-employment period, payment of child care will continue for the weeks remaining in the 52-week period.

Further language was added to authorize a waiver on a case-by-case basis to extend child care cost coverage for an employment-directed activity through REACH funds beyond one year. The waiver is initiated by the case manager with supervisory approval. The progress and circumstances of participants approved for the waiver must be reviewed by the case manager every three months. Post-employment child care payments are not extended beyond the 52-week period. For participants in exceptional circumstances, the waiver allows for completion of the employment-directed activity with the benefit of extended support services.

N.J.A.C. 10:81-14.18(e) was revised to expand requirements for child care providers and develop a network to ensure wider availability of quality child care. Notable changes involve:

Family day care providers of three or more nonsibling children must be registered pursuant to the Family Day Care Provider Registration Act (Public Law 1987, Chapter 27).

Family day care providers who do not live in the REACH participant's home and who care for a maximum of two nonsibling children or all sibling children in one family may choose to register as above, or may become an "approved" home under Department of Human Services guidelines. Providers of in-home care must also be evaluated.

To qualify for payment through REACH funds, the above requirements must be met.

N.J.A.C. 10:81-14.18(f) establishes the vendor payment system as the primary method of payment of REACH monies to providers of child care, but, when the provider is an unregistered household member, payment may be made directly to the participant.

Language was added at N.J.A.C. 10:81-14.18(g) through (h) to clarify responsibilities of the case manager and lead child care entity in assessing child care needs, identifying appropriate resources, and verifying and documenting that child care arrangements meet established criteria. The result will be a more coordinated, comprehensive effort to provide quality child care for REACH participants.

Language was added at N.J.A.C. 10:81-14.18(i) to clarify that if sufficient funds are not available to secure appropriate child care arrangements, the participant is excused from REACH participation until suitable child care services can be obtained.

N.J.A.C. 10:81-14.19(b) has been amended to include reimbursement for transportation costs necessary for attendance at orientation and assessment. Also included is language stating that the $75.00 work expense disregard of earnings in work supplementation covers the cost of transportation. Those modifications will serve to encourage participation in REACH.

N.J.A.C. 10:81-14.19(d) has been revised to provide a flat allowance of $6.00 per day of participation in a REACH activity for expenses related to training and transportation. Language was also added to specify that if actual transportation costs for orientation or assessment exceed $6.00 per day, or for job search or community work experience programs exceed $30.00 in a week, a higher amount may be provided to cover actual expenses for transportation by the most reasonably available means. In addition, if actual required training-related expenses exceed $30.00 in a week, a higher amount to cover actual costs may be provided. Those increased allowances provide a significant benefit to the REACH participant.

Language was added at N.J.A.C. 10:81-14.19(e) to specify that if a county has arranged for a participant to use other than established public transportation, the participant may request a voluntary restricted payment and direct that his or her transportation or training-related expense allowance be paid directly to the county or provider of transportation as a vendor payment. Upon the participant's request, such a voluntary restricted payment shall be discontinued.

Language was added at N.J.A.C. 10:81-14.20(c) concerning requirements applicable to the 12-month Medicaid extension to stipulate that the Department of Human Services may require that the individual or family periodically report certain information, such as health insurance coverage from an employer or absent parent, and earning and continued employment, to ensure continued eligibility for Medicaid. Failure to comply with such reporting requirements will result in discontinuation of eligibility for the 12-month Medicaid extension.

Language concerning the procedure for calculation of work supplementation program (WSP) residual grants was added at N.J.A.C. 10:81-14.21(d). That process illustrates the application of WSP disregards set forth at N.J.A.C. 10:81-14.11(g).

Language was added at N.J.A.C. 10:81-14.23 to clarify the requirements concerning the REACH Planning Committee and the REACH county program implementation plan. Each county must establish a REACH Planning Committee appointed in accordance with established county procedures and designated as a standing committee of the Human Services Advisory Council. Each county must also submit a REACH county program implementation plan in accordance with deadlines established by the Department of Human Services. Further, the planning committee shall include as a non-voting ex officio member a representative of the Division of Housing and Development in the Department of Community Affairs. Additional members may include representatives from the following: the local community college; the county vocational school; and private business or industry in the county. Other members may include two or more recipients of AFDC residing in the county, whose costs of participation in the planning committee will be reimbursed by the REACH program; county residents who represent nonprofit and religious communities in the county; and representatives of the lead REACH child care agency or other providers of child care in the county.

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In addition, technical changes were made throughout the text, to correct typographical errors.

Social Impact

The proposed amendments will have a positive social impact on REACH participants by enabling them to utilize broadened employment-related opportunities and an expanded network of support services. Increased flexibility is incorporated into the proposed rules to accommodate various local practices as the REACH program becomes operational throughout the State. The rule changes will positively impact county welfare agency staff, as well as REACH participants, by streamlining program functions, resulting in reduced workloads and more effective service provision.

In recognition of the fact that the supports available through REACH (including training and employment opportunities) assist in the development of the individual's ability to ultimately provide for the housing needs of his or her family, clarification has been added to state that the deferral automatically given to homeless individuals nevertheless allows for REACH participation on a voluntary basis.

In response to needs expressed by county welfare agencies, responsibilities of the case manager are specifically defined, concentrating the efforts of that role on provision of services to REACH participants, and permitting the county to contract with nonprofit entities to perform this role and its related functions. Certain tasks may be performed in support of the case manager's role by other staff as part of the newly defined case management function. For example, a waiver provision has been implemented to allow for the temporary reassigment of some administrative and support functions to other units in the county welfare agency, thus assisting case managers with the temporary workload increases which are expected as more AFDC families are phased into REACH. Moreover, to free case managers from unnecessary frequent monitoring of excused participants, requirements concerning those participants have been changed to require case management review as frequently as circumstances of the excuse warrant, but not less often than once a month. Additionally, income maintenance workers will support the case management function by providing an overview of the REACH program to AFDC applicants and recipients, determining the exempt status of REACH participants, and referring those who are not exempt for REACH orientation. Such expansion of income maintenance workers' functions will benefit both case managers and REACH participation by streamlining the client flow process and by giving participants accurate initial information about the program.

Proposed modifications to the case manager's role and the case management function will allow local agencies more flexibility and will promote more effective service delivery to REACH participants.

In deference to choices and commitments made by a mandatory participant prior to being scheduled for REACH participation, proposed amendments to the rules permit such an individual to use that client-selected training or education program or activity (in which he or she was previously enrolled) to satisfy REACH participation requirements under certain conditions; or, if conditions for approval cannot be met, to continue the client-selected activity and be temporarily deferred from REACH participation. The proposed amendments protect those individuals who have already invested time and money in other employment-related activities and is in keeping with the goal of tailoring the REACH program to the needs of the individual.

Provisions concerning the work supplementation program (WSP), which provides an incentive to employers to hire REACH participants by subsidizing their wages, have been revised to further benefit participants by extending the $30.00 and one-third disregard of WSP earned income for the entire nine month period of WSP participation, even if participants have previously exhausted the limit for that disregard.

Possible barriers to REACH participation have been removed by an addition to the proposal authorizing payment for the support services of child care and transportation during orientation, even though a REACH Agreement has not been signed. Participants in a REACH activity will benefit from proposed enhancements to the rules which provide a flat allowance of $6.00 per day for expenses related to training and transportation. The amendments provide added incentives to encourage REACH participation by allowing for payment of higher amounts to cover actual transportation expenses under certain conditions.

The provisions concerning child care were expanded to include child care payment rates for "special needs" children and full-day rates for school-age children during summers and school vacations. Under the proposed amendments, payment would also be authorized for transportation costs to and from a day care center for a child whose parent is involved in a REACH training-related activity. Moreover, the amendments would authorize a waiver on a case-by-case basis to extend child care cost coverage beyond one year, through REACH funds, for an employment-directed activity. The expansion and extension of those support services provides significant benefits to parents participating in the REACH program.

To develop a broad network of quality child care providers, the proposed amendments specify requirements for such providers and clarifies that the Department of Human Services establishes child care payment rates and procedures. The amendments also define the role of the "lead child care entity" in assisting the case manager to assess child care needs, identify appropriate resources, and verify and document that child care arrangements meet established criteria in the best interests of the child. This teamwork will result in a coordinated, comprehensive effort to provide quality child care for REACH participants.

Proposed amendments concerning the REACH Planning Committee provide for the incorporation of additional members who represent the Division of Housing and Development in the Department of Community Affairs; local educational institutions, businesses and industries; nonprofit and religious communities; the lead REACH child care agency in the county; and other child care providers and recipients of AFDC. The inclusion of those new members will provide each county with a broader based approach to addressing the problems of welfare dependency through its public-private partnership in planning.

Both REACH participants and New Jersey taxpayers will benefit significantly from these proposed amendments, which maximize employment-related opportunities and support services to assist individuals and families in their movement away from welfare dependency and toward self-sufficiency.

Economic Impact

The overall economic impact of the proposed amendments is expected to be minimal. The changes reflect procedural adjustments and modifications as a result of the first year of experience in the REACH program. The approach was to tailor the program to address prior policies and procedures that had not worked as well as planned, while maintaining and even improving both the quality of service provided to participants and administration of the REACH program. The intent was to make these changes within the limits of the funds budgeted for the Department of Human Services for REACH in State Fiscal Year 1989.

The modifications made to participation requirements and the frequency of follow up and monitoring of participant activity by case managers will result in more uniform administration of the REACH program at the local level among counties. In addition, changes that allow other agency support staff, including clerical staff, to handle the routine functions and tasks of REACH will result in freeing of REACH case managers' time to provide direct interaction and high quality service delivery to REACH participants. The result of both will be a more effective and more efficiently operated REACH program.

The regulatory changes address what had been a major paperwork problem with REACH, resulting in case managers spending too much time completing forms and following up with many letters to participants. The proposed amendments reduce and simplify the paperwork involved in client follow up, with an expected savings in administrative time and cost.

The proposed amendments expand a program which helps support itself and which is expected to be used considerably in the coming year—Work Supplementation. Under this program, savings from a welfare recipient's AFDC grant that are due to on-the-job training and employment are used to subsidize an on-the-job training position for a subsequent AFDC client. While the program is not entirely self-supporting, these "diverted funds" will help subsidize a job for nine months while the REACH participant gains experience valuable to the employer, culminating in an unsubsidized job.

By clarifying that all individuals are eligible for transportation and training-related expenses, the proposed amendments may result in increased usage of these benefits and increased overall expenditures. However, that is intended as an incentive to participation, and to ensure that lack of transportation is not a barrier to participation in REACH. Again, this change is included in the budget for the 1989 State Fiscal Year.

Changes concerning child care providers and implicit changes to child care rates are expected to offset each other when compared to the existing rates and payments for child care arrangements. At the same time, by requiring some type of inspection of the home and evaluation of the child care provider, the Department will ensure that it is receiving a uniform minimum quality of child care for the REACH dollars spent. Since all

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but post-AFDC child care payments are subject to Federal financial participation and the proposed amendments require case managers to use Federally-matched sources of child care before State-only REACH funds, REACH will take advantage of all available non-State funds.

By requiring as a condition of Medicaid eligibility that post-AFDC employed REACH participants report periodically about employer-provided health care, the proposed amendments will serve to offset the cost of health care under the Medicaid program during the 12-month extended period of Medicaid.

Regulatory Flexibility Statement

These proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required.

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

10:81-14.2 Definitions

The following definitions shall apply to REACH:

...

"Lead child care entity" means the lead child care agency or other agency or administrative entity established in each county to assist the case manager and REACH participant in obtaining child care.

...

10:81-14.3 REACH participation

(a) (No change.)

(b) Exemptions: Individuals classified as exempt are not required to participate in employment or REACH employment-directed activities. However, they may participate on a voluntary basis. An individual may claim at any time that he or she is entitled to an exemption. The following categories of individuals are exempt from participation in REACH:

1.-3. (No change.)

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

(c) Temporary deferrals: Participation in REACH may be temporarily deferred for circumstances likely to change that make current participation impossible or impracticable. [Individuals] **Unless otherwise specified, individuals** classified as temporarily deferred will be subject to monthly review [by the case manager] **as part of the case management function** for changes in circumstances that make them eligible to participate again. The following categories of individuals are temporarily deferred from participation in REACH:

1. Ill: When determined on the basis of medical evidence or on some other sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training. Reasons for deferral on a temporary basis include observation of a cast on a broken limb, or information of scheduled surgery, recuperation from surgery, or other instances where the condition will be of limited duration. This deferral will not exceed 90 days. Minor ailments and injuries do not normally defer the individual under this criterion. [However, where the condition appears to be serious enough for deferral, such deferral shall be reviewed every 30 days.]

i. (No change.)

2. Caretaker of young child: The parent or other caretaker relative of a child under two years of age who personally provides care for the child with only brief and infrequent absences from the child. For purposes of deferral from REACH participation, absence means that the parent and child are apart, one from the other. **Individuals temporarily deferred due to care of a young child will be subject to review at least every three months as part of the case management function to determine if the parent wants to voluntarily participate in REACH before the deferral expires.**

i.-ii. (No change.)

3. (No change.)

4. Extreme hardship: Deferral from participation will not ordinarily be given for circumstances other than those in (c)1 through 3 above. However, if the individual can demonstrate that extreme hardship to the children would result if the individual were required to participate, despite the provision of support services, participation should be temporarily deferred on a case by case basis. [Such situations should be monitored once every two weeks by the case manager for changes in circumstances permitting participation again.] Circumstances which would result in extreme hardship if participation was not deferred include but are not limited to the following:

i.-iii. (No change.)

5. Homelessness: REACH participation shall not be required of any individual who is without a permanent residence[, since such an individual will necessarily have to devote himself or herself to seeking a permanent place to live]; **however, such individuals may volunteer to participate in REACH.**

6. Participation in a client-selected activity; Individuals who participate in a client-selected program or activity, that is, a training or education program or activity in which the individual has enrolled himself or herself and which has not been authorized or approved by the county and is not in accordance with N.J.A.C. 10:81-14.14(a) and 10:82-5.6(c), shall be temporarily deferred from participation in REACH.

(d) Excused participation: REACH participants shall be temporarily excused from participation if the component (including social services) for which they are scheduled as set forth in the REACH Agreement is not currently available or if a support service set forth in the REACH Agreement is not available. Excused participation is reviewed once every [two weeks] **week up to once every month, depending on the circumstances surrounding the excuse.**

1.-2. (No change.)

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

(i) Client-selected activity: Individuals classified as mandatory participants who are scheduled to begin REACH participation but who are enrolled in a client-selected education or training program or activity shall be treated in accordance with (i)1 and 2 below:

1. As part of the individual evaluation, the case manager shall determine whether the client-selected activity is in accordance with N.J.A.C. 10:82-5.6(c).

i. If the case manager determines that the client-selected activity is in accordance with N.J.A.C. 10:82-5.6(c), participation in the activity shall be considered participation in REACH and the activity shall be included in the final REACH Agreement. However, if REACH funds are not available to pay the tuition for the client-selected activity, the individual assumes responsibility for all tuition costs.

ii. If the case manager determines that the client-selected activity is not in accordance with N.J.A.C. 10:82-5.6(c), participation in the activity shall not be considered participation in REACH and the activity shall not be included in the final REACH Agreement. The individual shall be deferred from REACH until the client-selected activity has been completed or until the individual stops participating in that activity.

2. An individual who disagrees with the temporary deferral may appeal this determination through the process set forth at N.J.A.C. 10:81-14.7 and 10:81-6.

10:81-14.4 REACH [C]case [M]management

(a) General: Case management is a structured approach to the delivery of multiple and interrelated services to assure that the goals and objectives of REACH are met. Case management functions will ensure that the principles of REACH set forth at N.J.A.C. 10:81-14.1 are applied in the development of the REACH Agreement, evaluation and monitoring, and during an individual's participation in REACH. Staff included in the case management function are the REACH case manager, supervisory staff, [and] clerical [support] staff**, and other support staff.** Case management functions include but are not limited to:

1.-10. (No change.)

11. Reevaluating a participant's [needs] post-AFDC **needs**; and

12. Monitoring continued eligibility and provision of services to post-AFDC participants who receive REACH services of child care and Medicaid**, where necessary.**

(b) Case manager: A REACH case manager will be assigned to coordinate the [functions] **activities** of the REACH program participants. For a participant, the case manager is the integral link among the different service subsystems of income maintenance, employment, training, child support enforcement and support services. Case man-

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agers or interpreters fluent in a participant's primary language will be provided when a participant is not fluent in English.

1. Responsibilities of case manager: The case manager is responsible for contact with the participant. Specific responsibilities of the case manager include:

i. Conducting the individual evaluation with the participant;

ii. Making appropriate referrals;

iii. Developing and signing the REACH Agreement;

iv. Approval of eligibility of payments for child care, transportation and training-related expenses;

v. Imposing and suspending a sanction for noncompliance with REACH participation requirements; and

[1.]**vi.** Maintaining responsibility for the case record during sanction. After a participant is referred for the imposition of a sanction as set forth in N.J.A.C. 10:81-14.8, the case manager shall retain the original REACH case file and shall have responsibility for making all decisions about exemption, deferrals, [excuses] **excused participation,** placements and modifications to the REACH Agreement, communications with the participant (other than those directly involved with the imposition of the sanction), and overall handling of the REACH case.

(c) Other support staff: Case management functions other than those in (b) above may be provided by case management staff and other support staff.

(d) Case management support functions: Certain administrative functions are essential to support REACH case management but need not be performed as part of the case management function. These case management support functions include but are not limited to: processing of payments for support services, training, outreach to potential participants, providing information about REACH to community groups, and data entry of participant information into non-REACH automated management information systems. The case management agency and county may designate the appropriate entities or agency units to perform these functions.

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

[(d) Orientation: As part of REACH participation, all potential REACH participants will receive orientation to the REACH program. Orientation will include a general description of the REACH program, the employment, training and educational opportunities available, the support services to be arranged by the agency, and the participation required under the principle of mutual obligation.

1. Orientation, individual evaluation, and development of the REACH Agreement may take place at a single interview or in more than one interview in the case management process.

(e) Individual evaluation: Individual evaluation involves an initial assessment of a REACH participant's existing employment-related skill levels, educational level, and similar characteristics related to employability and the job market and of support services needs.

(f) Development of the REACH Agreement: After the individual evaluation, the case manager shall interview the REACH participant and jointly develop an initial REACH Agreement (see N.J.A.C. 10:81-14.5).

(g) Client flow: Upon application or redetermination of eligibility, AFDC clients will proceed through the REACH program as follows.]

(f) Case management functions within REACH program client flow: Upon application or redetermination of AFDC eligibility, AFDC clients will proceed through the REACH program client flow. The REACH program client flow begins with an overview of REACH by the income maintenance worker and proceeds through case management as set forth below.

1. AFDC eligibility determination: The income maintenance worker at intake or active case unit will determine eligibility for AFDC. The worker will also provide an overview of the REACH program and determine whether the individuals are exempt from participation, in accordance with N.J.A.C. 10:81-14.3(b). [Parents whose youngest child is age six months or under will be temporarily deferred from all REACH requirements, and may volunteer for case management. Parents whose youngest child is over age six months and volunteers will be deferred to the case manager.]

i. Individuals exempt from participation will be given the opportunity to volunteer for the REACH program.

ii. All volunteers and individuals who are not exempt will be referred for REACH orientation. This referral will initiate assignment of the individual to REACH case management.

[2. REACH orientation: In orientation, usually conducted for small groups, the case manager will explain the REACH system, including the available services, the participant's obligations, and the Agreement. Small groups employment counselling for parents of children under age two will also be conducted at this step. Parents of children under two years of age may continue deferral or may become REACH participants on a voluntary basis. Initial steps in development of the REACH Agreements will take place.]

2. REACH orientation: As part of REACH participation, all potential REACH participants will receive orientation to the REACH program. Orientation will include a general description of the REACH program, the employment, training and educational opportunities available, the support services available, and the participation required under the principle of mutual obligation and the REACH Agreement.

i. Orientation is a case management function and may be conducted in a group setting or at an individual interview. Orientation, individual evaluation, and development of the REACH Agreement may take place at one or more interviews.

ii. Support services of child care and payment for transportation are available to a participant during orientation, even though a REACH Agreement has not been signed.

iii. During the orientation process, voluntary participants may decide whether to continue in REACH. All mandatory participants and voluntary participants continuing in REACH will be referred for case management.

3. Individual evaluation: **Individual evaluation involves an initial assessment of a REACH participant's existing employment-related skill levels, education level, and similar characteristics related to employability and the job market, and of support service needs.** The case manager will meet individually with each participant and conduct an initial evaluation of barriers to job readiness and of the need for social services, such as mental health services, vocational rehabilitation, drug and alcohol treatment programs, and health care.

[i. Initial REACH Agreement: An initial REACH Agreement will be completed, indicating whether the participant has been deferred or referred to social services, REACH job search or vocational/educational assessment. Steps necessary to secure support services are also initiated. This initial Agreement will become the final Agreement after assessment (see (g)5 below).]

i. Temporary deferral: At the individual evaluation, the case manager will determine whether the individual is eligible for temporary deferral under N.J.A.C. 10:81-14.3(c) and will explain the benefits of REACH participation during the period of deferral. (See (f)3ii(1) below for possible waiver of deferral and client flow.)

ii. Initial REACH Agreement: As part of the individual evaluation, the case manager and participant will jointly develop the initial REACH Agreement. The initial REACH Agreement will indicate whether the participant has been temporarily deferred or referred to social services, REACH job search, or assessment. The initial Agreement will also contain the support services necessary to enable the individual to participate in social services, job search or assessment.

(1) If the individual has been referred to REACH job search, the initial Agreement will be the final REACH Agreement. Individuals temporarily deferred or referred for social services will have signed only an initial Agreement.

(2) If the individual has been referred for assessment, the initial Agreement will be followed by the final REACH Agreement after assessment (see (f)5 below).

4.-5. (No change.)

6. Participation in employment and employment-directed activities: The participant will pursue activities as scheduled in the REACH Agreement[, and the case manager will monitor participation]. **Participation will be monitored as part of the case management function.**

(g) (Reserved)

(h)-(k) (No change.)

(l) Waiver for the reassignment of case management functions: It is recognized that the phase-in of AFDC families into REACH may result in a high workload for the case management agency, with the

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possibility that REACH participants may not be served timely. To alleviate this temporary workload and to ensure that all participants receive REACH services timely, the case management agency may request that certain case management functions set forth in the REACH program client flow in (d) above, be temporarily reassigned to another work unit in that agency. For example, the orientation and individual evaluation of parents with children under age two who are eligible for temporary deferral of up to 18 months could be performed by the income maintenance unit as part of the AFDC eligibility determination. To request a waiver of reassignment of case management functions, the case management agency must write to the Director, Division of Public Welfare, including the following:

1. The specific case management function(s) to be waived;

2. The agency unit to which they will be reassigned;

3. The duration of this reassignment;

4. Assurances that the unit will perform the function and provide the same information and service that the case manager would; and

5. A description of the REACH client flow with the reassigned function, affirming that monitoring and case review will be conducted with the same adequacy as by case management, and will interfere with the REACH automated management information system.

10:81-14.5 REACH Agreement

(a) Purpose and scope: The REACH Agreement will set forth provisions for both the REACH participant and the agency to comply with under the principle of mutual obligation. Each REACH participant will sign a REACH Agreement with the case manager affirming participation, provision of support services (such as child care and transportation) and commitment to self-sufficiency. The REACH Agreement will be tailored to each participant's skills and necessary employment activities. A Spanish language version of the REACH Agreement is available for any participant whose primary language is Spanish.

1.-2. (No change.)

3. Post-AFDC REACH participants: All REACH participants no longer receiving AFDC will be required to complete and sign a REACH Agreement as a condition of receiving post-employment child care. All REACH participants receiving post-AFDC Medicaid (see N.J.A.C. 10:81-14.20), should complete and sign a REACH Agreement. Exceptions may be granted where the participant would be penalized by the employer for taking time off from work. Absence of a REACH Agreement will not relieve the participant of complying with eligibility requirements for extended Medicaid benefits (see N.J.A.C. 10:81-14.20).

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

(d) Specifications: The REACH Agreement shall conform to the following specifications:

1. (No change.)

[2. Duration and expiration date: The REACH Agreement shall cover a minimum period of six months, or until employment makes the individual ineligible for AFDC, whichever is sooner. The expiration date shall not be earlier than the scheduled effective date of the next semiannual or annual redetermination of eligibility.

i. Example: The redetermination of eligibility for a participant is conducted annually, with the last redetermination effective for October 1, 1987. During November 1987 the participant and case manager complete a REACH Agreement. The expiration date of that Agreement may not be earlier than October 1, 1988, the scheduled effective date of the next annual redetermination of eligibility.]

2. Duration and expiration date: The REACH Agreement is continuous and has no automatic or periodic expiration date. Once signed, it remains in force until any of the following occurs: the individual becomes ineligible for AFDC for a reason other than employment or receipt of unemployment insurance benefits or temporary disability insurance, a sanction is imposed, the individual moves to another county, or the participant completes the last scheduled activity with no subsequent activity scheduled. In absence of a change in AFDC eligibility, the Agreement will expire on the ending date of the last activity unless the case manager and participant amend the Agreement with a new activity. To ensure continuous participation in REACH, the case manager shall review the individual's progress in REACH, schedule an appointment with the participant, and jointly update the Agreement with the participant within two weeks of the ending date of the last REACH activity set forth in the Agreement.

i. Example: On January 2, a participant and case manager signed the REACH Agreement for the following activities: training from January 3 through February 28, group job search from March 1 through March 15, and individual job search from March 16 through May 15. The time period covered by the REACH Agreement is January 2 through May 15. The case manager and participant should update the Agreement by May 30 with an additional REACH activity to ensure continuous REACH participation.

(e) (No change.)

(f) REACH Agreement review: A review of the REACH Agreement shall be completed at time of the redetermination of AFDC eligibility. At a minimum, the case manager and the participant shall review compliance with the existing Agreement, discuss changes that may be needed, and make the necessary amendments. The effective date[,] **and** duration [and expiration date] of the [new] **amendments to the** REACH Agreement shall conform to (d) above.

10:81-14.6 Income maintenance functions

(a) General: The functions and tasks of the income maintenance workers concerning the REACH program are set forth in this section. The functions include but are not limited to:

1. (No change.)

2. Provide an overview of the REACH program to applicants and recipients, and determine the exempt status of REACH participants;

[2.]**3.** Referral of AFDC applicants **and recipients** who do not meet the criteria for exempt participation at N.J.A.C. 10:81-14.3(b) [to the case manager] **for REACH orientation**;

[3.]**4.** Explaining voluntary participation in REACH and referral of interested individuals to [the case manager,] **case management** for families determined presumptively eligible for AFDC;

Renumber 4 through 7 as **5 through 8** (No change in text.)

[8.]**9.** Informing exempt REACH participants of their right to voluntarily [register for] **participate in** the REACH program.

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

10:81-14.8 Noncompliance; good cause; sanctions

(a) The REACH principles of self-sufficiency through employment, mutual agency/participant obligation, dignity and self respect of the individual, and flexible program design, are all directed to encouraging individual participation in his or her future. However, it is recognized that situations will occur in which the individual will not comply with the REACH participation requirements. In instances where noncompliance by a mandatory participant is indicted, the case manager will begin a series of procedures designed to assist the participant in complying with the REACH Agreement before any decision is made as to whether to impose a sanction for noncompliance.

1. (No change.)

2. Indications of noncompliance: Indications of noncompliance may be reported to the case manager or may become apparent to the case manager while monitoring client participation. Indications of noncompliance with REACH program requirements include, but are not limited to, situations in which the participant:

i. Did not attend a REACH orientation session after [two] **one** notice[s have] **has** been mailed to the participant and [have] **has** not been responded to;

ii. Did not attend a REACH assessment session after [two] **one** notice[s have] **has** been mailed to the participant and [have]**has** not been responded to;

iii.-x. (No change.)

3.-5. (No change.)

(b) (No change.)

(c) Notification of participant: When participant noncompliance is indicated, the case manager will proceed as follows[.]**:**

1. **Orientation and assessment: After failure to appear at the scheduled appointment,** [T]the case manager will send a **conference** letter notifying the participant of noncompliance and the penalty for willful refusal to comply with the requirements of REACH and the REACH Agreement, and asking the participant to come to the agency for a conference. Form PA-15, Important Notice, may be used for this

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purpose. In addition, the case manager shall attempt to contact the participant by telephone.

2. **Other activities: The case manager will send a conference letter notifying the participant of noncompliance and the penalty for willful refusal to comply with the requirements of REACH and the REACH Agreement, and asking the participant to come to the agency for a conference. Form PA-15, Important Notice, may be used for this purpose. In addition, the case manager shall attempt to contact the participant by telephone.** If the participant does not contact the agency within 10 days of the date of this letter, the case manager will send a second [notification] **conference** letter. In addition, the case manager shall attempt to contact the participant by telephone.

(d) (No change.)

(e) Imposition of the sanction: Sanctions will be imposed if a mandatory REACH participant has willfully refused to comply with the requirements of REACH or the REACH Agreement and the circumstances suggest that this willfull refusal will be continued and repeated in the future.

1.-2. (No change.)

3. If, after application of the above procedures, the individual still does not comply with REACH participation requirements, or if the participant has not contacted the agency within [20] **10** calendar days of the date of the [first notification] **last conference** letter and the individual has not been reached by telephone, the case manager will impose the sanction. The case manager will notify the income maintenance worker to take action regarding AFDC eligibility and grant amount, subject to timely and adequate notice.

4.-5. (No change.)

(f)-(l) (No change.)

10:81-14.10 REACH job search

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

(e) Additional job search requirements: The following additional requirements apply to participation in REACH job search activities.

1. (No change.)

2. Job contacts: For early intervention job search and individual self-directed job search, a job contact is defined as a contact with a prospective employer. The [agency] **county selected entity** may assist the participant by providing a list of employers. The following apply to job contacts:

i.-ii. (No change.)

iii. Depending upon the position sought, the job contact requirements may be fulfilled by either a personal visit to the prospective employer or another method of application which is considered by the [case manager] **county selected entity** to be a generally accepted practice, including telephone contacts where the job offer or advertisement lists a telephone number.

iv. (No change.)

v. Reporting job contacts: The participation will be required to report the result of all job contracts to the [agency] **county selected entity** at a prescheduled time. The time may vary with the job search participation requirements set forth in the REACH Agreement, but must be at least once every four weeks.

(1) Job contacts shall be reported in writing in a manner prescribed by the county [designated] **selected** entity at the time the REACH Agreement is signed. This writing requirement shall be reasonable given the participant's language abilities. While such reporting will not require the employer's written confirmation of the job contact, the participant shall be required to sign written documentation to attest to its validity. The written report shall be submitted to the county [designated] **selected** entity at the participant's follow-up interview. The participant shall be responsible for providing the county [designated] **selected** entity with any additional information concerning job contacts.

vi. County [designated] **selected** entity review of job contacts: The county [designated] **selected** entity shall review the participant's job contacts at least once every four weeks and determine if the participant has completed the assigned number of job contacts, as set forth in the REACH Agreement. If the participant missed any contacts or if any of the reported contacts are disallowed (for reason such as suitability or manner of contact), the participant shall have one additional week for every four weeks of scheduled job search activity to complete any missed or disallowed contacts.

vii. It is a goal of REACH to help and ensure that all participants are prepared to apply for and secure employment. Therefore, before a participant is placed and required to participate in job search activities, the [agency] **case manager** shall take such steps, **including referrals**, as are necessary, including employment counselling, to ensure that the participant can read and complete a job application, and is otherwise able to present himself or herself properly for employment.

3. (No change.)

4. Review of job search: At least once every four weeks the county [designated] **selected** entity shall review the individual's participation in job search, and determine if participation in job search should continue or if assignment to another REACH employment-directed activity is appropriate. **If reassignment is appropriate, the county selected entity must notify the case manager so that the REACH Agreement may be updated.**

(f) (No change.)

10:81-14.11 REACH Work Supplementation Program

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

(c) Eligibility: Mandatory and voluntary REACH participants are eligible to participate in the WSP if they are eligible for AFDC.

1. There is no specific limit on the number of times an individual may participate in WSP, but participation in WSP shall not exceed a cumulative total of nine months for each individual.

(d) Types of jobs: Any appropriate job may be provided or subsidized under the WSP, but acceptance of any such position by a REACH participant shall be voluntary. The job position which may be provided for AFDC recipients must be of the following general types:

1. (No change.)

2. A job position provided to an eligible individual by any other employer for which all or part of the wages are paid by the [Division of Public Welfare or a CWA, or another] entity selected to administer the WSP wage pool.

(e) Providing or subsidizing jobs: The county [designated agency] **selected entity** may use whatever means are appropriate to provide or subsidize jobs for participants in WSP. The county [designated agency] **selected entity** may make whatever arrangements it deems appropriate with regard to the type of work provided, the length of time the position is to be provided or subsidized, the amount of wages to be paid to the recipient receiving the work supplemented job, the amount of subsidy to be provided [by the Department of Human Services, Division of Public Welfare, or CWAs,] and the conditions of participation.

(f) Conditions of employment: The following provisions apply to conditions of employment under REACH WSP:

1. (No change.)

2. The county [designated] **selected** entity is not required to provide that eligible individuals filling job positions provided by other entities under WSP be provided employee status by such entity during the first 13 weeks during which they fill such position.

3. Wages: Participants in the REACH WSP will be paid wages which shall be [considered to be] **counted as** earned income [(see N.J.A.C. 10:82)] **and are subject to the monthly reporting requirements set forth at N.J.A.C. 10:90-2.3.**

(g) [Child care and transportation: Federal financial participation is available for child care and transportation costs incurred by participants in the REACH WSP.] **Application of AFDC earned income disregards under WSP: The application of earned income disregards as set forth at N.J.A.C. 10:82-4.4 differs for WSP participants. (See N.J.A.C. 10:81-14.21(d) for calculations of AFDC grant under WSP.)**

1. The $75.00 work expense disregard shall apply to earned income of WSP participants.

2. The child care disregard is not applied to WSP earned income. Payment for child care will be made directly to the provider as a vendor payment as set forth at N.J.A.C. 10:81-14.18.

3. The $30.00 and one-third disregard shall be extended for the entire period of an individual's participation in WSP, up to a maximum of nine months. The participant is eligible for the $30.00 and one-third

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disregard under WSP regardless of the prior application of that disregard to non-WSP earned income while receiving AFDC.

i. Example: A REACH participant has received AFDC benefits for three years. During the first year of public assistance, the REACH participant was employed for a period of six months; the participant received four months of the $30.00 and one-third disregard and two months of the $30.00 disregard during that time. The participation has remained continuously on assistance. Under WSP participation, this individual is entitled to the $30.00 and one-third disregard for each month of participation in WSP up to a maximum of nine months.

ii. Example: A WSP participant completed four months of WSP participation in January and subsequently continued to receive AFDC benefits. Participation in WSP resumed on June 1 and continued through October 31, completing a total of nine months in WSP. The participant is eligible for the $30.00 and one-third disregard for the entire nine months of WSP participation even though entitlement to that disregard had been exhausted under previous non-WSP employment.

4. The WSP participant who has never had the benefit of the $30.00 and one-third disregard is entitled to the $30.00 and one-third disregard for each month of WSP participation and may, at the end of this WSP participation period, be eligible for any of the remaining months of the $30.00 and one-third disregard or the $30.00 disregard regularly applied to earned income as set forth at N.J.A.C. 10:82-4.4.

i. Example: An individual who has had no previous employment participates in WSP from January 1 through September 30 (the nine month maximum) time permitted for WSP participation) and receives the $30.00 and one-third disregard during the entire nine month period. The individual then enters unsubsidized employment on October 1 and is eligible for the $30.00 disregard for three months (through December 31).

ii. Example: An individual who has had no previous employment participates in WSP from January 1 through March 31 and receives the $30.00 and one-third disregard for those three months. The individual then enters unsubsidized employment on April 1 and is eligible for the $30.00 and one-third disregard for one additional month (through April 30) and for the $30.00 disregard for another eight months (through December 31).

(h) Diversion of calculated earned income (CEI) to WSP wage pool: The WSP wage pool is used to provide wage subsidies to employers who hire WSP participants.

1. After application of WSP earned income disregards, the resulting CEI monies are diverted to the WSP wage pool. The WSP participant will receive a residual grant equal to the difference between the CEI and the maximum AFDC assistance payment for the family unit.

2. If the resulting CEI monies are greater than or equal to the maximum AFDC assistance payment for the family unit, then the entire assistance payment is diverted to the WSP wage pool and the participant will receive no residual grant; however, extended Medicaid benefits may be continued as set forth at N.J.A.C. 10:81-14.20.

10:81-14.12 REACH Community Work Experience Program

(a) (No change.)

(b) The following categories of AFDC recipients may not be required to participate in REACH CWEP, in accordance with Section 409(b) of the Social Security Act:

1. An individual who is exempt[, temporarily deferred or excused] from participation in REACH in accordance with N.J.A.C. 10:81-14.3;

2.-5. (No change.)

(c) Participation services and reimbursement: The services of child care and transportation that are necessary to CWEP participation will be provided as part of the REACH Agreement. In cases where the county [designated] **selected** entity is unable to provide these necessary services, the county [designated] **selected** entity must provide reimbursement for necessary transportation and child care costs that are incurred by the recipient and directly related to participation in CWEP.

1. Transportation costs: Participants shall be reimbursed for transportation costs directly related to their participation [in amounts equal to the cost of transportation by the most appropriate means (as determined by the CWA)] **by mutual agreement between the CWEP participant and the REACH case manager based on the availability of transportation in the locality.**

2. Child care costs: Participants shall be reimbursed for child care costs in such amounts as are determined by the CWA to be reasonable, necessary, and cost-effective. **Rates are determined on a Statewide basis through analysis of costs incurred for special needs care, full day care, before and after school care and summer rates for programs for school-age children as set forth at N.J.A.C. 10:82-14.18.** However, in no event shall the reimbursement using CWEP funds exceed $160.00 per month per child for full-time participation or $110.00 per month for part-time participation (see N.J.A.C. 10:82-2.8(a)2). [REACH vouchers may be used to supplement this amount.]

3. [Other costs] **Additional $10.00 CWEP reimbursement:** The CWA must provide reimbursement for costs other than transportation and child care that the CWA determines are necessary and directly related to participation in CWEP incurred by the participant. **Such costs include clothing and personal care items, materials and supplies and similar expenses related to applying for or accepting employment.** For purposes of Federal Financial Participation, this amount shall not exceed $10.00 per month per participant.

4. (No change.)

(d) (No change.)

(e) Participation requirements: The following additional participation requirements shall apply to CWEP:

1. (No change.)

2. Maximum monthly participation: No eligible family may be required to participate in CWEP more than the number of hours which would result from dividing the family's monthly grant amount by [the greater of] the Federal [or the applicable State] minimum wage.

3.-5. (No change.)

6. CWEP participants who claim "good cause" for refusing or failing to participate in CWEP must meet the criteria set forth at N.J.A.C. 10:81-14.8(b).

7. Reevaluation of CWEP participation: Participation in CWEP shall be reevaluated at least once every three months by the case manager to determine if CWEP and the specific worksite are still appropriate for that individual.

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

10:81-14.13 Vocational assessment and counselling

(a) (No change.)

(b) Parent with a child under age two: A special vocational assessment and counselling component [will] **may** be required for any parent whose full participation in REACH is temporarily deferred due to care of his or her child under age two. **The REACH orientation may be used to satisfy this requirement.**

1.-2. (No change.)

10:81-14.14 REACH employment and training services

(a) Purpose and scope: REACH employment and training services are designed to provide job training and other preparatory services for REACH participants. Such services include, but are not limited to, instructional skills training, on-the-job training, work experience and retraining. Education or training should be utilized wherever there is potential for upgrading a participant's skills and employment prospects.

1.-2. (No change.)

3. REACH **funded** employment and training programs are intended to supplement, not supplant, existing programs and resources available to the REACH participant.

4. (No change.)

(b) On-the-job training: REACH on-the-job training (OJT) is an employment opportunity which includes training. Under this component, a REACH participant is hired by a private or public employer and provided training which is subsidized under agreement between the employer and the county-designated provider agency.

1.-3. (No change.)

4. The funding source for REACH OJT will be the WSP resources, to the maximum extent feasible.

(c) (No change.)

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10:81-14.15 REACH educational services

(a) (No change.)

(b) The following educational services are available [directly] through the REACH program:

1. (No change.)

(c) (No change.)

10:81-14.18 REACH support services: child care

(a) The case manager, [and] the participant, **and the lead child care entity** will mutually arrange for child care for the REACH participant's child(ren) while the individual is employed or participating in an employment-directed activity, as set forth in the REACH Agreement. **Child care arrangements shall be in the best interests of the child. Additional responsibilities of the case manager and lead child care entity are set forth in (g) and (h) below.**

1. Child care arrangements [should] shall be located within reasonable commuting distance from the participant's home, place of employment or site of employment-directed activity. The hours provided must be sufficient to accommodate the hours required by the employer or employment-directed activity. The arrangements, including the site, must be agreeable to the participant, but any objections must be held in good faith.

(b) Payment for the cost of child care to support participation is available through the REACH program at rates established by the Department of Human Services.

[(b)]**1. When child care that is in the best interests of the child has been arranged,** [T]the case manager has the responsibility to [arrange] **determine eligibility and authorize payment** for the child care that will obtain the maximum Federal financial participation for the particular employment-directed activity. In determining payment of the cost of child care, the following sequence will be applied:

[1.]**i.** The participant's own sources of child care [involving no REACH child care payment;

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

[3.]**iii.** Federally-matched child care costs while an individual is participating in training for employment or in a program of vocational rehabilitation [(see N.J.A.C. 10:82-5.3)]; and

[4. REACH State-funded child care vouchers.]

iv. State REACH funds.

2. Payment for child care using State REACH funds may be made when the participant's own source or Federally matched child care are not available or not sufficient to pay for the cost of child care. The priority of funding sources in (b)1ii through iv above will be automatically incorporated into every REACH child care payment through fiscal procedures and reporting from the CWA to DPW, unless otherwise specified.

3. Effective date: In all counties, REACH child care payments will be available as each begins the operation of the REACH program, as defined by the Department of Human Services.

[(c) REACH child care vouchers: REACH child care vouchers may be used to fund child care when the participant's own sources or federally-matched child care are not available or not sufficient to pay for the cost of child care. Vouchers will be issued to the participant, who will then give the voucher to the child care provider as payment of the cost of child care. The provider redeems the voucher at the county welfare agency or Division of Youth and Family Services. REACH child care vouchers will be available effective October 1, 1987 for the initial three counties. In other counties, REACH vouchers will be available as the county begins operation of the REACH program, as defined by the Department of Human Services.

1. REACH vouchers are available for care of an infant, toddler, pre-school child or school-aged child in various types of arrangements, including full day care and after-school care. The value of the vouchers is determined by the Department of Human Services.

2. A maximum of 52 weeks of child care per participant will be funded by REACH child care vouchers.

i. The 52-week period will start with the first week for which the participant uses a voucher to pay for child care.

ii. Any week for which the participant does not use the voucher will not be counted toward the 52-week period.

iii. If a participant becomes ineligible for AFDC for a reason other than employment and returns to the assistance rolls within one year of the effective date of termination of AFDC, payment of child care by REACH voucher will continue for the number of weeks remaining in the original 52-week period.

3. Post-assistance child care: Eligibility for the REACH voucher will continue after the participant becomes ineligible for AFDC due to income from employment. Payment for child care by REACH voucher will continue if needed for the number of weeks remaining in the 52-week period. Before AFDC is terminated, the case manager will evaluate the need for post-assistance child care.

4. Case manager responsibilities: The case manager will be responsible for certifying the need for child care and issuing approval to receive voucher payment for such care. In addition, since REACH child care vouchers will be the payor of last resort, before vouchers may be issued, a REACH participant will be required to certify, and the case manager required to verify, that no other family members or other resources for child care are available. The welfare of the children and the quality of their child care should be considered.

5. If the total amount of the vouchers for a given period is insufficient to secure appropriate and agreed upon child care necessary to support participation in REACH, then the participant shall be under no obligation to participate in REACH for the time period that such child care is unavailable.]

(c) Types of care and payments: REACH child care payments are available for care of an infant, toddler, preschool child, school-aged child or child with special needs in various types of arrangements, including full and part-time day care and care before and after school. The rates for REACH child care payments are available from the Department of Human Services, CN 700, Trenton, NJ 08625, or the local Division of Youth and Family Services District Office or the county welfare agency.

1. "Special needs" is defined as serious physicial, emotional, mental or cognitive conditions for which day care is recommended as part of a treatment plan.

i. Records of children referred because of special needs situations shall contain documentation of the result of a standardized developmental or psychological test given by a certified individual, written verification by a physician identifying and delineating the special needs of the child, or documentation by the case manager, approved by the case management supervisor, attesting to a child's special social or emotional needs.

2. Care during summers and school vacations: Payment for care of school-aged children, which is normally limited to part-time or after school care during the school year, shall be made at the full-day rates during summer vacations and recognized vacations and holidays during the school year, for example, Christmas, spring vacation, and so forth.

3. Costs of transportation: Payment in addition to the REACH training-related expenses allotment may be made for the cost of transportation of a child to and from a day care center in accordance with N.J.A.C. 10:82-5.3(d)3.

(d) Duration of payment: REACH child care benefits are routinely available to participants for one year of participation in a REACH employment-directed activity and for one year post employment. One year is defined as 52 consecutive weeks.

1. The one year period of participation in a REACH employment-directed activity will start with the first week in which an individual participates in any employment-directed activity set forth at N.J.A.C. 10:81-14.2. Participation in orientation, individual evaluation and assessment do not count toward this one year period.

2. The one year post-employment period will start with the first week in which a participant is employed. For employed participants receiving AFDC, State REACH funds will be used for any month in which the cost of child care exceeds $160.00 for any child (see (g)3 below). For employed participants no longer receiving AFDC, State REACH funds will be used for the entire cost of child care.

3. If an employed participant becomes ineligible for AFDC for a reason other than employment, payment of child care through the REACH program will continue for the number of weeks remaining in the 52-week period that the participant is employed.

4. Post-assistance child care: Eligibility for payment of child care through the REACH program will continue after a participant becomes ineligible for AFDC due to income from employment. Payment for child

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care will continue if needed for the number of weeks remaining in the 52-week period. Before AFDC is terminated, the case manager will evaluate the need for post-assistance child care.

i. Additional eligibility requirements: In addition to demonstrating need, in order to be eligible for post-assistance child care the participant must:

(1) Sign a REACH Agreement covering the period the child care is to be provided;

(2) Participate in post-AFDC activities set forth in the Agreement; and

(3) Comply with REACH program requirements to report participation in post-AFDC activities.

ii. If an employed participant loses employment and returns to the assistance rolls within the one year post-employment period, payment of child care through the REACH program will continue for the weeks remaining in the 52-week period.

5. Exceptions and waiver: Exceptions to the one year limit on REACH child care payment for participation in a REACH employment-directed activity may be allowed in exceptional circumstances and must be approved through waiver procedures determined by the Department of Human Services.

i. At the end of the first year of REACH participation in an employment-directed activity, the case management shall complete an evaluation of participation and support services to determine if the activity will continue and if the participant's child care benefits should be continued to support participation in that activity. If extended child care payments appear to be needed, the case manager may initiate the waiver process.

ii. Waiver: The case manager must secure supervisory approval to initiate the waiver process. Once approved, the case manager will prepare a written waiver. The waiver will list the activity, child care needed, the expected duration of both the activity and extended child care payments, and will contain an evaluation by the case manager of the circumstances warranting the extended child care payments.

iii. Case manager responsibilities upon disposition of waiver: If the waiver is approved, child care payments shall be issued as authorized in the waiver. The case manager shall review and evaluate the participant's progress and circumstances at three month intervals to determine the appropriateness of continued child care benefits. If the waiver is not approved, the case manager will advise the participant and make any adjustments or changes to participation and the REACH Agreement.

iv. Child care payments shall not be extended beyond the 52-week post employment period.

(e) Provider requirements: REACH payments to providers of child care are available according to the following conditions:

1. Child care centers: To qualify for REACH child care payments, a child care center or program shall meet one of the following:

i. Centers providing care for pre-school children shall be licensed by DYFS, Bureau of Licensing or shall have a letter of exemption from DYFS, Bureau of Licensing; or shall be operated under the auspices of the public school system;

ii. Child care programs for school-age children shall meet local occupancy building and fire codes and shall have satisfactorily completed an inspection using the DHS' "Check List of Standards for School Age Child Care Progams"; or shall be operated under the auspices of the public school system; or

iii. Summer camps shall be approved by the New Jersey Department of Health. (See N.J.A.C. 8:25)

2. Family day care providers—registered homes: All family day care providers who serve three or more nonsibling children must be registered pursuant to the Family Day Care Provider Registration Act (see N.J.A.C. 10:126) in order to qualify for payment through the REACH program for child care provided to children of REACH participants.

i. Family day care providers of one or two children may choose to register under the Family Day Care Provider Registration Act or to provide family day care as an approved home.

ii. Payment shall be made to the provider who has secured a temporary registration certificate, as defined by rules promulgated under the Family Day Care Provider Registration Act.

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

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

ii. As an approved home, providers may receive payment for a maximum of two nonsibling children or of all the sibling children of one family.

4. Providers of in-home care: Providers of in-home care, that is, care of a REACH participant's children in the participant's own home, shall be evaluated using the "REACH In-Home Care Checklist", in order to qualify for payment through the REACH program.

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

(f) Payment methods: The two methods in the REACH program for issuing payments for child care are vendor payments to the provider and direct payments to the participant.

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

i. To be eligible for vendor payments, each participant scheduled to participate in training or an educational activity shall complete a Form PA-59A, Request for Voluntary Restricted Payment, authorizing the case management agency to make payment directly to the provider.

2. Direct payment to participant: Payment for child care provided may be made directly to the participant when the provider of child care is an unregistered household member. As with the child care voucher, payment is issued upon verification of attendance and care provided.

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

4. Special requirements for employed participants: The Social Security Act requires that for any employed AFDC recipient, the actual cost of child care up to and including $160.00 per month per child shall be disregarded from the participant's earnings, before that income is used to compute the monthly AFDC grant. Therefore, an employed participant shall pay the first $160.00 in child care directly to the provider. The balance of the REACH payment for child care provided will be issued as a vendor payment to the provider or as a direct payment to the participant, in accordance with (f)1 and 2 above. However, any amount in excess of $160.00 per month per child that is paid directly to the participant is income to the AFDC family and shall be used to compute the AFDC grant.

i. When a participant begins employment and is deemed prospectively eligible for AFDC, REACH child care payments may be continued for the first and second months of employment to assist transition of the family from prospective to retrospective budgeting. Because the participant will not have paid for child care during those months, the child care disregard of earnings will not be applied to AFDC grants for the third and fourth months of employment.

ii. For participants in Work Supplementation, the child care disregard and payment of child care shall be handled in accordance with N.J.A.C. 10:81-14.11(g) and 14.21(d).

(g) Case manager responsibilities: The case manager shall be responsible for assessing and determining the need for child care and authorizing issuance of REACH child care payments. Since the REACH program will be the payor of last resort, before payments may be issued, a REACH participant shall be required to certify that no other acceptable family members or other resources for child care that are in the best interest of the child are available. The case manager shall document this certification in the REACH case record. The welfare of the children and the quality of their care shall be considered.

1. Before the one year period of post-employment child care expires, the case manager shall advise the participant, the provider and the lead

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child care entity of the expiration date of REACH child care payments and that the participant shall be responsible for payment of the entire cost of child care. The case manager, with the assistance of the lead child care entity, will work with the participant to ease the transition to payment of child care not subsidized by REACH.

(h) Lead child care entity responsibilities: The lead child care entity will assist the case manager and participant in obtaining appropriate child care based on the parent's and child's needs; will assist in identifying child care resources available for a participant during orientation, assessment, participation in employment-directed activities and employment; and shall verify and document that the child care arrangements meet the criteria as specified in (e) and (f) above.

(i) If the total amount of the REACH child care payment for a given period is insufficient to secure appropriate and agreed upon child care necessary to support participation in REACH, then the participant shall be under no obligation to participate in REACH for the time period that such child care is unavailable.

10:81-14.19 REACH support services: transportation and related expenses

(a) (No change.)

(b) Transportation: Reimbursement for costs of transportation that are reasonably necessary for **attendance at orientation and assessment,** participation in REACH job search[, work supplementation] and community work experience programs [is available] **shall be provided** for the duration of participation in such **activities and** programs. **The $75.00 work expense disregard of earnings in work supplementation covers the cost of transportation in WSP.**

(c) (No change.)

(d) **Amounts of allowances: The allowance for expenses related to training and transportation is** [Up to] $6.00 per day of participation in a REACH activity [may be provided for expenses related to training and transportation].

1. If actual [training-related expenses exceed $30.00 in a week,] **transportation costs or training-related expenses exceed the limits in (d)1i and ii below,** a higher amount to cover actual costs may be provided[, but only if expenses are required for training, for example, a uniform required by an employer as a condition of accepting an on-the-job training position]. Such amounts shall be approved by the supervisor of the case manager **and documented in the REACH case record.**

i. If actual costs of transportation for orientation or assessment exceed $6.00 per day, or for job search or community work experience programs exceed $30.00 in a week, a higher amount may be provided to cover actual expenses for transportation by the most reasonably available means. In determining reasonably available means, the case manager shall consider the accessibility of available public and private transportation to the participant's home and site of the orientation and assessment.

ii. If actual training-related expenses exceed $30.00 in a week, a higher amount to cover actual costs may be provided, but only if expenses are required for training, for example, a uniform required by an employer as a condition of accepting an on-the-job training position.

2. (No change.)

(e) Vendor payments for transportation and training-related expenses: If a county has arranged for transportation for REACH participants by means other than established public transportation, the participant may request a voluntary restricted payment by signing Form PA-59A, Request for Voluntary Restricted Payment, to use this source of transportation and direct that his or her transportation or training-related expense allowance be paid directly to the county or provider of transportation as a vendor payment. The participant may discontinue the voluntary restricted payment by signing Form PA-59B, Request to Discontinue Voluntary Restricted Payment (see N.J.A.C. 10:81-4.5).

1. Example: A rural county with minimum public transportation has contracted with a vendor to provide transportation in a specific geographic area for REACH participants from their homes to training and job search sites. To offset the cost of this transportation and to ensure availability of transportation, the participant would request a voluntary restricted transportation/TRE payment, so that the $6.00 per day transportation allowance would be paid directly to this vendor. Once the participant completed the activity in the geographic area served by this vendor, he or she would discontinue the voluntary restricted payment.

10:81-14.20 REACH support services: medical assistance

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

(c) Additional requirements: The following additional requirements apply to the 12-month Medicaid extension:

1.-3. (No change.)

4. Periodic reporting: The Department of Human Services may require that the individual or family periodically report certain information, such as health insurance coverage from an employer or absent parent, earnings and continued employment, to ensure that the individual or family continues to be eligible for Medicaid. Eligibility for the 12-month Medicaid extension will be discontinued if the individual or family does not comply with such reporting requirements.

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

10:81-14.21 Need and amount of assistance in REACH

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

(d) Disregard of earned income in REACH Work Supplementation Program: In determining the calculated earned income for a WSP participant, from the total gross earnings deduct the WSP disregards as set forth at N.J.A.C. 10:81-14.11.

1. The CWA shall disregard from the earned income of the WSP participant the first $75.00 of such earnings.

2. The CWA shall disregard the first $30.00 from the WSP participant's remaining earned income. After that disregard is taken, an additional one-third of the remaining earned income shall be disregarded. The $30.00 and one-third disregards are applicable up to a maximum of nine months.

3. The remaining calculated earned income shall be deducted from the maximum AFDC assistance payment for the family unit to determine the WSP participant's residual grant.

10:81-14.23 County planning

(a) (No change.)

(b) Minimum county requirements: Each county is required to establish a REACH Planning Committee, **appointed in accordance with established county procedures and designated as a standing committee of the County Human Services Advisory Council,** and to submit a REACH County program implementation plan **in accordance with deadlines established by the Department of Human Services for each county.**

1. REACH Planning Committee: The purpose of the county REACH Planning Committee is to determine the most effective way to plan and organize services for REACH participants in that county.

i. Required membership: The planning committee shall, at a minimum, include the following as voting members: the Director of the County Welfare Agency, the Director of the Private Industry Council or Service Delivery Area established pursuant to the Job Training Partnership Act, the Chairperson or a designee of the County Human Services Advisory Council, a representative of the Board of Chosen Freeholders or County Executive or a designee. In addition, the planning committee shall include as non-voting ex officio members representatives of the following agencies: the Division of Public Welfare in the Department of Human Services, the Division of Employment Services in the Department of Labor, the Bureau of Adult Education in the Department of Education, **the Division of Housing and Development in the Department of Community Affairs,** and the county representative of the Department of Human Services.

ii. Additional members: The planning committee may also include as voting members **the following: a representative of the local community college; a representative of the county vocational school; a representative of private business or industry in the county; two or more recipients of Aid to Families with Dependent Children residing in the county, whose costs of participation in the planning committee will be reimbursed by the REACH program, in accordance with procedures established by the Division of Public Welfare; county residents who represent the nonprofit and religious communities in the county; representatives of the lead REACH child care agency or other providers of child care in the county; and** other individuals and/or organizations that the county believes would provide a valuable contribution to the REACH program planning and implementation process.

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2. (No change.)

(c) Planning and program management: Additional requirements for counties will be specified by the Department of Human Services for REACH planning and program management as follows:

1. REACH Program Coordinator: The Department will contract with the county governing body to provide an amount of funding for REACH program planning and implementation activities, with no county match required. Primarily these funds must be applied toward support of a full time REACH Program Coordinator who will be responsible for centrally managing implementation of the program and coordinating the planning process to the extent possible. Demonstration that a REACH Program Coordinator has been designated will be required for **final** approval of the REACH county program implementation plan (see (b)2iv above).

2. To assure **that** REACH services are productive in terms of reducing welfare dependency and increasing the employment and earnings of the REACH participants, the Department of Human Services will establish performance standards for the REACH program. [Such standards shall be stipulated in the contract between the Department of Human Services and the REACH counties.]

i. Payments of REACH monies to a county [will] **may** be linked to achievement of these performance standards. Bonuses for exceeding standards and deferral of payment for failure to meet mutually agreed-upon goals will be proposed for county review and comment prior to adoption.

ii. (No change.)

(d) Submittal and approval of REACH county implementation plan: Upon completion of the REACH county implementation plan by the county, the following submittal and approval process shall occur[.]:

1. County process: At the county, the plan shall be submitted [in sequence] to the Private Industry Council/Service Delivery Area (PIC/SDA), County Welfare Agency (CWA), and County Human Services Advisory Council (CHSAC) for review and endorsement of the plans as consistent with respective agency goals, objectives, and service delivery plans. Signatures of the PIC/SDA Director, CWA Director, and CHSAC Chairperson are required as evidence of endorsement. The plan shall be submitted to the county governing body for review and approval, with signature of the County Freeholder Director or County Executive and freeholder resolution required as evidence of approval. The county shall provide for public input on the plan in accordance with existing county public input procedures, with confirmation of input received included in the plan. The REACH County Plan with required endorsements and approvals and required number of copies shall be submitted to the Department of Human Services in accordance with deadlines established by the Department for each county.

2. (No change.)

3. Department of Human Services process: The review and approval process set forth below will begin upon receipt of the REACH county implementation plan by the Department of Human Services.

i. (No change.)

ii. [Within 14 days, t]The Committee will determine if the REACH County Plan is incomplete or does not contain adequate information for approval. For any plan determined incomplete or inadequate, the Committee may request additional information from the county, conditionally approve the plan, or formally return the plan to the county with specific instructions.

iii.-iv. (No change.)

APPENDIX A
REACH HOME APPROVAL CHECKLIST

This checklist shall be used by agency conducting evaluation at a preliminary visit to home of new caregiver applicant.

Agency conducting evaluation _____

Evaluator _____ Date of Visit _____

Applicant _____

Address _____

City _____ State _____ Zip Code _____

County _____ Telephone _____

Applicant's Social Security Number _____

For office use only:

Approved: _____

Denied: _____

	(Children's Name)	(Date of Birth)	(Sex)	(Case Numbers)
Referred by _____ (REACH Participant) For				

Language Spoken In Home _____ Case Manager _____

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A. INSPECTION CHECKLIST

Mark each item: C = compliance NC = Non-compliance NA = Not applicable

Physical environment	Compliance	Comments
1. Adequate floor space		
2. Minimum temperature 65°F		
3. Surfaces clean, in good repair		
4. Adequate ventilation		
5. Warm and cold running water available		
6. Working indoor toilets accessible		
7. Indoor and outdoor equipment sturdy, safe non-toxic, easy to clean, free of hazards		
8. Sufficient furniture and equipment for children		be provided by REACH program YES/NO
9. Working telephone in home		
10. If no working telephone in home		
i. Provider demonstrates inability to afford telephone		
ii. If able to afford telephone, provider agrees to install in 90 days		
iii. Working telephone accessible within 5 minutes at all times when enrolled children present		
II. Fire Safety		
1. Working smoke detector on each floor		
2. Lockable interior doors can be unlocked from outside		
3. Heating/cooling devices vented, protected by guards, kept clear of combustible materials		
4. Woodburning stoves have barriers, are not accessible to children		
5. Portable liquid fuel-burning appliances are not used when children are in care		
6. Stairways, hallways, exits unobstructed		
7. Electrical cords in good condition		
III. General Safety		
1. Home and furnishings present no hazard		
2. All toxic substances out of reach		
3. Non-permanent barriers on stairs, ramps, balconies, porches, elevated play areas		To be provided by REACH Program YES/NO
4. Electrical outlets accessible to children are covered		To be provided by REACH program YES/NO
5. Working flashlight available		To be provided by REACH Program YES/NO
IV. Outdoor Space		
1. Adequate, safe outdoor play area adjacent to or within walking distance of home		
V. Accidents, Injuries and Emergencies		
1. First aid supplies accessible		To be provided by REACH Program YES/NO
VI. Sanitation		
1. Individual towels and washcloths or disposable towels and washcloths		

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Physical environment	Compliance	Comments
VII. **Program**		
1. Safe toys, play equipment, creative materials for ages, interests, and number of children		
2. Materials for preschoolers include:		
i. Dramatic play/language development		
ii. Visual/small muscle development		
iii. Auditory development		
iv. Creative expression		
v. Large muscle development		
VIII. **Rest and sleep**		
1. Daily rest/sleep for each child in clean, safe area according to needs		
2. Children under 18 months/non-walkers sleep in crib, playpen, cot, bed with rails, or floor mat 1" thick		To be provided by REACH Program YES/NO
3. Crib and playpen slats no more than 2 3/8 apart		
4. Drinking water available?		

B. STANDARD INTERVIEW PROCEDURE

Name	Relationship to Caregiver	Sex	Date of Birth

Other Children Living in Home

Name	Relationship to Caregiver	Sex	Date of Birth

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QUESTION	RESPONSE
1. Are you over 18 years of age?	
2. What other adults and/or children will be in your home during the time the REACH children are in your care? What type of contact will they have with the REACH children?	
3. How long can you provide the day care? (Days/weeks/months).	
4. Full time?/Part time?	
5. Holidays?/Summers?	
6. Have you ever been convicted of a crime? If yes, explain. (Evidence of conviction of a crime, in itself, shall not automatically preclude an individual from serving as a caregiver. Such determination shall be made on a case by case basis.)	
7. Do you have any illnesses or medical conditions that would prevent you from providing child care services?	
8. Based on compliance with the policy outlined above, are you willing to provide day care to the child/children of the REACH client?	
9. Have you had other experiences in working with children? Describe.	
10. What methods of discipline will you use with the REACH child in your care?	
11. How will you handle medical emergencies if you or the REACH child should get sick during the hours child care is being provided?	
12. Who, other than the REACH child's parent, will be able to pick-up the child at the end of the day? Do you have a telephone number in order to contact this person?	
13. What arrangements have been made to provide nutritious meals to the REACH child/children in your care?	

C. OBSERVATIONS

1. Describe the applicant's home in relation to assessing their home management skills.

_____

_____

_____

_____

2. Have you observed any condition or situation that would cause you to deny this applicant?
If yes, explain: _____

_____

_____

_____

_____

3. If applicant is being approved for child care, has emergency card been provided?

_____

_____

_____

For evaluator only: (check)

Home Approved _____

Home Denied _____ Reason _____

Date: _____ Evaluator's signature _____

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(a)

DIVISION OF PUBLIC WELFARE

General Assistance Manual
Unearned Income
Proposed Amendment: N.J.A.C. 10:85-3.3

Authorized By: Drew Altman, Commissioner, Department of Human Services.
Authority: N.J.S.A. 44:8-111(d).
Proposal Number: PRN 1988-453.

Submit comments by October 6, 1988 to:
Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The General Assistance rules on income-in-kind at N.J.A.C. 10:85-3.3 are being proposed for amendment to exempt all contributions from organizations and exempt a part of shelter contributions from individuals who are legally obligated and have an elevated capacity to support. A duplicative reference at N.J.A.C. 10:85-3.3(f)5 is proposed for deletion.

Social Impact

It is expected that the proposed amendment will increase the probability that organizations and individuals will be willing to make contributions to General Assistance recipients. It is believed that the current rules serve to retard the flow of such contributions because both the contributors and the recipients are aware that such contributions will cause deductions from assistance grants. It is to be noted that the proposed amendment will not produce any change in the determination of the capacity of legally responsible relatives to provide support.

Economic Impact

A positive economic impact may be expected, since the proposed amendment will allow General Assistance recipients to take advantage of various charitable contributions which would, without significant cost to the public treasury, allow recipients to enjoy an improved standard of living. The proposed amendment should also help some recipients to avoid homelessness.

Regulatory Flexibility Statement

This proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This rulemaking imposes no requirements on small businesses; therefore, a regulatory flexibility analysis is not required.

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

10:85-3.3 Financial eligibility
(a)-(d) (No change.)
(e) Rules concerning unearned income are as follows:
1.-3. (No change.)
[4. Income-in-kind: Contributions provided in the form of goods or services rather than cash are to be considered in accordance with the provisions below. Cash contributions made for or on behalf of a client and which if paid to the client directly would be considered as countable income are to be treated as though they were actually received by the client. Such payments are not recognized as in-kind income.
i. Shelter: When shelter is provided without charge to an applicant/recipient but is not part of his/her wages as described in N.J.A.C. 10:85-3.3(c)3, it shall be recognized as income-in-kind. An amount equal to 25 percent of the applicable allowance standard shall be deducted as unearned income. When utilities are included, the amount shall be 30 percent of the allowance standard.
ii. Hospital services: When grants are being continued under the provisions for shelter continuity (see N.J.A.C. 10:85-3.3(f)5), an in-kind income item for hospital services shall be used in grant computations to accommodate for the absence of the individual from his/her home. The amount for employable persons is $17.00 monthly; for unemployable persons, $25.00 monthly.
iii. Other items: No deductions will be made for other in-kind items, except as stated in (c) above or unless they are contributed by an LRR in accordance with N.J.A.C. 10:85-9.5. However, cash contributions from whatever source are countable income, except for occasional gifts.]
4. Income-in-kind: Income or benefits received in the form of goods, services or via third party payments, rather than cash, are to be treated in accordance with the provisions below. Cash contributions, however, made for or on behalf of a client, are to be treated as countable unearned income, except those income items specifically identified in (e)5 below.
i. Shelter/utilities: When shelter and/or utilities are provided without charge or to a third party by an individual who is under an obligation to make the contribution, it shall be recognized as income-in-kind. Deduct 25 percent of the applicable allowance standard for shelter only and 30 percent when utilities are included. When shelter and/or utilities are provided without charge or to a third party by an agency or organization or by an individual who is not under an obligation to make contribution, the value of such shelter and/or utilities shall not be considered in the determination of eligibility or in the calculation of grants of assistance.
ii. Hospital services: When grants are being continued under the provisions for shelter continuity (see (f)5 below), an in-kind income item for hospital services shall be used in grant computations to accommodate for the absence of the individual from his or her home. The amount for employable persons is $17.00 monthly; for unemployable persons, $25.00 monthly.
iii. Other items: No deductions will be made for other income items, except for wages as described in (c) above and contributions by an LRR in accordance with N.J.A.C. 10:85-9.5.
5. (No change.)
(f) Assistance allowance standards are as follows:
1.-4. (No change.)
5. Shelter continuity: When a person who had been living alone and is otherwise eligible for General Assistance is hospitalized for more than 30 days, grants of assistance may be continued for up to 60 additional days for the purpose of retaining shelter to which the person can return. [See N.J.A.C. 10:85-3.3(e)4ii for appropriate deduction for in-kind income.]
(g) (No change.)

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(b)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Methodology for Computing Energy Cost Savings
Proposed New Rules: N.J.A.C. 12A:60

Authorized By: Borden R. Putnam, Commissioner, Department of Commerce, Energy and Economic Development.
Authority: N.J.S.A. 52:27F-11g and q.
Proposal Number: PRN 1988-425.

Submit comments by October 6, 1988 to:
Edward J. Linky, Esq.
Chief Regulatory Officer
Division of Energy Planning and Conservation
101 Commerce Street
Newark, New Jersey 07102

The agency proposal follows:

Summary

The rules concerning methodology for computing energy cost savings, N.J.A.C. 14A:12, expired on February 7, 1988, pursuant to Executive Order No. 66(1978). The Department proposes to renew the methodology through the proposed new rules, N.J.A.C. 12A:60, which substantially retain the provisions of the former rules.

These proposed new rules differ from the prior rules due to changes necessary to make the methodology consistent with changes to the

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procurement laws covering the two groups which are the intended beneficiaries of the energy cost savings methodology: municipal governments and local boards of education. Changes to the Local Public Contracts Law, N.J.S.A. 40:11-1 et seq., and the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., provide for a definition of "extraordinary unspecifiable services". The inclusion of such a definition to these rules achieves consistency and makes the rules more easily understood. The inclusion of a definition of "fair market value" is necessary to provide a common understanding of one key component of energy savings contracts which allow for the user to purchase the installed equipment at the end of the contract term. Finally, safeguards are proposed at N.J.A.C. 12A:60-1.5(a)18i which will protect local government units and school boards from overly optimistic energy savings projections by certain firms.

The proposed new rules provide entities subject to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. and the Public School Contracts Law, N.J.S.A. 40:11-1 et seq., with the option to obtain energy conserving equipment and services on shared-savings and guaranteed-savings bases through contracts of greater than one year in duration.

In a shared-savings arrangement, an energy service firm ("firm") purchases, installs and services energy conserving renovations at no capital cost to the user. In return, the user agrees to share with the firm a percentage of whatever energy cost savings result. In a guaranteed-savings arrangement, the firm likewise provides energy conserving renovations to the user. However, the firm warrants that the user will achieve a specific level of energy savings due to the energy conserving renovations.

As a precondition to concluding shared-savings and guaranteed-savings contracts, the proposed rules require a firm to collect certain data necessary for the accurate determination of a user's anticipated energy savings and energy cost (dollar) savings. Collection of the data is accomplished through a preliminary or summary energy audit of the user's premises. By virtue of the summary energy audit, the firm is apprised of the size and type of buildings involved, the nature of the energy consuming equipment, the patterns and types of fuel use, and other factors that may influence energy consumption. On the basis of the summary energy audit, the firm is required to determine the type of energy conserving renovations which are needed and to calculate the energy savings, BTU savings and energy cost savings that such renovations will generate for the user. The user and the firm may conduct a complete energy audit in the pre-contract phase as a substitute for the summary energy audit if they so agree. Either the user or the firm may terminate the arrangement in the pre-contract phase for any reason at no penalty or risk.

Upon conclusion of the summary energy audit, the firm furnishes a written summary energy audit report (or complete energy audit report if a complete energy audit was performed) to the user. In the event that the user finds the report to be satisfactory, the user may accept same in writing and thereafter conclude a shared-savings or guaranteed-savings contract with the firm.

The proposed rules also control certain aspects of the shared-savings and guaranteed-savings contracts. All such contracts must be in writing and are limited to a maximum of 10 years in duration. The rules prohibit a firm from requiring any payment prior to the time when energy savings occur. They also require all payments to be consistent with the amount of energy savings realized. In the contract, the firm must agree to conduct a complete energy audit in the event that it has not done so prior to concluding the contract and to furnish a complete energy audit report to the user. Should the complete energy audit report project energy savings or energy cost savings which are less than or describe proposed energy conserving renovations which are different from those in the summary energy audit report, the user may terminate the contract. In the event that the user terminates the contract for these reasons, the complete energy audit report and certain other materials become the property of the user. The firm is also permitted to terminate the contract at the end of the complete energy audit by relinquishing the complete energy audit report and certain other data. Additionally, the firm must agree to inform the user on a monthly basis of energy consumption, energy savings, BTU savings and energy cost savings occasioned by the energy conserving renovations. The firm is obliged to familiarize the user's personnel with the operation of the renovations and service the energy conserving renovations promptly in the event of breakdown. The rules state that the user is to be given the option to purchase the energy conserving renovations for a specified price or fair market value at any time during the contract period; if the option is not exercised the firm must remove or make provisions for the removal of the energy conserving renovations at the end of the term. In addition, the contract shall address certain situations, specified in the rules, which may affect the energy conserving renovations, or the energy cost savings anticipated therefrom.

Social Impact

The proposed new rules are an attempt to standardize the essential aspects of shared-savings and guaranteed-savings plans, to establish guidelines regarding the furnishing of energy conserving renovations in this manner, and to familiarize potential users with the mechanics of such arrangements. It is expected that the rules will facilitate the use of such plans, make the installation of energy conserving renovations more attractive to users, and augment energy conservation efforts within the State.

The safeguarding provision at N.J.A.C. 12A:60-1.5(a)18i not present in the former rule will have a positive social impact by safeguarding the units of local government from unreal expectations from energy savings and thus the unwise expenditure of tax dollars. The change imposes a certain level of discipline in the area of projecting reasonable estimates of energy savings. To the extent that the credibility of the energy savings industry is enhanced, the broad social public policy objective of saving energy and tax dollars is advanced.

Economic Impact

Energy conserving renovations formerly available to affected entities only through outright purchase are now obtainable through shared-savings and guaranteed-savings plans. Such arrangements are advantageous because they require no capital investment by the user. The cost of the energy conserving renovations is paid from the reduction in the user's expenses which are brought about by the energy conserving renovations. Thus, entities which have capped or otherwise limited budgets, such as municipalities, counties and school districts, will be able to take advantage of energy conservation opportunities unattainable without these rules.

The provisions not appearing in the former rules will have a positive economic impact on the energy savings industry by bolstering the credibility of the industry with units of local government. Overly optimistic estimates of energy savings by the industry can dampen local government's willingness to enter into long term contracts with firms that they may feel have an unfair technical advantage. Employment opportunities by government and the energy savings industry will be lost if the credibility of the industry is not maintained.

Environmental Impact

The proposed new rules will have a positive environmental impact by encouraging units of local government to invest in energy saving equipment. It is well documented that energy conservation adds to overall environmental quality.

Regulatory Flexibility Statement

The proposed new rules minimally impact on small businesses. They do provide an element of protection for units of local government in negotiating with the energy savings industry. The overall effect of the rules is to allow units of local government to more equally negotiate energy savings contracts with the firms marketing energy savings services and equipment.

Full text of the proposal follows.

CHAPTER 60
ENERGY CONSERVATION MEASURES FINANCING

SUBCHAPTER 1. METHODOLOGY FOR COMPUTING ENERGY COST SAVINGS

12A:60-1.1 Scope

(a) This subchapter shall apply to all contracts, the entire price of which is established as a percentage of the resulting energy savings, and which involve the performance of work or services or the furnishing of materials, supplies or equipment for the purpose of conserving energy in the following:

1. Buildings owned or operations conducted by those entities subject to the provision of the Local Public Contracts Law, P.L. 1971, c.198 (N.J.S.A. 40A:11-15), as amended by P.L. 1981, c.551; and

2. Buildings owned by any board of education subject to the provision of N.J.S.A. 18A:18A-5 and 18A:18A-42, as amended by P.L. 1984, c.49.

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12A:60-1.2 Purpose

This subchapter fulfills the requirements of section 15(12) of P.L. 1981, c.551, and of N.J.S.A. 18A:18A-5 and 18A:18A-42 as amended by P.L. 1984, c.49, by establishing a methodology for computing energy cost savings associated with contracts for the furnishing of energy conserving renovations on a shared-savings or guaranteed-savings basis.

12A:60-1.3 Definitions

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

"Annualized price" means the average price of fuel to the user during the base period.

"Base period" means the preceding calendar year, preceding fiscal year, preceding 12-month period, or any consecutive period of time greater than one year specifically agreed upon by the firm and user which serves as the standard for measurement of energy consumption and energy savings due to energy conserving renovations.

"Complete energy audit" means an energy audit conducted in accordance with the requirements of N.J.A.C. 12A:60-1.5(a)3.

"Current cost" means the most recent delivered price of fuel to the user for the period of claimed savings.

"Degree days" means an index for measurement of differences in energy usage due solely to differences in weather conditions and equals the daily difference between 65 degrees fahrenheit and the outdoor mean daily temperature.

"Department" means the New Jersey Department of Commerce, Energy and Economic Development.

"Energy conserving renovation" means any equipment, services, work, materials or supplies, or combination thereof furnished by a firm and agreed upon by the user, for the purpose of conserving energy in buildings owned or operations conducted by a user.

"Energy cost savings" means energy savings converted into dollar savings.

"Energy savings" means the amount in energy units (e.g., BTUs, kilowatts) of energy saved by an energy conserving renovation.

"Extraordinary unspecifiable services" are defined by the Local Public Contracts Law (N.J.S.A. 40A:11-2(7)) as "services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor."

"Fair market value" means the cost of the equipment and/or renovation plus the cost of installation less the depreciation figured over the life of the contract less the cost of the removal.

"Firm" means a vendor engaged in the business of furnishing energy conserving renovations to users through a shared-savings or guaranteed-savings program, and includes all representatives, agents, assignees, and other persons or entities performing activities for or acting on behalf of the vendor.

"Guaranteed-savings" means a program in which a firm guarantees a user a predetermined reduction in energy costs and warrants that the energy costs of the user plus all costs of the energy conserving renovations provided by the firm will be less than or equal to the user's normal energy costs minus the cost reductions provided for in the program.

"Shared-savings" means a program in which the sole source of payment for energy conserving renovations provided by a firm is a predetermined percentage of the energy cost savings of the user resulting from the energy conserving renovations.

"User" means a municipality, county or other entity subject to the provisions of P.L. 1971, c.198 (N.J.S.A. 40A:11-15), as amended by P.L. 1981, c.551, and a board of education subject to the provisions of N.J.S.A. 18A:18A-5 and 18A:18A-42 as amended by P.L. 1984, c.49, which enters into a shared-savings or guaranteed-savings contract with a firm.

12A:60-1.4 Pre-contract phase

(a) In this section, "user" shall mean only municipalities, counties and other entities subject to the provisions of P.L. 1971, c.1978 (N.J.S.A. 40A:11-15), as amended by P.L. 1981, c.551.

(b) Prior to entering into any contract pursuant to N.J.A.C. 12A:60-1.5 for the furnishing of energy conserving renovations, the following requirements shall be fulfilled:

1. Preliminary assessment of the energy consumption patterns and energy conserving renovations needs of the user: The assessment may take the form of a self-audit conducted by the user, an energy audit performed by an independent auditor, an energy audit performed by all firms as a condition of participation in a pre-Request for Bids Conference or an energy audit performed by all firms as part of a pre-qualification procedure conducted in accordance with N.J.S.A. 40A:11-25. Any meetings, discussions or other contact with firms during the preliminary assessment shall conform to the requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. The preliminary assessment shall be tailored to the needs of the user and shall provide the user with the following information:

i. A description of the building(s) audited, including but not limited to level of occupancy, schedule of operating hours, and size in square feet;

ii. An inventory and description of the building components and equipment affecting energy consumption;

iii. Base period energy consumption data. The information shall be presented as follows:

(1) Factors influencing base period energy consumption (for example, degree days, building renovations) shall be identified and the effect of each factor shall be discussed individually; and

(2) Consumption data shall be:

(A) Reported separately for each component type (for example, for electricity, fuel oil, natural gas); and

(B) Stated in energy units, BTU's and dollars;

iv. A description of the suggested energy conserving renovations including all equipment to be installed;

v. A description of the effect of the suggested energy conserving renovations on base period energy consumption and energy costs; and

vi. The projected energy savings, BTU savings and energy costs savings which will be generated by the suggested energy conserving renovations;

2. Bidding: Upon completion of the preliminary assessment specified in (a)1 above, the user shall solicit bids in accordance with the requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

12A:60-1.5 Contract phase

(a) All contracts and modifications thereof subject to the provisions of this chapter shall meet, in addition to the requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. or the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., and rules promulgated thereunder, the minimum requirements stated below. The firm and user may agree to any additional terms or conditions which do not limit, contradict or abrogate the said minimum requirements and which comply with the applicable provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. or the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., and rules promulgated thereunder. At a minimum the contracts and modifications shall:

1. Be reduced to writing;

2. State the term or duration, which shall not exceed 10 years;

3. Require the firm to conduct a complete energy audit and to furnish the user with a complete energy audit report. The complete energy audit report shall include, but not be limited to, the following:

i. A description of the building(s) audited, including but not limited to information concerning level of occupancy, schedule of operating hours, and size in square feet;

ii. An inventory and description of the building components and equipment affecting energy consumption;

iii. Base period consumption data. The information shall be presented as follows:

(1) Factors influencing base period energy consumption (for example, degree days, building operating schedules, equipment installation or removal, building renovations) shall be identified. The effect of each factor shall be both quantified and discussed individually; and

(2) Consumption data shall be:

(A) Reported separately for each component type (for example, for electricity, fuel oil, natural gas); and

(B) Stated in energy units (for example, BTUs, Kwh) and dollars;

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iv. A precise description of the proposed energy conserving renovation, including but not limited to equipment specifications, required modifications to or alteration of the building structure, engineering drawings, installation procedures and schedules, and estimated equipment and installation costs, as appropriate to the particular case;

v. The projected impact of each major energy conserving renovation and of the total program of energy conserving renovations on base period energy consumption and energy costs; and

vi. The projected energy savings, energy units (for example, BTUs, Kwh) savings and energy cost savings which will be generated by the proposed energy conserving renovations;

4. State a specific method of accounting for energy savings due to the energy conserving renovations:

i. The firm shall employ, alone or in combination, as appropriate, the following:

(1) Individual metering: The effect of each energy conserving renovation on energy savings shall be determined, where feasible, by individually metering each energy conserving renovation;

(2) Calculating energy savings: In the event that (a)4i(1) above is not feasible, the effect of each energy conserving renovation on energy savings shall be determined by calculating the amount of energy savings attributable to each energy conserving renovation. Calculations shall be based upon billings from utility or other energy suppliers, readings from energy meters, and/or measurements of energy storage facilities;

(3) Normalization: All energy savings produced by energy conserving renovations which are affected by degree day changes shall be normalized using the following: degree day method; modified degree day method†; bin method†. Energy consumed by energy conserving renovations that are affected by degree day changes or the base period equivalent of such energy conserving renovations, for uses other than space heating or cooling, shall be discounted before comparing energy consumption data using the degree day method, modified degree day method or bin method.

5. Require energy savings determined in (a)4 above to be converted to BTU savings††;

6. Require energy savings determined in (a)4 above to be converted to energy cost savings as follows:

i. Energy cost savings shall be equal to energy savings adjusted by an energy cost factor. The energy cost factor may include but shall not be limited to:

(1) Current cost; or

(2) Annualized price.

ii. The calculations of energy cost savings shall be stated and explained to the user.

7. Contain a provision including or excluding the cost of metering in the cost of energy conserving renovations, in the event that metering is used pursuant to (a)3 or 4 above;

8. Contain a provision incorporating changes in such factors as demand charges, power factors, time-of-day usage, delivery schedules, as appropriate, in the calculation of energy savings, BTU savings, and energy cost savings, in the event that fuel or utility billing is not based on energy usage;

9. Contain a provision including or excluding fuel adjustment clauses, in the event that the current cost method specified in (a)6i(1) above is used in the complete energy audit report to convert energy savings into energy cost savings;

10. Specify the extent to which the firm may have access to and control over the operation of equipment and facilities of the user;

11. Require the firm to familiarize personnel of the user with the operation and functions of the energy conserving renovations;

12. Identify and provide a method of adjustment to account for variations in conditions or situations which may affect energy consumption and energy savings (for example, activities affecting energy conservation undertaken by the user independent of the firm and not caused by the energy conserving renovations, changes in building use or operating schedules, installation or removal of equipment, additions to or alteration of building structure). Appropriate adjustments may be made to base period or current energy consumption data to reflect such conditions or situations;

13. Define acceptable limits for variations in installed equipment performance, operating conditions and health, safety and comfort levels, and require the firm to maintain operations within said limits;

14. Require the firm to provide, at no cost to the user, maintenance, repair and replacement, and emergency services with respect to the energy conserving renovations or portions thereof, in the event that the firm retains ownership of or control over the energy conserving renovations. The firm shall agree to service all problems regarding maintenance, repair and replacement, and emergency services within 24 hours of notification by the user so as to eliminate any interruption in the operation of the user's facilities or essential equipment or any adverse effect on health, safety and comfort;

15. State the payment for energy savings generated by the energy conserving renovations shall be required of the user only in the following circumstances and that no other payment shall be required:

i. The energy savings have actually occurred. No payment shall be required of the user until the energy conserving renovations have generated energy savings for the user; and

ii. The payment required is consistent with the energy savings generated. No payment shall be required of the user which is disproportionate to the energy savings generated by the energy conserving renovations;

16. Contain indemnification, insurance or other provisions regarding payment or reimbursement for injury to persons, or damage or loss of property, as the parties deem appropriate;

17. Specify that the firm shall furnish monthly summaries of energy consumption, energy savings, BTU savings and energy cost savings to the user. Calculations shall be made in accordance with (a)4, 5, and 6 above;

18. State the grounds for termination of the contract by the user or the firm prior to the conclusion of the term. The following grounds shall be specifically included:

i. If the savings projected in the original proposal is significantly greater than the savings indicated by the engineering study the user shall have the option of terminating the contract and shall not be liable for any costs or expenses incurred by the firm.

ii. Termination by buyout: The user shall be permitted to terminate the contract at the user's election at any time during the term of the contract by purchasing the energy conserving renovation in accordance with a schedule of prices or, if no price schedule is established, fair market value. The right to termination by buyout and the schedule of prices shall be expressly stated in the contract.

19. Require the firm to remove or dispose of the energy conserving renovations at the conclusion of the contract term unless the user exercises an option to purchase, pursuant to (a)18ii above; and

20. Specify the manner in which disputes are to be resolved.

†The Department adopts the energy estimating methods of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., contained in ASHRAE Systems Volume, Section IV, Chapter 43 (1980), with respect to the normalization of energy savings by the degree day method, modified degree day method, and bin method.

Copies of the document may be obtained from the sponsor at: ASHRAE, Inc., 1971 Tullie Circle, NE, Atlanta, Georgia 30329.

††The Department adopts the conversion factors of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., contained in ASHRAE Systems Volume, Section IV, Chapter 47 (1980), with respect to the conversion of energy savings to BTU savings.

12A:60-1.6 Technical assistance

The Department shall be available to provide technical assistance to users in connection with matters included in this subchapter.

12A:60-1.7 Extraordinary unspecifiable services bidding exception

N.J.S.A. 40A:11-5(1)(a) permits local contracting units to avoid competitive bidding for extraordinary unspecifiable services. The application of this exception to extraordinary unspecifiable services shall be construed narrowly in favor of open competitive bidding where possible.

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LAW AND PUBLIC SAFETY

(a)

BOARD OF PHYSICAL THERAPY

Unlawful Practices; Fee Splitting; Kickbacks

Pre-Proposed New Rule: N.J.A.C. 13:39A-3.2

Authorized By: Board of Physical Therapy, Patricia E. Stuart, Executive Director.

Authority: N.J.S.A. 45:1-32, 45:1-21 and 45:9-37.18(f).

Pre-Proposal Number: PPR 1988-13.

Take notice that the Board of Physical Therapy, pursuant to its authority at N.J.S.A. 45:1-32, 1-21 and 9-37.18(f), will receive preliminary comments with respect to the initiation of subsequent rulemaking proceedings relating to unlawful practices by licensees; fee splitting; and kickback prohibition. In addition to prohibiting traditional kickback arrangements by physical therapists, this pre-proposal identifies and delineates additional fee splitting arrangements which the Board deems to constitute professional misconduct.

The Board, through this pre-proposed rule, is seeking to address what it perceives as a growing trend in the health care system of having physical therapy services delivered by therapists who are in the employ of, or otherwise indebted to, persons who possess the capacity to authorize the initiation of treatment. Such arrangements, the Board believes, permit the referrers to derive a profit from physical therapy services without allowing consumers to know where their health care dollar is going. In addition, in such situations it is impossible to ascertain the actual cost of the physical therapy services. Employment arrangements wherein the licensee is paid for his or her services by the referring practitioner would be prohibited based upon the Board's belief that such arrangements lead to a compromise of the physical therapist's professional judgment and denial of the patient's freedom of choice. A patient usually is not in a position to shop for physical therapy services and must rely on both the referrer and the therapist for unbiased recommendations and guidance.

The rule would also make it clear that the physical therapist may not charge a fee for referral, where the therapist himself renders no service.

The pre-proposed rule recognizes that physical therapists may be involved in rendering services to the public in non-therapeutic settings (that is, health spas, exercise classes). Such services, though they may have a beneficial effect on the recipients, are not the equivalent of physical therapy. Accordingly, the Board believes that where the services rendered by a physical therapist are not intended to be therapeutic, they should not be described as physical therapy. Similarly, the physical therapist providing such non-therapeutic services should not represent himself or herself to be a physical therapist in the context, since such representations may lead the public and possibly third party payors to believe that therapy is being offered and received.

Finally, this pre-proposed rule seeks to assure that in whatever setting a physical therapist may choose to work, he or she shall remain free to exercise his or her own professional judgment in determining when physical therapy shall be undertaken, when it should be continued and when it should be stopped. Accordingly, the physical therapist is put on notice that he or she will be held responsible for the rendition of unnecessary services, even if such services are rendered at the direction of a referrer.

The Board believes that medicine and physical therapy are two distinct professional services and neither should be compromised because of a financial arrangement in which the physical therapist is dependent on the referring practitioner and/or the referring practitioner is locked into the physical therapist.

Comments from all interested parties are welcome. The Board will discuss the pre-proposed new rule at a **public hearing** on Thursday, October 13, 1988 at 10:00 A.M. in the Bureau of Securities' Hearing Room, 8th Floor, Gateway Two, Newark, New Jersey.

Interested persons who wish to provide comment at the public hearing should contact, by October 6, 1988:

Patricia E. Stuart, Executive Director
Board of Physical Therapy
1100 Raymond Boulevard, Room 513
Newark, New Jersey 07102
(201) 648-4033

Interested persons may submit written comments, suggestions or ideas regarding the pre-proposed new rule to the Executive Director, at the address set forth in the preceding paragraph, by October 13, 1988.

Should sufficient interest be demonstrated, an additional opportunity to be heard may be scheduled.

Full text of the pre-proposed new rule follows:

13:39A-3.2 Violative acts; professional misconduct

(a) The following acts or practices shall be deemed to be in violation of N.J.S.A. 45:9-37.21 and professional misconduct pursuant to N.J.S.A. 45:1-21(d):

1. Providing any payment or any other form of remuneration to any health care professional authorized to direct the initiation of physical therapy treatment for a referral of any specific patient or any number of patients.

2. Accepting, or agreeing to accept, any payment or other form of remuneration for the referral of any specific patient or any number of patients from any person licensed as a health care professional authorized to direct the initiation of physical therapy treatment.

3. Accepting, or agreeing to accept, from any person, firm or corporation any fee, commission, rebate, gift or other form of remuneration for the prescribing, ordering, or promoting the sale of a device, appliance or other item or service; except that nothing in this section shall preclude a licensed physical therapist from accepting a product or commodity which can be used as a sample by patients, provided that the physical therapist does not charge the patient for items so obtained.

4. Sharing directly or indirectly, in the form of wages, fees for service or other remuneration for the provision of physical therapy services, in any fees charged to the patient or third party payor which are derived from the rendition of physical therapy service through a business entity in which the referring practitioner or any member of his or her family derives a benefit, monetary or otherwise, from the referral; unless the physical therapist is a member of the referrer's family;

5. Accepting employment from a corporation or other business entity, or an unlicensed individual or group of individuals other than those which have been granted legislative authorization to provide physical therapy in such a format, (that is, hospitals or home health agencies) to practice physical therapy on their behalf; unless such employment is intended to provide physical therapy to other employees as part of the business entity's benefits program and the services are not offered to the general public.

6. Charging any patient a fee for making referral to a physician or other health care professional authorized to direct the initiation of physical therapy treatment, for the purpose of obtaining clearance for physical therapy. Nothing in this section shall preclude a physical therapist from charging a patient for a physical therapy examination conducted prior to referral.

7. Using, or permitting the use, of his or her professional education, degree, title or license in connection with the rendition of services which are not designed to be therapeutic or to represent his or her services as "physical therapy," or to permit his or her services to be represented as "physical therapy" where those services are not intended to be therapeutic.

8. Rendering treatment when, in the exercise of his or her professional judgment, the physical therapist may deem such treatment to be unnecessary, even if he or she has received direction from a physician or other health care professional authorized to direct the initiation of physical therapy treatment.

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(a)

BOARD OF PHYSICAL THERAPY

Educational Credentials for License Applicants

Proposed Amendment: N.J.A.C. 13:39A-5.1

Authorized By: Thomas K. Charles, Chairperson, Board of Physical Therapy.

Authority: N.J.S.A. 45:9-37.18(f) and 45:9-37.23.

Proposal Number: PRN 1988-462.

Submit comments by October 6, 1988 to:
Patricia E. Stuart, Executive Director
Board of Physical Therapy, Room 513
1100 Raymond Boulevard
Newark, New Jersey 07102

Summary

N.J.S.A. 45:9-37.23 states in pertinent part:

"An applicant for licensure who is a graduate of a foreign school of physical therapy shall furnish evidence satisfactory to the board that:

a. He has completed a course of study in physical therapy which is *substantially equivalent* to that provided in an accredited program as described in section 12a. of this act . . ." (Emphasis added.)

N.J.S.A. 45:9-37.22, the "section 12a" referred to above, requires a ". . . program in physical therapy which has been approved for the education and training of physical therapists or physical therapist assistants by an accrediting agency recognized by the Council on Post-Secondary Accreditation and the United States Department of Education . . ."

This proposed amendment to N.J.A.C. 13:39A-5.1 sets forth the subjects that are included in physical therapy programs in the United States. For clarity, the amendment describes course content rather than the number of credits necessary to fulfill the "substantially equivalent" statutory requirement.

Social Impact

The proposed amendment sets forth specific courses which are included in and must be completed by a graduate of an approved physical therapy program in the United States. This amendment clarifies the "substantially equivalent" statutory requirement of N.J.S.A. 45:9-37.23.

Economic Impact

The proposed amendment will have no discernible economic impact. The amendment merely specifies certain courses which must be taken prior to the licensure of an applicant from a physical therapy program at a foreign school, but the list is not comprehensive.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., it has been determined that this amendment will not impose reporting, recording or other compliance requirements on small businesses within New Jersey, since it relates to applicants and not to licensees.

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

13:39A-5.1 Educational credentials for applicants for licensure as physical therapists

(a) Applicants for examination shall submit to the Board satisfactory proof of:

1. Graduation from a program in physical therapy which has been approved for the education and training of physical therapists by an accrediting agency recognized by the Council on Post-secondary Accreditation and the United States Department of Education; or

2. [With respect to foreign trained applicants for licensure as physical therapists, graduation from or successful completion of an approved physical therapy program which shall have included 120 credits of which 60 or more shall be in courses relating to the practice of physical therapy and at least 45 of which shall be in courses of general academic study. English General College Equivalent A level courses will be accepted toward the necessary credits in general education.] **With respect to foreign trained applicants for licensure as physical therapists, the applicant shall demonstrate satisfactory evidence of graduation from a physical therapy program that is substantially equivalent to a physical therapy program approved for the education and training of physical therapists by an accrediting agency recognized by the Council on Post Secondary Accreditation and the United States Department of Education. The applicants shall show successful completion of course work in both general and professional education. General education courses should include, but not be limited to: mathematics, physics, chemistry, biology, sociology, psychology, history and the arts. The professional component of the program should include, but not be limited to: human anatomy, pathology, physiology, neurologic science and clinical practice.**

(b)

BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Contract to Provide Professional Services

Proposed New Rule: N.J.A.C. 13:40-10.1.

Authorized By: Board of Professional Engineers and Land Surveyors, Joseph Wiseman, P.E., President.

Authority: N.J.S.A. 45:8-27 et seq., specifically 45:8-28(e).

Proposal Number: PRN 1988-460.

Submit comments by October 6, 1988 to:
Cathleen McCoy, Executive Director
Board of Professional Engineers and Land Surveyors
1100 Raymond Boulevard, Room 317
Newark, New Jersey 07102

The agency proposal follows:

Summary

In response to numerous consumer complaints alleging the unlicensed practice of engineering or land surveying, the Board of Professional Engineers and Land Surveyors is proposing new rule N.J.A.C. 13:40-10. The rule seeks to clarify how firms not utilizing the title "engineer" or "land surveyor", or any modification or derivative of such terms, in the firm's name pursuant to N.J.S.A. 45:8-27, may offer or perform services where an executive officer or a member of the firm, partnership or association is not a professional licensed by the State of New Jersey. Under the proposed rule, the firm must have a written contract with a New Jersey licensed professional engineer or land surveyor prior to offering or performing engineering or land surveying services.

Social Impact

The proposed new rule will benefit the consumer by assuring that engineering and land surveying services will be performed by a licensed professional who has reached the standards of competency set by statutory mandate as well as Board rules.

Economic Impact

The proposed new rule will have a positive economic impact since it should result in the elimination of economic losses resulting from inferior workmanship performed by unlicensed individuals. A negative impact may arise for those operations presently engaged in engineering or surveying without a licensed professional in a position of authority, since such a professional must now be engaged under this proposed rule. However, the operation's increased professionalism should, in time, generate business offsetting the cost of the contracted professional, and reduce the potential for costly litigation due to inadequate workmanship.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., it has been determined that, with few exceptions, all professional engineering and land surveying entities are small businesses that will be affected by the proposed new rule. The specific number is impossible to determine, since the Board licenses individuals and not entities. However, the proposed compliance requirements are equally applicable to all professional engineering and land surveying licensees and entities, without differentiation as to types and sizes of businesses.

The proposed new rule will entail no additional reporting or record keeping requirements for small businesses since the requirement of a written contract is the type of record maintained in the normal course of business.

Full text of the proposed new rule follows:

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SUBCHAPTER 10. CONTRACT TO PROVIDE PROFESSIONAL SERVICES

13:40-10.1 Contract requirement

(a) Any corporation, firm, partnership or association which does not have an executive officer, if a corporation, or a member, if a firm, partnership or association, who is licensed to practice engineering or land surveying in this State and which offers or performs engineering or land surveying services pursuant to N.J.S.A. 45:8-27 shall, prior to the offer or performance of said services, have a written contract with a New Jersey licensed professional engineer or land surveyor. Such contract shall require the licensed professional engineer or land surveyor to be in responsible charge of the engineering or surveying work contracted for and shall be consistent with the Board's enabling legislation (N.J.S.A. 45:8-27 et seq.) and all rules adopted pursuant thereto.

(b) A licensed professional engineer or a licensed land surveyor rendering engineering or surveying services for a corporation, firm, partnership or association covered by this section shall not perform such services unless the written contract required by this section is present.

(a)

BOARD OF PSYCHOLOGICAL EXAMINERS

Board of Psychological Examiners Rules

Proposed Readoption with Amendments: N.J.A.C. 13:42

Authorized By: Board of Psychological Examiners, Rhoda Geller Marks, Ph.D., Chairperson.

Authority: N.J.S.A. 45:14B-45.

Proposal Number: PRN 1988-448.

Submit comments by October 6, 1988 to:
Jeannette Balber, Executive Director
Board of Psychological Examiners, Room 512
1100 Raymond Boulevard
Newark, New Jersey 07102

The following summarizes the contents of each subchapter:

Subchapter 1 contains the chapter's general provisions, governing the examination review procedure, various fees, the license notice display requirement, provisions concerning the unlicensed practice of psychology, and the change of address and service of process requirements.

Subchapter 2 sets forth the academic and professional experience requirements for licensure. The rules provide the allied degrees, equivalent training, supervised experience and temporary permit requirements, and define the term "student of psychology".

Subchapter 3 provides the American Association of State Psychology Boards examination requirements, the examination requirement for out-of-State psychologists, the requirements for licensure without examination and provisions governing the failure of the examination.

Subchapter 4 sets forth in detail what constitutes misconduct, as grounds for revocation, suspension and refusal to grant or renew a license.

Subchapter 5 provides the criteria to be met in order for a given group to qualify as another "professional group" under N.J.S.A. 45:14B-8 in doing work of a psychological nature.

Subchapter 6 sets forth the general provisions governing disclosure of patient information, the treating psychologist's responsibilities and the establishment and responsibilities of the Independent Professional Review Committee.

Summary

All provisions of this chapter became effective October 20, 1975 as R.1975 d.310 (see: 7 N.J.R. 510(a)). Subsequent amendments were filed and became effective May 11, 1977 as R.1977 d.165 (see: 9 N.J.R. 128(b), 9 N.J.R. 290(c)). Further amendments became effective June 9, 1978 as R.1978 d.192 (see 10 N.J.R. 70(b), 10 N.J.R. 295(c)). Subchapters 2 through 5 and amendments became effective January 17, 1979 as R.1979 d.24 (see: 10 N.J.R. 505(a), 11 N.J.R. 78(d)). This chapter was readopted pursuant to Executive Order 66(1978) effective November 3, 1983 as R.1983 d.543 (see: 15 N.J.R. 1497(a), 15 N.J.R. 1947(b)). Further amendments and the repeal of Subchapter 5 (Advertising) became effective November 21, 1983 as R.1983 d.543 (see: 15 N.J.R. 1497(a), 15 N.J.R. 1947(b)). Further amendments became effective December 2, 1985 as R.1985 d.621 (see: 17 N.J.R. 986(a), 17 N.J.R. 2909(a)). Recodification of Subchapter 6 to Subchapter 5 and new rules for Subchapter 6 became effective October 20, 1986 as R.1986 d.438 (see: 18 N.J.R. 817(a), 18 N.J.R. 2129(a)). Amendments to N.J.A.C. 13:42-1.1 and 3.1 became effective on February 16, 1988 as R.1988 d.82 (see: 19 N.J.R. 2246(a), 20 N.J.R. 404(a)). Pursuant to Executive Order No. 66(1978), this chapter will expire on November 3, 1988, unless readopted.

The Board of Psychological Examiners' (Board) rules, as revised by this proposed readoption with amendements, are reasonable, necessary and effective and will have an advantageous impact on the conduct of the profession by enabling the Board to structure its procedures to protect the public's best interest.

As the expiration of the present rules approaches, the Board expended considerable energy in reviewing, modifying and updating the rules. The proposed amendments address issues relevant to the oral examination and its appeal process; provide a more comprehensive statement of the practice of psychology; and acknowledge retroactive accreditation for universities or colleges.

The proposed deletion in N.J.A.C. 13:42-1.1(b) which removes language allowing for a transcribed version of the oral exam will guarantee the continued integrity and confidential nature of the oral exam process. N.J.A.C. 13:42-1.1(c) clarifies and further distinguishes among good cause for appeal, deferral or reversal of the oral exam results. N.J.A.C. 13:42-1.1(d) has been amended to limit the submission of lengthy written appeals to a failure on the oral exam. The Board would like to better address meritorious appeals; however, submission of an excessive amount of paperwork makes review and response impossible for the Board to administer within the time period prior to oral reexamination. N.J.A.C. 13:42-1.4(b)1ii and N.J.A.C. 13:42-1.4(c)1 and 2 are intended to specify a broader base to the practice of psychology thereby providing the consumer with a more comprehensive infrastructure pertaining to psychological treatment. N.J.A.C. 13:42-2.1(a) and N.J.A.C. 13:42-2.1(a)4 offer retroactive accreditation for a five-year period, thus acknowledging the quality of some university and college programs during the period when accreditation was being sought. N.J.A.C. 13:42-2.1(d) provides for the use of other experts, if necessary, to determine the psychological nature of a dissertation or courses. N.J.A.C. 13:42-2.4 proposes additions to further clarify the nature of the supervisory experience and the responsibility of the supervisor thereto; it also limits the fees charged to clients by candidates for licensure. This will better assure the integrity of the candidates in their treatment of clients and deter abuses in the offering of services to consumers. N.J.A.C. 13:42-2.5 further clarifies the nature of temporary permits and formalizes the conditions that may be imposed upon the candidate after a failure of the written or oral exam, or the failure of a candidate to properly discharge his or her responsibilities. N.J.A.C. 13:42-4.1(a)1xxiv(1)(A) has been added in accordance with *McIntosh v. Milano,* 168 N.J. Super. 466 (Law Div. 1979), which held that a psychiatrist or therapist may be responsible to warn a potential victim of the patient when there is a "probability" of harm to the potential victim. The hearing provisions at N.J.A.C. 13:42-4.1(b) have been added to codify a licensee's right under N.J.S.A. 45:14B-24.

Social Impact

The proposed readoption with amendments will continue to provide various procedures for the orderly administration of examinations and licensure in order to ensure that truly qualified individuals are certified to practice their profession. The Board continues to endeavor to maintain the highest level of professionalism available.

The proposed readoption with amendments will be helpful to candidates for licensure since it will clarify and ensure uniform understanding of the oral examination process and the supervisory experience. The amendments will also benefit the Board in that they will ensure the integrity and confidentiality of the oral examination process. Additionally, there is benefit to those candidates who have graduated from unaccredited institutions within a five-year period prior to that institution's accreditation.

Economic Impact

The current fee schedule remains unchanged and does not impose an unreasonable financial burden on candidates or licensees. The proposed amendments create no discernible impact on the Board, candidates or supervisors. However, the one year temporary permit holder, working

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in an independent private practice, will be impacted by a 10 hour client contact limit. This limit is proposed to allow the ready transfer of clients should the candidate fail either the written or oral examination or fail to properly discharge his or her responsibilities resulting in the suspension or revocation of the permit. Since funding of the Board's operation is partially attained by the Board's fee structure now in place, failure to readopt would place the Board's operation in jeopardy.

Regulatory Flexibility Statement

It is unclear and doubtful whether the Regulatory Flexibility Act was intended to cover individual practicing professionals, but on the assumption that it is applicable, the following statement is relevant:

The Board of Psychological Examiners currently licenses 2,065 individuals. The specific number of small businesses is impossible to determine since the Board licenses individuals and not entitlies.

The rules proposed for readoption are uniformly applicable to all classes, which include candidates, licensees and supervisors, without distinction as to the size of the professional practice. The impostition of reporting, recording and compliance requirements are minimal, yet carry out the Board's intended purpose of protecting the public's best interests.

The proposed requirements relating to licensee supervisors include the determination of patient needs and whether they fall within the capabilities of the candidate, and ratings of the candidate to assure their personal and professional integrity. Additionally, the client contact hours of the one year temporary permit holder are proposed to be limited to 10 hours per week in independent private practice to assure the ready transfer of clients in the event of the suspension or revocation of the permit.

Since no additional professional services will be required, nor will the amendments impose any new or annual costs of compliance, there is no need to minimize any adverse economic impact on small businesses, pursuant to the Regulatory Flexibility Act.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:42.

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

CHAPTER 42
BOARD OF PSYCHOLOGICAL EXAMINERS

SUBCHAPTER 1. GENERAL PROVSIONS

13:42-1.1 Examination review procedures

(a) A candidate who fails the American Association of State Psychology Boards' sponsored written examinations[,] may request a review of papers and grades as available. The candidate shall be responsible for payment of any fees required by the American Association of State Psychology Boards. Such a request must reach the Board secretary in writing within 45 days of the date of the letter of notification of examination results. The secretary shall subsequently arrange a mutually convenient date for the candidate and a Board examiner to review the materials at the Board office.

(b) A candidate who fails the oral examination of professional practice may request a review of the examination. Such request must reach the Board secretary in writing within 45 days of the date of the letter of notification of examination results. The Board secretary will make the tape of the oral examination available to the candidate at the Board office on a mutually convenient date. Neither the candidate nor an agent of the candidate may tape the Board's copy of the oral examination tape during this or any review of the tape of the oral examination. [A transcript of the oral examination, prepared by a shorthand reporter, will be available to the candidate at the candidate's expense; however, this transcript may be obtained only for use in the appeal process.]

(c) Following review of the examination, a candidate who fails the oral examination may request an appeal of the decision. Requests for appeal shall only be granted upon a showing of good cause**, which means cause sufficient to establish that the request is meritorious and made in good faith**. Such requests must reach the Board secretary in writing within 45 days of the date of the examination review. **A failure on the oral examination may be deferred or reversed for good cause shown.** For purposes of establishing good cause required for this subsection, the Board shall consider the following:

1.-2. (No change.)

(d) Should an appeal be granted, the Board may decide the appeal based on written material submitted and/or the taped examination. **Any written material submitted must be limited to no more than five 8½ inch by 11 inch sized pages, single spaced, with normal size type set. Only one side of the page is to be used.** The Board may also appoint a subcommittee which shall be designated to make a recommendation on the matter to the Board after conducting an inquiry or investigation deemed necessary by the subcommittee. Should a subcommittee be designated to make a recommendation on the matter, it shall subsequently present to the Board the following:

1.-4. (No change.)

(e) (No change.)

13:42-1.4 Unlicensed practice of psychology

(a) The unlicensed practice of psychology occurs if either of the following is present:

1. Offering or rendering of professional psychological services for a fee, monetary or otherwise, by an unlicensed person who is not otherwise explicitly exempted from the Act; or

2. Use of any title or description which implies the individual is a psychologist or is an expert or has special competence in the field of psychology which implies the offering or rendering of professional psychological services or the use of psychological principles or procedures or implies that such person is licensed under [this] **the** Act.

(b) Definitions of the terms are as follows:

1. Professional psychological services include, but are not limited to, the use or advertisement of the use of, the theories, principles, procedures, techniques or devices of psychology, for a fee, monetary or otherwise. Such services include but are not limited to:

i. (No change.)

ii. Psychological intervention to promote optimal development or growth or to ameliorate personality disturbances or maladjustments of an individual or group including but not limited to: individual psychotherapy, [group therapy, family systems therapy, organizational development] **psychoanalysis, hypnotherapy, biofeedback, couples and family systems therapy, sex therapy, group therapy, and organizational development.**

iii. (No change.)

2.-3. (No change.)

(c) A person not licensed under this Act is prohibited from implying licensure under the Practicing Psychology Licensing Act by using:

1. A title or description which would lead a reasonable person to think that the person is a licensed psychologist (**such title shall include, but not be limited to, "psychoanalyst", "psychotherapist", "therapist", "mental health specialist", "behavior modifier", "growth facilitator"**); or

2. A title or description which when combined with other circumstances (for example, a graduate degree in psychology or an allied field, membership in psychological organizations, training or certification in applied psychological methods, professional association and identification with licensed psychologist) would lead a reasonable person to think that the practitioner is a licensed psychologist. **This includes, but is not limited to, school psychologists and pastoral counselors outside the scope of their respective institutions.**

SUBCHAPTER 2. ACADEMIC AND PROFESSIONAL EXPERIENCE REQUIREMENTS FOR LICENSURE

13:42-2.1 Allied Degree

A doctoral degree in a "field allied to psychology" as set forth in N.J.S.A. 45:14B-17(a) shall be obtained from a regionally accredited educational institution or one which is recognized by the New Jersey State Board of Education. **Any accreditation given to a formerly non-accredited school shall be considered retroactive for a period of five years.** This accreditation will be accepted as long as the following criteria are met:

1.-3. (No change.)

4. The accrediting body is generally recognized within the national academic community. **A degree shall be accepted if it was granted within five years prior to the date of the institution's receiving accreditation.**

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

(d) The doctoral dissertation must be psychological in nature. If there is question about the psychological nature of the dissertation or courses, the determination will be made by the Board with the advice of the chairperson of the graduate department of psychology of the degree-granting institution and after consulting with the chairperson of the graduate department in which the degree was earned **or any other expert designated by the Board**.

(e) (No change.)

13:42-2.4 Supervised experience

(a) **The purpose of supervised experience is to afford the candidate an opportunity to gain training and experience under qualified supervision prior to licensing.** As prescribed in N.J.S.A. 45:14B-17(b), "supervised experience" shall mean psychological practice that meets the following criteria:

1. Unsupervised independent practice by the candidate is prohibited. Supervised practice shall be conducted in accordance with the following requirements:

i. The candidate's clients shall include only those who have been approved in advance by the supervisor(s). **The responsibility for the patient shall rest with the supervisor(s). It is his or her judgment to determine if the needs of the patient fall within the capabilities of the candidate. Should the Board deem it necessary to discontinue or limit the temporary permit, it shall be the responsibility of the supervisor(s) to assume the further treatment of the patients, or to refer the patients to other qualified psychologists in the event that the candidate fails to pass the written or oral examination.**

ii.-v. (No change.)

vi. [Fees must be commensurate with the candidate's status and experience when compared to those asked by licensed psychologists in the local area. It is the candidate's responsibility to justify any fees charged in light of this requirement.] **The client fee structure shall reflect the experience and training of the candidate and not the experience and training of the supervisor.**

vii. (No change.)

2. A supervisor [must] **shall**:

i. (No change.)

ii. Be clearly eligible for licensure. Such eligibility requires:

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

(3) Demonstration of substantial experience in the field of applied psychology or, in the case of a psychiatrist, **who must be Board-certified,** demonstrated substantial experience in the practice of psychotherapy. **A psychiatrist shall supply no more than one-third of the total required supervisory hours**; and

(4) (No change.)

iii. [A supervisor may not s]Supervise **no** more than [five] **three** candidates at a given time[.]; and

iv. [A supervisor must a]Attest to the candidate's compliance with (a)1 above and to his **or her** satisfaction of the requirements enumerated in (a)2 above. On forms provided by the Board, a supervisor [must] **shall** also indicate the dates during which the candidate has been under supervision, the nature of the cases assigned, and the proficiency rating earned by the candidates. **These ratings shall include categories attesting to the personal and professional integrity of the candidate.**

3. (No change.)

13:42-2.5 Temporary permit

(a) **One Year Permit:** Pursuant to N.J.S.A. 45:14B-6(e), a temporary permit may be issued for the [independent] practice of psychology for a period not to exceed one year. **The permit limits the permit holder to no more than 10 client contact hours per week in independent private practice.**

1.-2. (No change.)

3. In the event that the temporary permit is granted to a candidate who has passed the written examination but has not presented the Board with a case study for oral examination, the candidate shall have 45 days from the date of issuance of the permit to submit the written case to the Board office. Failure to meet this deadline [means automatic] **may result in** revocation of the temporary permit.

4. In the event of failure of either the written or oral examination [the continuance of the temporary permit is conditioned upon the candidate's meeting the following requirements:] **, or the failure of a candidate to properly discharge his or her responsibilities, the Board may suspend or revoke a one year temporary permit. The further continuance of a permit subsequent to the above stated failures may be conditioned upon the candidate meeting the following requirements:**

i.-ii. (No change.)

iii. Acceptance of such limitations **and conditions (for example, reduction of caseload, change of supervisor, personal therapy, etc.)** as the Board may deem necessary to assure competent psychological practice.

5. A candidate for New Jersey licensure shall be responsible for the completion of the examination process within the time allotted before the expiration of the temporary permit. The candidate [must] **shall** assume only the number and kind of cases that [could be] **can be readily** transferred to a licensed psychologist **deemed appropriate by the Board** should there be a failure in the examination and/or the expiration or revocation of the temporary permit not to exceed one year.

(b) **Three Year Permit:** A temporary permit not to exceed a total of three years pursuant to N.J.S.A. 45:14B-6(f) may be granted to a candidate for licensure who has satisfied the following requirements:

1.-3. (No change.)

4. Arranged for a supervisor who has been licensed as a psychologist in New Jersey for at least two years and who has no more than [four] **two** other candidates for licensure under supervision.

5. Arranged for the supervisor to provide the Board with a written statement detailing the planned hours of supervised time per week, the nature of the work assignments and the estimated date of completion of the supervised experience **prior to the beginning of supervision**.

(c) **Permit holders:** A holder of a **three year** temporary permit allowed in N.J.S.A. 45:14B-6(f) is responsible for the following:

1.-2. (No change.)

3. Requisite supervisory hours should be obtained and the examination process should be successfully completed within the time allotted in the temporary permit. The candidate [should] **shall** undertake only the number and kind of cases that could be readily transferred to a licensed psychologist should he **or she** fail to complete the examination process successfully within the term of the permit.

4. In the event of failure of either the written or oral examination [the continuance of a permit is conditioned upon the candidate's meeting the following requirements], **or the failure of a candidate to properly discahrge his or her responsibilities, the Board may suspend or revoke a three year temporary permit. The further continuance of a permit subsequent to the above stated failures may be conditioned upon the candidate meeting the following requirements:**

i.-iii. (No change.)

5. (No change.)

SUBCHAPTER 4. MISCONDUCT DEFINED FOR PURPOSES OF N.J.S.A. 45:14B-24

13:42-4.1 Misconduct; generally

(a) Misconduct, as grounds for revocation, suspension, refusal to renew or grant a license shall include, but not be limited to, the following:

1. Misconduct in the practice of psychology by persons licensed by the State Board of Psychological Examiners:

i.-xxiii. (No change.)

xxiv. Failure to maintain professional confidentiality including the following:

(1) Failure to safeguard information about an individual that has been obtained by a psychologist in the course of his or her teaching, practice, or investigation unless:

(A) There is a clear and imminent danger to the individual or the public **or when there is probable cause to believe that there is a likelihood of danger to a potential victim of a patient, as judged by the psychologist in accordance with the standards of the profession**. In such

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cases information should be revealed only to appropriate professional workers, public authorities and the threatened individual(s) or their representatives.

(B) (No change.)

(C) Personal information obtained during the course of professional work in writing, lectures or other public forums is revealed with [adequate] prior consent **of the clients or persons involved** or where the identity of the **clients or** persons involved is adequately disguised.

(D)-(F) (No change.)

xxv. through xxvi. (No change.)

(b) Prior to the suspension, revocation or non-renewal of a license, the licensee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(a)

DIVISION OF CONSUMER AFFAIRS

Advertising and Sale of New Merchandise

Proposed New Rule: N.J.A.C. 13:45A-11.1

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.

Authority: N.J.S.A. 56:8-4.

Proposal Number: PRN 1988-459.

Submit comments by October 6, 1988 to:
James J. Barry, Jr., Director
Division of Consumer Affairs, Room 504
1100 Raymond Boulevard
Newark, New Jersey 07102

Summary

This new rule is being proposed in response to numerous complaints relating, most frequently, to automobiles and furniture. There is no existing provision which specifically proscribes the failure to disclose that merchandise has been previously owned, leased, used, etc. or which specifically requires such disclosure. Consequently, what may be "as good as new" to the seller is "used" to the buyer. The proposed rule makes it an unlawful practice for anyone to advertise or sell any merchanidise as "new" when, in fact, it is not "new merchandise", as defined in the rule.

Social Impact

The proposed new rule will be beneficial to consumers since "new merchandise" is defined to assure a uniform understanding of that term by both buyer and seller and to prevent deceptive representations.

Economic Impact

The proposed new rule will be economically beneficial to consumers since the consumer will be assured of receiving "new merchandise" when they believe that it is what they are purchasing. While certain sellers may be adversely affected by the rule's prohibition, sellers in general should benefit economically due to consumer confidence in the nature of the goods purchased.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., it is impossible to determine the specific number of small businesses that will be affected by the proposed new rule. However, the proposed requirement is equally applicable to all merchandising entities, without differentiation as to types and sizes of businesses. The proposed new rule will entail no additional reporting or recordkeeping requirements for small businesses since records of prior ownership, lease, use, etc. are of the kind maintained in the normal course of business. No additional professional services are needed for compliance, nor are there any initial capital costs or ongoing costs of compliance.

Full text of the proposed new rule follows.

SUBCHAPTER 11. ADVERTISING AND SALE OF NEW MERCHANDISE

13:45A-11.1 Prohibition; definition

(a) It shall be an unlawful practice for any person to advertise or sell any merchandise as new merchandise when, in fact, it is not new merchandise.

(b) "New merchandise" shall be defined to mean any merchandise which has not been previously owned, leased, used, damaged, repaired, returned, operated, or used as a floor model or demonstrator or in any other similar manner.

OTHER AGENCIES

(b)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

District Zoning Regulations PDC-1 Planned Development Center Specially Planned Areas

Proposed New Rule: N.J.A.C. 19:4-5.3A. Proposed Amendment: N.J.A.C. 19:4-6.28.

Authorized By: Hackensack Meadowlands Development Commission, Anthony Scardino, Executive Director.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Proposal Number: PRN 1988-441.

A **public hearing** concerning this rule will be held on September 21, and September 22, 1988 at 7:00 P.M. at:
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit comments by October 6, 1988 to:
Thomas R. Marturano, Acting Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

The Hackensack Meadowlands Development Commission (HMDC) periodically reviews its existing rules to determine their continuing usefulness. Accordingly, the HMDC has undergone a thorough review of its rules pertaining to Specially Planned Areas, especially those contained in N.J.A.C. 19:4-5.3, related to the Island Residential—4 (IR-4) zoning classification.

As a result of this review, the PDC-1 zoning designation has been proposed to replace the IR-4 zoning designation, along with a small portion zoned Light Industrial "A". Additionally, a portion of the Light Industrial "A" Zone is proposed to be rezoned to Light Industrial "B". The Light Industrial "A" Zone is being revised because it is isolated by the existing Light Industrial "B" Zone and the existing IR-4 Zone. IR-4 was designed to accommodate only residential and related uses on man-made islands, whereas the PDC-1 is designed to accommodate a mix of uses, including residential, office, commerical/retail, and hotel, and will be accompanied by public facilities, transportation facilities, parking structures and open space. Residential, however, remains a key focus of PDC 1. The area in question is a parcel of approximately 500 acres and is bordered by the Western Spur of the New Jersey Turnpike, Commerce Avenue, Paterson Plank Road, and the Hackensack River.

It was determined that the present IR-4 zone rules were too narrowly focused and did not recognize the other non-residential land uses would be necessary for the residential component to be viable in this particular location. The market realities of land development were not being responded to under IR-4 zoning.

The recommended course of action to establish a PDC-1 zone and subsequent multi-use zones has the following as its objectives: first, the rezoning is proposed to be consistent with HMDC's program to completely revise the 1970 Master Plan by mid-1989; second, to be consistent with current efforts of HMDC and Federal agencies to integrate the development and environmental goals of the Hackensack Meadowlands Recla-

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mation and Development Act with section 404 of the Clean Water Act and other governmental requirements affecting wetlands; third, to be consistent with the real estate market and other economic realities of future development in the District; and finally, to be responsive to various proposals of landowners of the subject tract, insofar as they are consistent with current Master Plan concepts.

Social Impact

One of the primary goals of this rezoning is to induce housing construction in the Meadowlands. The new rule allows a minimum of 4,500 units to be built and a maximum of approximately 7,000. This would translate into between a 12,780 and 19,880 increase in the Meadowlands population base. Another related goal is the provision of a percentage of new housing built in this zoning classification to be set aside for low and moderate income households. PDC-1 calls for 10 percent of housing units to be set aside for low income households and 10 percent of units set aside for households of moderate income or between 450 or 700 units for each segment.

In addition, the changing of IR-4 zoning rules to PDC-1 will introduce a mix of office uses, regional shopping facilities, hotels, and neighborhood retail facilities. This development will have an impact on services such as schools, utilities, transportation infrastructure, and fire and police protection. These impacts will be addressed by the provision in the rules which requires that the landowner must demonstrate the adequacy of infrastructure capacity in all phases of development, including transportation facilities, public improvements, and public service facilities prior to receiving approval.

Economic Impact

PDC-1 would become one of the key mixed-use centers within the Meadowlands and thus have a major impact on office and retail employment within the Meadowlands District. New residents numbering between 12,780 and 19,880 will substantially increase area buying power.

An addition of potentially three million square feet of office space translates into 15,000 new office workers, while a possible 1.3 million square feet of regional retail and several neighborhood retail sites will add at least 2,600 employees and the hotel facilities another 1,000 workers. Other uses within the development will add additional workers to the area.

The area tax base will be substantially increased by the scale of development, which will benefit all 14 HMDC Municipalities, due to the tax sharing formula. Transportation and infrastructure improvements may spur additional area economic development efforts.

Regulatory Flexibility Statement

The effect of this proposed new rule and amendment would be to revise the land use rules within one zone in the Hackensack Meadowlands. The revised rules will be applied uniformly to all applicants desiring to develop properties located therein, whether they are large or small businesses. Due to the nature of tax records, it is not possible to easily determine how many small businesses are affected by these rules.

Full text of the proposal follows.

19:4-5.3A Planned development center specially planned areas: PDC-1

(a) The PDC-1 specially planned area shall be developed as a planned development center according to a plan as a single entity containing structures with appurtenant common areas.

1. The following principal uses shall be provided:

i. Office,

ii. Regional retail,

iii. Commercial,

iv. Hotel,

v. Residential, and

vi. Neighborhood retail.

2. Accessory uses may include, but are not limited to:

i. Public facilities,

ii. Transportation facilities,

iii. Parking structures, and

iv. Open space.

(b) Development shall be permitted in PDC-1 only pursuant to an approved general plan for the entire PDC-1, under N.J.A.C. 19:4-5.8, pursuant to an approved development plan for the section to be developed under N.J.A.C. 19:4-5.9, and pursuant to an approved implementation plan for the subsection to be developed under N.J.A.C. 19:4-5.10.

(c) All development in each PDC-1 shall conform to all applicable rules and policies affecting wetlands.

(d) No general plan for any PDC-1 shall be approved under N.J.A.C. 19:4-5.8, no development plan shall be approved under N.J.A.C. 19:4-5.9, and no implementation plan shall be approved under N.J.A.C. 19:4-5.10 unless it contains the following types of uses and percentage of land areas specified in the project component mix below:

1. Project Component Mix: The amount of land area devoted to each of the uses specified below shall be as follows:

PERCENT OF TOTAL SITE

Use	Minimum	Maximum
Residential†	25	35
Non-Residential†	15	30
Open Space††	45	—

†Includes all internal roads, accessory and adjacent roads within the PDC, and developed open spaces such as lawns, landscaping, parking areas, sidewalks, etc. All common roads that are not accessory or adjacent to the residential or non-residential areas shall be apportioned according to the final mix of uses.

††Does not include developed open spaces within the developed areas of the site.

2. Non-residential uses shall be of the type typically found in a major regional office/commercial center. The principal uses include office, regional retail, commercial, and hotel facilities. Accessory uses in the non-residential area include transportation center, cultural facilities, and any uses listed in (e) below. Non-residential use requirements are as follows:

i. Within the non-residential area of the site, a total Floor Area Ratio of 1.00 shall not be exceeded. Such Floor Area Ratio (F.A.R.) shall be determined by dividing the total floor area of every building or structure by the area of the total non-residental area of the site. The following accessory uses shall be exempt from inclusion in the F.A.R.: (1) Parking facilities (2) Cultural facilities, upon Development Board approval; and (3) Transportation centers.

ii. Maximum building height shall be 20 stories, exclusive of stories devoted completely to air conditioning and utility equipment and exclusive of parking decks within the same non-residential structure. No more than five stories shall be devoted to air conditioning and parking decks.

4. Residential uses include dwellings, community facilities, neighborhood shopping facilities, day care facilities, public schools, and other uses listed in subsection (e) below. Residential use requirements are as follows:

i. The gross residential density on that portion of the PDC-1 devoted to residential use shall be 40 dwelling units per acre.

ii. No less than 4,500 dwelling units shall be required in PDC-1.

iii. After an initial one million square feet of office, regional retail, or hotel space is constructed, one dwelling unit for each 1,000 square feet of additional non-residential development shall be provided. The Development Board shall insure that the residential component of the general plan is implemented in a manner that balances the residential and non-residential portions of the site development.

iv. At least five percent but not more than 10 percent of the total number of dwelling units in the PDC-1 shall be in structures three stories or less in height, measured from the ground level, except that if the ground floor is devoted to parking and common area facilities, the structure may be four stories high.

v. Of the total number of dwelling units in the PDC-1, 10 percent shall be set aside for low-income households, and 10 percent shall be set aside for moderate-income households. In addition, such set aside shall conform to the Council on Affordable Housing regulations as prescribed under N.J.S.A. 52:27D-301 et seq. No more than 20 percent of the total low- and moderate-income dwelling units shall be reserved for senior citizen occupancy.

vi. Maximum building height shall be 20 stories, exclusive of stories devoted completely to air conditioning and utility equipment and exclusive of parking decks within the same residential structure. No more than five stories shall be devoted to air conditioning and parking decks.

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5. Except for any neighborhood shopping facilities, the commercial, office, and hotel facilities shall be of a type suitable for sale or lease to retail and service uses typically found in a regional shopping center and regional office center. The regional center shall be a planned commercial development consisting of not less than two major department stores and coordinated satellite stores whose primary purpose is to draw its business from the surrounding region. Such facility shall contain a minimum of 500,000 square feet of gross retail space with attendant parking facilities. No regional shopping facilities shall be constructed unless at least 500,000 square feet of office space have been constructed or proposed in the same development phase as the regional shopping facilities. If the development is staged or phased, the Development Board shall not approve subsequent phases for construction unless 75 percent of the previous phase has been completed or is substantially under construction.

6. The Development Board, at its discretion, shall also determine the extent and location of any neighborhood shopping facility which the PDC-1 may require. Neighborhood shopping facilities shall be developed for the convenience of the residential and employment population of the PDC-1, and construction of these facilities shall be coordinated with construction of the residential and office uses, based on a schedule established by the Development Board. A neighborhood shopping facility shall consist of a group of commercial establishments planned, developed, and managed as a unit for, primarily, the sale of convenience goods and personal services, including appropriate off-street parking pursuant to N.J.A.C. 19:4-6.18. Each such facility shall contain between 30,000 and 60,000 square feet of retail space. The primary uses, consisting of a supermarket or food store and a drug store, shall be vital components of the neighborhood center and shall be designed to draw its business from the surrounding residential development.

7. The roadway and transportation system requirements PDC-1 are as follows:

i. Upon a finding by the Development Board, at the general plan, development plan, and/or the implementation plan stage, that the existing roadway network and transportation system or facilities are inadequate, the applicant shall either reduce the proposed development, arrange for the appropriate public or private body to provide traffic improvements and mass-transit systems, or the applicant itself shall provide traffic improvements and a mass-transit system sufficient to meet the transportation needs of the residents and users of the PDC-1, as to both internal movement and, where possible, access to widely used areas in the Meadowlands District and in the Northeast New Jersey-New York metropolitan region. The mass-transit system shall be coordinated with the mass-transit systems of abutting specially planned areas and with the mass-transit system for all or part of the Meadowlands District in general and shall include a mass-transit center within the PDC-1 development.

ii. Vehicular parking and loading shall be required, as provided in N.J.A.C. 19:4-6.18, with the exception of shared off-street parking. Shared off-street parking facilities may be provided for uses with varying peak hour traffic generation. Such shared parking arrangements must be approved by the Development Board, based on a submitted and approved comprehensive parking and traffic plan.

8. The requirements for open areas are as follows:

i. In the PDC-1, not less than 45 percent of the total land area shall be set aside as undeveloped open areas. These open areas may be utilized for wetland mitigation purposes. In any case, no use in the undeveloped open areas shall be operated, conducted, or maintained that may impair the quality of the undeveloped open areas. Within the boundaries of the marshland open areas, no use shall be permitted that significantly discourages or interferes with the use of the marshland open area as a natural habitat for waterfowl and other forms of marsh life.

ii. Wetland buffer strips shall be provided in accordance with N.J.A.C. 19:4-6.16. Wetland buffer strips shall not be applicable to tributaries for which Federal and/or State permits have been obtained for fill.

iii. In the non-residential portion of the PDC-1, 15 percent of the land area shall be established as open space. In the residential portion of the PDC-1, 30 percent of the land area shall be established as open space.

iv. Residential open space shall consist of landscaped areas, pedestrian pathways, recreational areas, malls and bicycle paths within each neighborhood. Open space may also be used to connect proposed or developed neighborhoods. The composition and design of the open space shall be determined by the Development Board based upon recommendation of the HMDC staff.

v. Open space in the neighborhood shopping areas and non-residential areas shall be provided to serve the needs of the users. Such open space may contain plazas and malls, pedestrian paths and landscaped areas.

vi. Should the Development Board find that the PDC-1 development creates visual or aesthetic adverse impacts to other zones and/or properties, it may require a buffer area along said property or zone line up to a maximum of 100 feet.

vii. The Development Board, after consulting with the Environmental Design Committee, may publish detailed open space design guidelines.

viii. All common open areas and space, facilities and structures thereon shall either be dedicated to the public with the approval and subject to the terms of the Hackensack Meadowlands Development Commission, or maintained in accordance with the requirements of N.J.A.C. 19:4-5.14.

9. The applicant shall comply with all applicable rules and policies affecting wetlands.

10. The applicant shall provide for or make arrangements to insure that the appropriate governmental agency or private individual or group provides physical and mental health care facilities sufficient to meet the health care needs of the residents and occupants of the PDC-1 not otherwise provided for. A fee may be charged for such uses.

11. The applicant shall provide for or make arrangements to insure that the appropriate governmental agency or private individual or group provides group day care centers and nursery schools sufficient to serve the needs of the residents and occupants of the PDC-1. A fee may be charged for such uses.

12. The applicant shall provide facilities for community meetings and activities sufficient to serve the needs of the residents and occupants of the PDC-1.

13. The public schools requirements for PDC-1 are as follows:

i. The applicant shall demonstrate that land or facilities are available in the residential area for providing primary and secondary education for the children who reside in the PDC-1 in accordance with standards for school size and location as promulgated by the New Jersey Department of Education, except insofar as adequate capacity is determined to be available in the existing school system.

ii. The applicant shall demonstrate that he or she has consulted with the school district or districts having jurisdiction regarding a schedule for the construction of schools that will meet the otherwise unmet needs of the residents of the PDC-1.

14. The applicant shall demonstrate that he has consulted with the appropriate officials having authority over library development regarding a schedule for the construction of library facilities in the residential area that will meet the needs of the residents of the PDC-1 or that adequate existing facilities are available.

15. The requirements for public improvements and utilities are as follows:

i. Public improvements must be provided in accordance with N.J.A.C. 19:4-5.13.

ii. The applicant shall demonstrate that he has consulted with the electric, gas and telephone utilities having jurisdiction and that they have agreed upon a schedule for the installation of utilities that will meet the needs of the residents and users of the PDC-1.

(e) The general, development, and implementation plans may also include other uses which will benefit the users and residents of the PDC-1.

1. Such other uses include but are not limited to:

i. Chapels, churches, synagogues and temples;

ii. Private schools;

iii. Senior citizen housing;

iv. Charitable and social services;

v. Public cultural facilities;

vi. Governmental uses;

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vii. Light public utility uses;
viii. Medical facilities and nursing homes; and
ix. Recreational facilities.

2. If any of the uses listed in (e)1 above are located in the non-residential area of the PDC-1, the building area shall be excluded from F.A.R. calculations. If such uses are located in the residential area of the PDC-1, the land area allocated to these uses shall be included when calculating the required number of dwelling units.

(f) The architectural design standards are as follows:

1. Structures and open spaces shall be laid out in a manner that best serves the users and residents of the PDC-1. Site design shall maximize aesthetic values and shall comply with the following:

i. All dwelling units shall have easy access to common open space, including recreational facilities;

ii. Buildings shall be placed so as to permit ready access of emergency vehicles; and

iii. Buildings and screening shall be arranged and designed so as to enhance the visual and acoustical privacy of all dwelling units.

2. The design of structures and other improvements shall comply with the requirements of N.J.A.C. 19:4-6.

3. All open space areas shall be designed to conform with acceptable planning and landscape architectural principles. The Hackensack Meadowlands Development Commission's open space map should be consulted in the allocation, design and configuration of the open space portion of the PDC-1.

(g) All uses in the PDC-1 shall comply with all Category A environmental performance standards and water quality requirements of N.J.A.C. 19:4-6.1 to 19:4-6.16.

(h) The applicant shall follow the environmental/socio-economic impact guidelines of N.J.A.C. 19:3B-1.1 to 19:3B-1.9. The Development Board shall not approve any general, development or implementation plan unless the Development Board finds that, to the extent reasonably feasible, the impacts of the development proposed by the plan will be within the carrying capacity of each natural and man-made system to be impacted.

19:4-6.28 Official zoning map

Change the zoning designation of Block 128, Lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, part of lot 21, part of lot 33, part of lot 34, part of lot 35, part of lot 36, part of lot 38, part of lot 39 in Carlstadt; Block 131.1 (shown as Block 131.0 on the Carlstadt Tax Map), Lots 35, 36, and 67 in Carlstadt; Block 136, Lots 1, 2, 3, 4, 5, 6, and 7, in Carlstadt; Block 137, Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, in Carlstadt; Block 135, Lot 1, in Carlstadt; Block 106, Lot 4B (shown as Lot 4.02 on the South Hackensack Tax Map), part of lot 3, part of lot 4A (shown as Lot 4.01 on the South Hackensack Tax Map), in South Hackensack, from IR-4 (Island Residential—4) to PCD-1 (Planned Development Center—1).

Change the zoning designation of Block 106, part of lot 3 and part of lot 4A (shown as Lot 4.01 on the South Hackensack Tax Map) in South Hackensack from Waterfront Recreation for PDC-1 (Planned Development Center—1).

Change the zoning designation of Block 128, part of lot 21, part of lot 33, part of lot 34, part of lot 35, part of lot 36, part of lot 38 and part of lot 39, in Carlstadt, from Light Industrial and Distribution "A" to PDC-1 (Planned Development Center—1).

Change the zoning designation of Block 128, part of lot 21, part of lot 27, part of lot 33, part of lot 34, part of lot 35, part of lot 36, part of lot 38, and part of lot 39, in Carlstadt, from Light Industrial and Distribution "A" to Light Industrial and Distribution "B".

OFFICE OF ADMINISTRATIVE LAW NOTE: The Official Zoning Map is not reproduced herein, but may be viewed at the following locations:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey, 07071

Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
Trenton, New Jersey 08625

CASINO CONTROL COMMISSION

The following proposals are authorized by the Casino Control Commission, James Fiandaca, Acting Executive Secretary.

Submit comments by October 6, 1988, to:
Carole R. Jacobson
Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

(a)

Exclusion of Persons Hearings

Proposed Amendments: N.J.A.C. 19:42-4.2 and 4.3. Proposed Recodification with Amendments: N.J.A.C. 19:42-4.4, 4.5, 4.6 and 4.7.

Authority: N.J.S.A. 5:12-69(a) and 5:12-71.
Proposal Number: PRN 1988-433.

The agency proposal follows:

Summary

Under the existing provisions of N.J.A.C. 19:42-4, the procedure for placing an individual on the exclusion list is commenced when the Division of Gaming Enforcement (Division) files a petition with the Commission naming a candidate for placement on the list. A petition for exclusion is currently considered by the Commission in a two stage integrated process.

During the first stage, a limited preliminary hearing is held to determine whether there is a reasonable possibility that the candidate for exclusion satisfies the criteria for exclusion established by section 71 of the Casino Control Act, N.J.S.A. 5:12-71, and N.J.A.C. 19:48. If such reasonable possibility is found, the second stage is automatically implemented and the candidate is preliminarily placed on the exclusion list pending completion of a plenary evidentiary hearing on the petition for exclusion. Conversely, if the Commission determines that the Division has failed to preliminarily demonstrate a reasonable possibility that the candidate satisfies the criteria for exclusion, the petition for exclusion is dismissed and no stage two plenary evidentiary hearing is held.

The proposed amendments to N.J.A.C. 19:42-4 would revise the current exclusion process to create two independent exclusion proceedings. Similar to the current procedure, a request for exclusion would be initiated by the Division by filing a petition for exclusion with the Commission. Contrary to the current procedure, however, the filing of this petition would not automatically result in the scheduling of a limited preliminary exclusion hearing. The individual named in the petition would not be subject to preliminary exclusion pending completion of the plenary evidentiary hearing unless the Division, in its discretion, filed an independent application for a limited preliminary exclusion hearing. In either case, the underlying petition for exclusion would automatically proceed to a plenary evidentiary hearing unless such proceeding was waived by the candidate for exclusion.

It should be noted that amendments to N.J.A.C. 19:48 are also being proposed in this issue of the New Jersey Register in conjunction with the proposed amendments to N.J.A.C. 19:42-4.

Social Impact

The proposed rule changes would ensure that all exclusion petitions proceed to a plenary evidentiary hearing unless the exclusion candidate waives such a hearing. The State has an overriding interest in maintaining the public trust and confidence in the credibility and integrity of the regulatory process and of casino operations (see N.J.S.A. 5:12-1b(6)). The exclusion or ejection of individuals whose presence in licensed casino establishments is found to be inimical to the interests of the State of New Jersey or of licensed casino gaming is consistent with that goal. The proposed amendments to these rules will further the public trust and confidence in the credibility and integrity of New Jersey's gaming industry and the regulatory process by enabling the Commission to make exclusion determinations based upon a complete factual record in all cases.

Economic Impact

It is anticipated that the proposed rule changes will not have any significant economic impact on the financial resources of the Commission, the Division or the industry. It is possible that some candidates

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for exclusion who might have avoided the expense of a plenary evidentiary hearing under the current rules will be required to proceed to a plenary hearing under the proposed amendments and, thus, might incur some additional expense. Any attempt to quantify the number of candidates who would fall into this category or the amount of additional expense involved would be highly speculative.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments do not impose any reporting, recordkeeping or compliance requirements on small businesses as defined by the Regulatory Flexibility Act.

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

19:42-4.2 Commencement; petition

Any [proceedings] **proceeding to place an individual on the exclusion list** initiated under N.J.S.A. 5:12-71, **N.J.A.C. 19:48** and this subchapter shall commence by written petition, which shall include a statement setting forth in ordinary and concise language the grounds for exclusion.

19:42-4.3 Service of petition

(a) Whenever the [division] **Division,** pursuant to section 71 of the [act] **Act, N.J.A.C. 19:48** and [the regulations of the commission] **this subchapter,** petitions to place a candidate on the exclusion list, the Commission or Division shall serve such petition on the candidate by:

1. Personal service; or
2. Certified mail at the last known address of the candidate; or
3. Publication daily for one week in a newspaper of general circulation in Atlantic City, New Jersey.

19:42-[4.6] **4.4** Right to a [final] **plenary** hearing; time; waiver

(a) [An excluded person placed on the list by preliminary order of the Commission] **A candidate for placement on the exclusion list** shall be advised at the time of service of the [preliminary order] **petition for exclusion** of his **or her** right to demand a [final] **plenary** hearing.

(b) A demand for a [final] **plenary** hearing shall be in writing and must be received by the Commission within 30 days after service of the [preliminary order placing the excluded person on the list] **petition for exclusion.**

(c) The Commission shall, upon receipt of a timely and sufficient demand for a [final] **plenary** hearing, set a time and place for such hearing. **If a candidate for exclusion has been placed on the exclusion list by preliminary order of the Commission in accordance with the provisions of N.J.A.C. 19:42-4.6 and 19:48-1.5A,** [Unless otherwise agreed by the Commission and the excluded person, a final] **a plenary** hearing shall be initiated no later than 30 days after the receipt by the Commission of [the] **a timely and sufficient** written demand for a [final] **plenary** hearing **or the date of issuance of the preliminary order, whichever is later, unless otherwise agreed by the Commission and the excluded person.**

(d) Any [excluded person placed on the list by preliminary order of the Commission] **candidate for exclusion** who fails to demand a [final] **plenary** hearing within the allotted time period shall be **deemed to have admitted all matters and facts alleged in the petition, shall be** precluded from having a [final] **plenary** hearing before the Commission, and shall be subject to the issuance of a final order directing that the [excluded person] **candidate be placed on the list or, if the candidate has been placed on the list by preliminary order of the Commission,** shall remain on the list until further order of the Commission; provided, however, **that the Commission, in its discretion, may nevertheless order a hearing; and provided further,** that such preclusion shall in no way affect the right of any excluded person to judicial review as provided in the Act and rules of the Commission.

19:42-[4.7] **4.5** [Final] **Plenary** hearing: nature of proceeding; burden of proof; service of order

(a) A [final] **plenary** hearing shall be a full evidentiary proceeding conducted in accordance with the provisions of section 107 of the Act, N.J.A.C. 19:42-2, and, to the extent that they are not inconsistent with these provisions, the Administrative Procedure Act and the UAPR. The purpose of a [final] **plenary** hearing is to determine if [an excluded person placed on the list by preliminary order] **a candidate for exclusion** satisfies the criteria for exclusion established by section 71 [(a) 1-3] of the Act and N.J.A.C. 19:48[-1.3(a) 1-4].

(b) The Division shall have the affirmative obligation to demonstrate by a fair preponderance of the evidence that the [excluded person] **candidate for exclusion** satisfies the criteria for exclusion established by section 71 [(a) 1-3] of the [act] **Act** and N.J.A.C. 19:48[-1.3(1) 1-4].

(c) The Commission shall render a decision and issue a final order as soon as is practicable after the completion of the [final] **plenary** hearing. A final order directing that [an excluded person shall] **the candidate for exclusion shall be placed on the list or, if the candidate has been placed on the list by preliminary order of the Commission,** shall either remain on the list or be removed from the list shall, within five days of its entry, be served upon the candidate, by regular mail at his **or her** last known address, and upon the [division] **Division** and all casino licensees.

(d) A final order of the Commission shall be subject to review by the Superior Court in accordance with the rules of court.

19:42-[4.4] **4.6** Preliminary [hearing] **placement on the list; commencement;** notice; service; postponement

(a) [No person shall be placed on the exclusion list prior to a preliminary hearing held in accordance with the provisions of this subchapter.] **In accordance with the provisions of N.J.A.C. 19:48-1.5A, the Division may request the Commission to place a candidate on the exclusion list pending completion of the plenary hearing on the petition for exclusion by filing an application for preliminary placement of the candidate on the list.** Timely notice of [such] **a preliminary exclusion** hearing shall be served upon the candidate for exclusion by regular mail at his **or her** last known address. The notice shall include:

1. A statement advising the candidate of his **or her** right to appear before the [commission] **Commission** at the preliminary **exclusion** hearing; and
2. The time, place and nature of the preliminary **exclusion** hearing.

(b) The preliminary **exclusion** hearing shall be scheduled no earlier than 15 days from the mailing of notice of the hearing.

(c) Unless otherwise [agreed] **approved** by the [parties and the] Commission **for good cause shown,** a preliminary **exclusion** hearing scheduled in accordance with [these regulations] **this subchapter** shall not be postponed at the request of any party.

19:42-[4.5] **4.7** Preliminary **exclusion** hearing; nature of hearing; burden of proof; service of order

(a) A preliminary **exclusion** hearing shall be a limited pre-exclusion proceeding. The purpose of the preliminary **exclusion** hearing is to determine if there is a reasonable possibility that a candidate satisfies the criteria for exclusion established by section 71[(a) 1-3] of the Act and N.J.A.C. 19:48[-1.3(a) 1-4].

(b) A preliminary **exclusion** hearing shall be decided on the basis of the [facts alleged by the petition and] **reliable documentary or other** supporting [documents] **evidence** of the [division] **Division** and the oral arguments of the parties. Candidates may be represented by counsel.

(c) The [division] **Division** shall have the affirmative obligation to establish that there is a reasonable possibility that the candidate satisfies the criteria for exclusion established by section 71 of the Act and [the Commission's rules] **N.J.A.C. 19:48.**

(d) A preliminary order of the [commission] **Commission** designating a candidate as an excluded person shall, within five days of its entry, be served upon the candidate, the [division] **Division** and all casino licensees.

(e) A Commission order [dismissing a division petition naming a candidate] **denying an application for preliminary placement of a candidate on the list** shall be served upon the candidate and the [division] **Division**.

(f) Any order served upon a candidate and issued pursuant to (d) and (e) above, shall be served by regular mail at the candidate's last known address.

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(a)

Exclusion of Persons

Proposed Readoption with Amendments: N.J.A.C. 19:48.

Proposed Repeal and New Rule: N.J.A.C. 19:48-1.5.

Proposed New Rule: N.J.A.C. 19:48-1.5A.

Authority: N.J.S.A. 5:12-69(a) and 5:12-71.

Proposal Number: PRN 1988-434.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Casino Control Commission proposes to readopt N.J.A.C. 19:48 concerning exclusion of persons from licensed casino establishments. These rules would otherwise expire on October 13, 1988. N.J.A.C. 19:48 originally became effective on October 16, 1978. The rules implement the provisions of N.J.S.A. 5:12-71(a), which requires that:

> The Commission shall, by regulation, provide for the establishment of a list of persons who are to be excluded or ejected from any licensed casino establishment.

Section 71 also requires the Commission to "define the standards for exclusion" and to "promulgate definitions establishing those categories of persons who shall be excluded." This section also imposes requirements concerning hearing procedures related to the exclusion of persons, which requirements are implemented by N.J.A.C. 19:42-4.

The present rules provide procedures for the maintenance and distribution of the exclusion list; establish the criteria for exclusion; define the duties of the Division of Gaming Enforcement; provide procedures for the entry of names on the list; describe the type of information which must be contained on the list; describe the duties of casino and individual licensees; and describe the procedures to be employed to remove a name from the list.

The standards and procedures provided by these rules have had a positive impact in controlling the unsavory elements traditionally associated with the casino business by ensuring that unfit persons are kept away from casino hotel facilities. The failure to readopt these rules would engender an unacceptable degree of uncertainty in matters concerning the substantive and procedural issues associated with the exclusion of persons and would leave the parties without the necessary guidance to determine their rights and duties under the law.

The staffs of both the Commission and the Division of Gaming Enforcement have continually reviewed, monitored and assessed the merits and viability of the system in operation since the rules were readopted in 1983. The Commission has not recommended any amendments to these rules since the chapter was last readopted because the rules have provided an efficient and effective system for the implementation of the exclusion provisions and procedures established by the Casino Control Act. Although an opportunity for public comment on the rules exists pursuant to section 69(c) of the Act (N.J.S.A. 5:12-69(c)), the Administrative Procedure Act (N.J.S.A. 52:14B-4(f)) and various informal methods, no public comments on the rules have been received. A review of the rules within the purview of Executive Order No. 66 has suggested, however, that certain changes to the rules might be appropriate.

Under the existing provisions of N.J.A.C. 19:42-4, the procedure for placing an individual on the exclusion list is commenced when the Division of Gaming Enforcement (Division) files a petition with the Commission naming a candidate for placement on the list. A petition for exclusion is currently considered by the Commission in a two stage integrated process.

During the first stage, a limited preliminarily hearing is held to determine whether there is a reasonable possibility that the candidate for exclusion satisfies the criteria for exclusion established by section 71 of the Casino Control Act, N.J.S.A. 5:12-71, and N.J.A.C. 19:48. If such reasonable possibility is found, the second stage is automatically implemented and the candidate is preliminarily placed on the exclusion list pending completion of a plenary evidentiary hearing on the petition for exclusion. Conversely, if the Commission determines that the Division has failed to preliminarily demonstrate a reasonable possibility that the candidate satisfies the criteria for exclusion, the petition for exclusion is dismissed and no stage two plenary evidentiary hearing is held.

The proposed amendments to N.J.A.C. 19:48 would revise the current exclusion process to create two independent exclusion proceedings. Similar to the current procedure, a request for exclusion would be initiated by the Division by filing a petition for exclusion with the Commission. Contrary to the current procedure, however, the filing of this petition would not automatically result in the scheduling of a limited preliminary exclusion hearing. The individual named in the petition would not be subject to preliminary exclusion pending completion of the plenary evidentiary hearing unless the Division, in its discretion, filed an independent application for a limited preliminary exclusion hearing. In either case, the underlying petition for exclusion would automatically proceed to a plenary evidentiary hearing unless such proceeding was waived by the candidate for exclusion. These changes would provide more flexibility to the Division in the exclusion process and would enable the Commission to reach a final determination in all exclusion cases with a complete record available for consideration.

It should be noted that amendments to the Commission's rules concerning exclusion hearings, N.J.A.C. 19:42-4, are also being proposed elsewhere in this issue of the New Jersey Register in conjunction with the instant proposal.

Social Impact

The readoption of N.J.A.C. 19:48 will have a positive effect on the public and the industry. These rules provide a system of control and regulation which insures, so far as practicable, the exclusion from participation in casino gaming "of persons with known criminal records, habits or associations". N.J.S.A. 5:12-1(b)(7). The State has an over-riding interest in maintaining the public trust and confidence in the credibility and integrity of the regulatory process and of casino operations (see N.J.S.A. 5:12-1(b) (6)). The exclusion or ejection of individuals whose presence in licensed casino establishments is found to be inimical to the interests of the State of New Jersey or of licensed casino gaming is consistent with that goal. The proposed amendments to these rules will further the public trust and confidence and the credibility and integrity of New Jersey's gaming industry and the regulatory process by enabling the Commission to make exclusion determinations based upon a complete factual record in all cases. Thus, the proposed readoption of these rules, with the proposed amendments, will promote the public policy expressed by the Legislature in N.J.S.A. 5:12-1(b)(6), (7), (9) and (13).

These rules also promote the legislative goal by imposing an affirmative duty upon casino and individual licensees to exclude or eject persons whose names appear on the exclusion list and to immediately notify a Commission inspector and Division representative of such action. Casino licensees also have the obligation to inform the Commission and Division of the names of persons they believe are appropriate for placement on the exclusion list.

Economic Impact

These rules, with the proposed changes, require the Commission, the Division of Gaming Enforcement and the industry to expend a certain amount of money and labor commensurate with their duties to comply with them. The requirement to exclude "unfit" persons, however, is imposed by the Casino Control Act, and, thus, any economic impact may be attributed to the legislative authorization for such exclusion as opposed to the implementing rules which are now being proposed for readoption by the Commission. Moreover, the costs associated with compliance with these rules is insignificant in comparison to the social benefits which these rules promote.

It is anticipated that the proposed amendments will not have any significant economic impact on the financial resources of the Commission, the Division or the industry. It is possible that some candidates for exclusion who might have avoided the expense of a plenary evidentiary hearing under the current rules will be required to proceed to a plenary hearing under the proposed amendments and, thus, might incur some additional expense. Any attempt to quantify the number of candidates who would fall into this category or the amount of additional expense involved would be highly speculative.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since these rules, with the proposed amendments, do not impose any reporting, recordkeeping or compliance requirements on small businesses as defined by the Regulatory Flexibility Act.

Full text of the rules proposed for readoption appear in the New Jersey Administrative Code at N.J.A.C. 19:48.

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

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19:48-1.4 Duties of the Division of Gaming Enforcement

(a) The Division shall, on its own initiative, or upon the request of the Chairman, investigate any individual who would appear to be an appropriate candidate for placement on the exclusion list.

(b) If, upon completion of an investigation, the Division determines that an individual should be placed on the exclusion list, the Division shall file a petition **for exclusion** with the Commission[, with supporting affidavits,] identifying the candidate and setting forth a factual basis why the Division believes the candidate satisfies the criteria for exclusion established by section 71 of the Act and [these regulations] **this chapter.**

(c) (No change.)

19:48-1.5 Procedure for entry of names

[(a) Upon receipt of a Division petition naming a candidate for the exclusion list, the Commission shall schedule a preliminary hearing in accordance with the provisions of N.J.A.C. 19:42-4. If, upon completion of the preliminary hearing, the Commission determines that there is a reasonable possibility that the candidate satisfies the criteria for placement on the exclusion list, the Commission shall issue a preliminary order placing the candidate on the exclusion list pending further proceedings in accordance with these regulations. A preliminary order designating a candidate as an excluded person shall be effective as to a particular casino licensee upon its service upon that casino licensee. The Commission shall deny any petition which does not present facts establishing a reasonable possibility that a candidate satisfies the criteria for placement on the excluding list.

(b) An excluded person placed on the list by preliminary order of the Commission shall be advised of his right to a final hearing in accordance with the provisions of section 71 of the Act and N.J.A.C. 19:42-4.

(c) If, upon completion of a final hearing, or in the absence of a final hearing, upon the expiration of time for requesting such a hearing, the Commission determines that an excluded person placed upon the list by preliminary order of the Commission satisfies the criteria for exclusion established by section 71 of the Act and these regulations, the Commission shall issue a final order directing that the excluded person shall remain on the list until further order of the Commission. A final order directing that an excluded person remain on the list shall be effective immediately. If, upon completion of a final hearing, the Commission determines that an excluded person placed upon the list by preliminary order of the Commission does not satisfy the criteria for exclusion established by section 71 of the Act and these regulations, the Commission shall issue a final order directing that the excluded person be removed from the list. A final order directing the removal of an excluded person from the list shall be effective as to a particular casino licensee upon its service upon that casino licensee.

(d) The placement of a candidate on the exclusion list pursuant to section 71 of the Act and these regulations shall have the effect of requiring the exclusion or ejectment of the excluded person from any casino hotel facility.]

(a) Upon receipt of a Division petition naming a candidate for placement on the exclusion list, the Commission shall notify the candidate of his or her right to request a plenary hearing in accordance with the provisions of N.J.A.C. 19:42-4.4 and 4.5.

(b) If, upon completion of a plenary hearing, or in the absence of a plenary hearing, upon the expiration of the time for requesting such a hearing, the Commission determines that a candidate for exclusion satisfies the criteria for exclusion established by section 71 of the Act and this chapter, the Commission shall issue a final order directing that the candidate be placed on the exclusion list until further order of the Commission. A final order directing that a candidate be placed on the list shall be effective as to a particular casino licensee upon its service upon that casino licensee.

(c) The placement of a candidate on the exclusion list pursuant to section 71 of the Act, N.J.A.C. 19:42-4.5 and this chapter shall have the effect of requiring the exclusion or ejectment of the excluded person from any casino hotel facility.

(d) If, upon completion of a plenary hearing, the Commission determines that a candidate for exclusion does not satisfy the criteria for exclusion established by section 71 of the Act and this chapter, the Commission shall issue a final order denying the petition for exclusion. A final order denying a petition for exclusion shall be served on the candidate and the Division. If the candidate had been previously placed upon the list by preliminary order of the Commission in accordance with the provisions of N.J.A.C. 19:48-1.5A, the Commission shall issue a final order directing that the excluded person be removed from the list, which order shall be served on the excluded person, the Division and all casino licensees. A final order directing the removal of an excluded person from the list shall be effective as to a particular casino licensee upon its service upon that casino licensee.

19:48-1.5A Application for preliminary placement of candidate on list

(a) In addition to filing a petition for exclusion, the Division may, in its discretion, file an application with the Commission seeking preliminary placement of the candidate on the exclusion list pending completion of the plenary hearing on the petition for exclusion. An application for preliminary placement on the list shall be supported by reliable documentary or other evidence. Upon receipt of an application for preliminary placement on the list, the Commission shall schedule a preliminary exclusion hearing and notify the candidate in accordance with the provisions of N.J.A.C. 19:42-4.6 and 4.7.

(b) If, upon completion of the preliminary exclusion hearing, the Commission determines that the reliable documentary or other supporting evidence establishes a reasonable possibility that the candidate satisfies the criteria for exclusion established by section 71 of the Act and this chapter, the Commission shall issue a preliminary order placing the candidate on the exclusion list pending the issuance of a final order in accordance with the provisions of N.J.A.C. 19:48-1.5. A preliminary order designating a candidate as an excluded person shall be effective as to a particular casino licensee upon its service upon that casino licensee.

(c) The preliminary placement of a candidate on the exclusion list pursuant to section 71 of the Act, N.J.A.C. 19:42-4.7 and this chapter shall have the effect of requiring the exclusion or ejectment of the excluded person from any casino hotel facility.

19:48-1.8 Petition to remove name from exclusion list

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

(d) A hearing to determine if an excluded person placed on the list by final order of the Commission should be removed from the list shall be conducted as if it were a [final] **plenary** hearing pursuant to the provisions of N.J.A.C. 19:48-1.5[(c)] and N.J.A.C. 19:42-[4.7] **4.5**. Notwithstanding the foregoing, an excluded person shall have the affirmative obligation to show cause why he **or she** should be removed from the list.

(e) (No change).

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RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Jersey Fresh Quality Grading Program Products and Manner of Use

Adopted Amendments: N.J.A.C. 2:71-2.4 and 2.5

Proposed: June 6, 1988 at 20 N.J.R. 1129(b).
Adopted: August 4, 1988 by State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: August 5, 1988 as R.1988 d.421, **without change.**

Authority: N.J.S.A. 4:10-3, 4:10-13 and 4:10-20.

Effective Date: September 6, 1988.
Expiration Date: July 8, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

2:71-2.4 Agricultural commodities intended to be marketed under the Jersey Fresh Quality Grading Program

(a) Only sweet anise (fennel), apples, asparagus, blueberries, cabbage, green corn, cucumbers, cucumbers (pickling type), eggplants, endive, escarole, herbs (fresh), leeks, big Boston lettuce, iceberg lettuce, nectarines, okra, common green onions, parsley, peaches, sweet peppers, sweet potatoes, white potatoes, raspberries, romaine, summer squash, fall and winter squash and tomatoes (fresh market), may be identified by the "logo".

(b) (No change.)

2:71-2.5 Commodity grades, packing requirements, packer identification and containers

(a) (No change.)

(b) Commodities shall be graded, packed, identified and contained as follows:

1.-10. (No change.)

11. Herbs (fresh) shall be clean, have characteristic color and shall not be affected by discoloration, wilting, freezing, mechanical damage or by other means. Herbs shall be free from decay. All containers shall be new. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, are provided: five percent in any lot which fail to meet the requirements, including therein not more than one-half of one percent affected by decay. Individual packages in a lot may contain not more than double the tolerance specified, provided that at least one defective specimen may be permitted in any package and, provided further, that the average for the entire lot is within the tolerance specified.

12. Big Boston lettuce shall be U.S. No. 1 grade, or better. The heads shall be fairly uniform in size. The containers shall have a tight pack, provided the heads are not individually packaged. All containers shall be new.

Recodify existing 11. as 13. (No change in text.)

14. Leeks shall be fairly clean, tops and bulbs shall be characteristic color. Tops and bulbs must not be affected by discoloration, wilting, freezing, mechanical damage or by other means. Plants shall be free from decay. If tops are trimmed, it must be done so as not to materially affect the appearance of the individual plant. In order to allow for variations incident to proper grading and handling, the following tolerances, by count, are provided: ten percent for plants in any lot which fail to meet the requirements, including therein not more than one percent for plants affected by decay. Individual packages in a lot may contain not more than one and one-half times the tolerance specified, provided that the average for the entire lot is within the tolerance specified. All containers shall be new.

Recodify existing 13. through 15. as 15. through 17. (No change in text.)

18. Parsley shall be U.S. No. 1 grade. The pack shall be for 60 bunches per bushel. All containers shall be new.

Recodify existing 17. through 25. as 19.-27. (No change in text.)

(b)

DIVISION OF RURAL RESOURCES

State Agriculture Development Committee Acquisition of Development Easements

Adopted Amendments: N.J.A.C. 2:76-6.9, 6.11 and 6.14

Proposed: June 20, 1988 at 20 N.J.R. 1319(a).
Adopted: August 12, 1988 by Arthur R. Brown, Jr., Chairman, State Agriculture Development Committee.
Filed: August 15, 1988 as R.1988 d.435, **without change.**

Authority: N.J.S.A. 4:1C-5f.

Effective Date: September 6, 1988.
Expiration Date: August 29, 1989.

Summary of Public Comments and Agency Responses:

COMMENT: The New Jersey Department of Transportation, Division of Project Development and Planning, commented in support of the proposed amendments, citing a positive effect on the Committee's ability to preserve more farmland in a shorter period of time and indicating New Jersey Department of Transportation's belief that the proposed amendments would not affect that agency's procedures regarding farmland impacts related to roadway projects.

RESPONSE: The Committee notes the support of New Jersey Department of Transportation and concurs with their stated belief that the proposed amendments would not affect that agency's cited procedures.

Full text of the adoption follows.

2:76-6.9 Final board review

(a) The board shall inform the landowner of the certified fair market value of the development easement and shall proceed to negotiate a purchase price of the development easement with the landowner. In no case shall the committee make a grant to the board for more than 80 percent of the certified fair market value of the development easement.

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

2:76-6.11 Final committee review

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

(c) The committee shall authorize funding for no more than 80 percent of the cost of the development easement on the applications receiving a priority ranking.

(d) (No change.)

2:76-6.14 Payment procedures; schedule of payment

(a) (No change.)

(b) The committee, upon receipt of all approvals and verification of costs incurred by the board, shall authorize the Secretary to issue a grant to the board for no more than 80 percent of the costs for acquisition of the development easement.

1. (No change.)

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PERSONNEL

(a)

MERIT SYSTEM BOARD

General Rules and Department Organization Definitions

Adopted Amendment: N.J.A.C. 4A:1-1.3

Proposed: April 18, 1988 at 20 N.J.R. 845(b).
Adopted: July 26, 1988 by the Merit System Board, Eugene J. McCaffrey, Sr., Commissioner, Department of Personnel.
Filed: August 1, 1988 as R.1988 d.415, **without change.**

Authority: N.J.S.A. 11A:2-6(d).

Effective Date: September 6, 1988.
Expiration Date: October 5, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

4A:1-1.3 Definitions
The following words and terms, when used in these rules, shall have the following meanings unless the context clearly indicates otherwise:
. . .
"Department" in local service, where not otherwise defined by statute, means the largest type of organizational unit established by ordinance or resolution, as appropriate, that is not a sub-unit of any other organizational unit for the purpose of administering the political subdivision. In State service, "department" means a principal executive department of State government.
. . .

(b)

MERIT SYSTEM BOARD

Classification, Services and Compensation

Adopted New Rules: N.J.A.C. 4A:3

Adopted Repeals: N.J.A.C. 4:1-6, 4:1-7, 4:1-10.1, 4:1-27; 4:2-6.4 through 4:2-6.10, 4:2-7.1 through 4:2-7.6, 4:2-7.7(a), (b) and (d), 4:2-7.8 through 4:2-7.13, 4:2-27; and 4:3-2.

Proposed: April 18, 1988 at 20 N.J.R. 846(a).
Adopted: July 29, 1988 by the Merit System Board, Eugene J. McCaffrey, Sr., Commissioner, Department of Personnel.
Filed: August 1, 1988 as R.1988 d.416, **with technical and substantive changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3), **and with portions not adopted.**

Authority: N.J.S.A. 11A:3-1 through 7 and N.J.S.A. 11A:6-24.

Effective Date: September 6, 1988.
Expiration Date: September 6, 1993.

Summary of Public Comments and Agency Responses:
The Department of Personnel held three public hearings on the proposed repeals and new rules: at the Office of Administrative Law, Trenton (50 attendees); in Pennsauken (107 attendees); and in Newark (425 attendees). Of those attending the hearings, 51 testified. The Department also received numerous written comments.

The first four comments to proposed N.J.A.C. 4A:3 constitute general reactions to the rules proposed, rather than comments to specific areas of the proposed rulemaking.

COMMENT: Some individuals expressed general concern that the proposed N.J.A.C. 4A:4-3 reflect the intent of the Civil Service Reform Act (N.J.S.A. 11A).

RESPONSE: The Merit System Board and the Department of Personnel have worked to effect the intent of the Civil Service Reform Act in the proposed rules. In preparation for proposing N.J.A.C. 4A:3, the Department held meetings to review preliminary drafts of the rules with advisory boards, one comprised of labor representatives, one of State personnel officers and one of local government representatives. The Commissioner of Personnel also testified before legislative oversight committees on the implementation of Title 11A. Thus, the concerns of affected parties and of the legislature have been sought out and considered.

COMMENT: Some individuals stated that the proposed rules violate N.J.S.A. 11A:1-2(e), which guarantees recognition of negotiating units and their role in the employment process.

RESPONSE: As stated above, the Merit System Board and the Department of Personnel have made every attempt to faithfully implement the provisions of Title 11A. Specifically, the statutory requirement found at N.J.S.A. 11A:2-11(m), that the Commissioner establish and consult with a labor advisory board, has been implemented, with respect to all proposed chapters of the new rules. Through this process, an effort is made to fulfill the requirements of N.J.S.A. 11A:1-2(e) regarding the collective negotiations process.

COMMENT: A representative of Communications Workers of America (CWA) Local 1039 stated that the rules proposal, rather than eliminating wage discrimination pursuant to a recommendation by the Task Force on Equitable Compensation, permits wage freezes. A representative of CWA Local 1031 expressed displeasure that the Department of Personnel does not have the funds in its own budget to pay for equitable compensation. Representatives of CWA and representatives of the Rainbow Coalition and from the National Organization for Women urged implementation of the recommendations of the Task Force on Pay Equity.

RESPONSE: The rules proposal is intended to provide clear guidelines for the classification of positions in State and local service and the determination of compensation in a variety of situations. Pay equity funding is not an issue for these rules and requires general salary expenditures for the budgets of all State departments.

COMMENT: A representative of CWA Local 1033 stated that N.J.A.C. 4A:3-1.1(a) would have the effect of exempting employees from the career service and from a negotiations unit.

RESPONSE: The language of the rule is taken from the requirements of N.J.S.A. 11A:3-1, which permits assignment and reassignment of titles among the career, senior executive and unclassified services. Moreover, the rule would not affect negotiations unit designations for titles.

COMMENT: A representative of the International Federation of Professional and Technical Engineers (IFPTE) agreed that, before a reallocation of a career service title to the unclassified service, a public hearing should be provided, pursuant to N.J.A.C. 4A:3-1.1(b). A representative of CWA Local 1086 opposed N.J.A.C. 4A:3-1.1(b) and (c). A representative of CWA Local 1033 expressed support for OPTION ONE of the two options presented for N.J.A.C. 4A:3-1.1(c) because it would provide for the most rights. The Camden County Personnel Director also expressed support for OPTION ONE. The Personnel Director for the Department of Environmental Protection (DEP) and a representative of Camden Council No. 10 supported OPTION ONE because it would prevent a career employee from having to surrender rights to a title because of appointment to an unclassified position that may be beyond the control of the employee. A representative of CWA Local 1037 stated that adoption of either version of N.J.A.C. 4A:3-1.1(c) could result in an employee losing all rights attendant permanent status, when the provision is coupled with title consolidation.

RESPONSE: There was general agreement on the choice of OPTION ONE for N.J.A.C. 4A:3-1.1(c). It should be noted that the purpose of adopting a version of subsection (c) is to ensure the protection of the status of a career service incumbent. The Merit System Board has decided to adopt OPTION ONE as the option most likely to protect an employee's tenure rights.

COMMENT: A representative of Camden Council No. 10 stated that the reallocation of career service titles between the noncompetitive division and the competitive division, as provided for in N.J.A.C. 4A:3-1.2(a), should only occur in unusual circumstances and notice should be provided. She also opposed N.J.A.C. 4A:3-1.2(c), which would permit an interim reallocation of a career service title between the competitive and noncompetitive divisions, because the rule would permit the appointing authority to circumvent competitive testing. A representative of IFPTE requested that the rule include safeguards to prevent any abuse. He also proposed that any reallocation be pursuant to a union contract. A CWA member stated that N.J.A.C. 4A:3-1.2(c) would result in the lack of a designated salary range for employees whose titles are reallocated to the noncompetitive division on an on-going or interim basis.

RESPONSE: First, the rule does provide for an administrative review of reallocations from the competitive to the noncompetitive division in N.J.A.C. 4A:3-1.2(e), which will include a notice and comment process.

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If the situation warrants, a public hearing may be provided. However, there is no reason why the noncompetitive status of a title would affect the existence of a salary range. Generally, titles in State service are assigned to a salary range, whether the titles are assigned to the competitive or noncompetitive division.

COMMENT: A representative of IFPTE and a representative of Camden Council No. 10 stated that N.J.A.C. 4A:3-1.2(e) should require that a public hearing be held prior to a reallocation of a title from one division to another. The Personnel Director for DEP proposed that the Department of Personnel complete its administrative review of a proposed reallocation, as set forth in N.J.A.C. 4A:3-1.2(e), within 60 days of receipt of a request for a reallocation.

RESPONSE: As noted in the response to the previous comment, N.J.A.C. 4A:3-1.2(e) provides for a thorough administrative review process, which can include a public hearing where necessary. As to a time limit within which the Department of Personnel may act, the rule limits the comment period to 20 days. The amount of time needed for a final administrative decision will vary according to the complexity of issues involved.

COMMENT: A representative of Camden Council No. 10 proposed that the redesignation of a noncompetitive title to the competitive division pursuant to N.J.A.C. 4A:3-1.2(g) be done pursuant to the procedures outlined in N.J.A.C. 4A:3-1.2(e). The Personnel Director for DEP stated that interim designations to the noncompetitive division lasting less than one year should be permitted an extension to the one-year limit under subsection (g) without going through the administrative review process found in subsection (e).

RESPONSE: Since the purpose of an interim allocation of titles to the noncompetitive division is to address certain emergent needs in the appointment process, requiring an administrative review process for reallocation to the competitive division, or permitting an extension of time for the duration of the noncompetitive period, would be contrary to the purpose of this provision.

COMMENT: Representatives of CWA Local 1033 and CWA Local 1037 expressed opposition to the concept of unclassified appointments. A representative of CWA Local 1034 stated that the right to appoint unclassified employees in State government is being abused.

RESPONSE: Numerous specific statutes outside of Title 11A and N.J.S.A. 11A:3-4 and 11A:3-5 set certain titles in the unclassified service.

COMMENT: A representative of CWA Local 1033 suggested that the word "examination" be deleted from N.J.A.C. 4A:3-1.3(a)5 and replaced with "the compilation of a rank listing of eligibles."

RESPONSE: The suggested change is not useful, since eligible lists are constructed from the scores that examinees receive on an oral or written examination or through an evaluation of education and experience, another examination procedure.

COMMENT: Representatives of IFPTE and Camden Council No. 10, and a CWA member, stated that N.J.A.C. 4A:3-1.3(a)5 should include stricter criteria for the allocation of a title to the unclassified service.

RESPONSE: The rule explains the criterion that the Merit System Board will use in determining whether an allocation of a title to the unclassified service is appropriate. Under this standard, it is anticipated that the overwhelming majority of job titles would remain allocated to the career service.

COMMENT: A representative of CWA Local 1034 stated that abuses exist in the appointments of confidential secretaries and assistants. A CWA member stated that N.J.A.C. 4A:3-1.4 would not limit the number of such confidential secretaries and assistants who may be appointed. A representative of IFPTE stated that the rule would not protect against the potential abuse of such appointments.

RESPONSE: N.J.A.C. 4A:3-1.4(a) specifically limits the number of confidential secretaries and assistants who may be appointed in State service, pursuant to the statutory language found at N.J.S.A. 11A:3-4(h).

COMMENT: A representative of CWA Local 1032 stated that the Senior Executive Service (SES) rules would affect the terms and conditions of employment and, as such, should be the subject of negotiations. A representative of CWA Local 1039 proposed that the SES rules include a provision requiring that 50 percent of all SES members be minorities and women. A deputy division director in DEP expressed opposition to the requirement in N.J.A.C. 4A:3-2.1(c) that 85 percent of all positions allocated to the SES be career positions. She stated that this provision would be unfair to people who have not had the chance to go through the competitive testing process for certain titles.

RESPONSE: N.J.S.A. 11A:3-3 specifically requires rulemaking on the Senior Executive Service. The requirement that 85 percent of all SES members be in the career service is set by statute, and thus cannot be changed by rule. There is a strong emphasis on equal employment opportunity and affirmative action for the SES. A strict quota requirement would not be appropriate.

COMMENT: A CWA member expressed opposition to N.J.A.C. 4A:3-2.3(a), which would permit the posting requirements for vacancies to be waived when the vacancies are SES positions. She also stated that eligible lists and job specifications should be utilized in filling SES vacancies.

RESPONSE: Selection procedures for the SES are not limited to ranked lists and the type of position and selection options will vary. As to waiver of the posting requirement, this option would occur only where a particular position is first allocated to the SES.

COMMENT: One commenter stated that the non-selection of a permanent employee for SES membership, as outlined in N.J.A.C. 4A:3-2.3(b), would be the equivalent of a demotion as a result of a reorganization, as the employee would be paid less than if he or she were an SES member. He proposed that such an employee receive a preferred reemployment right which would have precedence over promotional and open competitive eligible lists. He also suggested that subsection (b) be changed so that a non-selected permanent employee will have a disciplinary appeal right from a demotion as a result of the non-selection. Also, the subsection should be amended to state that the non-selected employee have the right to placement in a position for which he or she qualifies, rather than in an "available" position.

RESPONSE: The rule follows N.J.S.A. 11A:3-3 on alternatives for a permanent employee with career service status. Thus, disciplinary or reemployment right requirements in this instance would not be useful. As to the comment that a non-selected employee be placed in a position for which he or she is qualified, that requirement is found in N.J.A.C. 4A:3-2.3(b).

COMMENT: A representative of CWA Local 1039 stated that the benefits which would be available to SES members pursuant to N.J.A.C. 4A:3-2.6 constitute merit pay, and merit pay should be negotiated. A representative of CWA Local 1037 opposed the provisions of the proposed rule. A CWA representative also stated that gainsharing for SES members and their subordinates, provided for in N.J.A.C. 4A:3-2.7, should be negotiated. A representative of CWA Local 1032 stated that gainsharing is improper because of the rule's stated objective of promoting cost-effectiveness. That goal ordinarily is sought through a reduction in force. A member of CWA proposed that the rule should include a provision on the equitable distribution of gainsharing.

RESPONSE: SES positions are not included within negotiations units. However, the Board has decided not to adopt N.J.A.C. 4A:3-2.7 at this time. The Board will continue to consider the concerns raised concerning this rule.

COMMENT: One commenter criticized the lack of disciplinary appeal rights for a permanent employee who is not selected for SES and who is placed in a lower level position. A bureau chief in DEP stated that he opposed the provision at N.J.A.C. 4A:3-2.9(c), which would permit a separated SES member with permanent status to be placed in a title at a lower level than the one in which the employee has permanent status.

RESPONSE: N.J.S.A. 11A:3-3 is the basis for the rule on separation of an employee from the SES service.

COMMENT: Several CWA representatives and members, and a representative of the National Organization for Women, all expressed opposition to title consolidation.

RESPONSE: Title consolidation is expressly authorized by N.J.S.A. 11A:3-1(b) and it is necessary to provide rules in this area.

COMMENT: A representative of CWA Local 1032 and a representative of IFPTE stated that N.J.A.C. 4A:3-3.1(b)3 should be amended to provide for the negotiation of salaries for negotiations unit titles.

RESPONSE: A State employee compensation plan is required, pursuant to N.J.S.A. 11A:3-7

COMMENT: A representative of IFPTE urged that N.J.A.C. 4A:3-3.1(c) be changed to provide that if an appointing authority designates official job titles purely for use in public correspondence, an employee using such a title should be paid accordingly.

RESPONSE: Job titles used solely for some public correspondence would not add to the duties of an employee or change an employee's responsibilities. In addition, the employee's actual title, in which he or she may have or obtain permanent status, would remain the same. However, in response to the comment, the rule has been modified to ensure that functional titles are appropriate to the duties performed.

COMMENT: A representative of IFPTE and a representative of Camden Council No. 10 stated that N.J.A.C. 4A:3-3.2(b)2 and (c) should

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be changed so that a single job specification for a title series would not be permissible. This restriction would forestall the potential of out-of-title work assignments. The Personnel Director for DEP asked why N.J.A.C. 4A:3-3.2(b)2 does not require that a job specification include a listing of knowledge, skills and abilities.

RESPONSE: A job specification for a series of titles would specify the differences in duties among the titles. Meanwhile, it will continue to be the practice of the Department of Personnel to include qualifications and job descriptions in specifications, although the terminology of "knowledge, skills and abilities" may be modified.

COMMENT: A representative of CWA Local 1033 expressed opposition to N.J.A.C. 4A:3-3.3(a)2, because it would permit title consolidation. A representative of IFPTE stated that the rule should be more restrictive of title consolidation activities. A representative of Camden Council No. 10 opposed the establishment of "dual" titles, as inferred from subsection (a). The representative of CWA Local 1033 and a representative of Camden Council No. 10 proposed that N.J.A.C. 4A:3-3.3(a) be amended to provide for notice to negotiations representatives of changes in the classification plans. Both representatives, along with the IFPTE representative, also favored that notice of the administrative changes permitted in N.J.A.C. 4A:3-3.3(b) be sent not only to the Department of Personnel but to negotiations representatives. The CWA representative favored such notice when appointing authorities update their organizational charts, pursuant to N.J.A.C. 4A:3-3.3(c). The Personnel Director for DEP stated that the requirement in subsection (c) for an appointing authority to provide the Department of Personnel with updated organizational charts on an annual basis is impractical because organizational changes are so frequent. The Camden County Personnel Director asked how a job audit of an unclassified position would be conducted pursuant to N.J.A.C. 4A:3-3.3(d). He stated that there are no job specifications for unclassified positions in local government.

RESPONSE: As noted above, title consolidation is permitted by N.J.S.A. 11A:3-1(b). Any title consolidation that occurs pursuant to this chapter and the statute would be done to make the examination and selection process faster and more responsive to the needs of both appointing authorities and employees. As to notification concerning changes in the classification plans, N.J.A.C. 4A:3-3(a)4 provides for such notification to affected persons. The need for annually updated organizational charts is based on the Department's responsibility for continuous review of the classification plan. In particular, the structure of a unit must be known in order to classify positions within that unit. The necessity for job audits of unclassified positions has been recognized by the New Jersey Superior Court as an activity of the Department. Generally, an audit of an unclassified position would be performed to ensure that the incumbent is not performing the duties of a career service title.

COMMENT: A representative of CWA Local 1033 favored the substance of N.J.A.C. 4A:3-3.4, but proposed that the last clause "unless otherwise provided by law or these rules" be deleted. A representative of IFPTE stated that this rule would be meaningless once title consolidation is implemented.

RESPONSE: The rule takes into account that there may be emergent situations where an employee may have to perform duties uncharacteristic of his or her title, or where a law is enacted which would supersede these rules.

COMMENT: A representative of IFPTE asked for clarification of the meaning of the phrase "organizational structure of the appointing authority" in N.J.A.C. 4A:3-3.5(a)3. He also proposed, along with a representative of Camden Council No. 10 that employees and their negotiations representatives be permitted, under N.J.A.C. 4A:3-3.5(b), to request a reclassification. The IFPTE representative stated that the delegation by the Commissioner of Personnel to appointing authorities of position reclassifications, as provided in N.J.A.C. 4A:3-3.5(c), has no statutory authorization. He further proposed a 30 day time limit on Department of Personnel reclassification determinations. A representative of CWA Local 1033 stated that the enforceability of N.J.A.C. 4A:3-3.5(c)1 would be improved if documents comprising an appointing authority's request for an extension of time to implement the Department of Personnel's reclassification decision were made public records. The Personnel Director for DEP stated that 30 days for an appointing authority to implement a reclassification plan is too short; the time should be 60 days. She also proposed that the rule include a three-month deadline for a Department of Personnel reclassification determination.

RESPONSE: The phrase "organizational structure of the appointing authority," N.J.A.C. 4A:3-3.5 found in (a)3, refers to the organization of its divisions, offices, sections and units, based on the functional needs of the appointing authority.

An employee, individually or through a negotiations representative, may appeal a reclassification determination as provided in N.J.A.C. 4A:3-3.5(c)2. The employee may also appeal from a classification of a position pursuant to N.J.A.C. 4A:3-3.9. In these ways, an employee and his or her negotiations representative may be involved in the classification and reclassification processes.

It should be noted that the delegation of position reclassifications to appointing authorities is specifically authorized by N.J.S.A. 11A:2-12. As to the time of issuance of the reclassification determination, the Department of Personnel is making an effort to reduce this time, but setting a limit by rule would not be appropriate. As for implementation of the reclassification determination, the appointing authority will have the opportunity to ask for an extension of time for good cause, as provided in N.J.A.C. 4A:3-3.5(c)1.

COMMENT: A representative of CWA Local 1031 proposed that, whenever an appointing authority requests a new title, as provided in N.J.A.C. 4A:3-3.6(a), it will forward a copy of the request to the affected negotiations representative. A representative of IFPTE proposed that subsection (a) be amended to permit the union to request a new title or, at the very least, to be given notice before a title is reevaluated. The Personnel Director for DEP asked that N.J.A.C. 4A:3-3.6(b) reflect a more interactive relationship between the appointing authority and the Department of Personnel on the creation of new job specifications.

A representative of CWA Local 1033 proposed that N.J.A.C. 4A:3-3.6(b) be amended to provide for the right of unions to negotiate salaries for new titles. Barring that, subsection (b) should provide for notice to unions of salary changes. Representatives from CWA Locals 1034 and 1032 opposed the tentative title provision of N.J.A.C. 4A:3-3.6(c).

The IFPTE representative asked why N.J.A.C. 4A:3-3.6(e) provides for different effective dates for new titles in State and local government service. The Personnel Director for the Department of Environmental Protection proposed that the effective date of a new title in State service be the next pay period.

RESPONSE: It should be noted, first, that an employee or his or her negotiations representative may appeal the creation of a new title through the classification appeal procedure found in N.J.A.C. 4A:3-3.9. As to the role of the appointing authority, N.J.A.C. 4A:3-3.6(a) requires that the appointing authority provide detailed information to the Department of Personnel on the need for the new title.

It also should be noted that improvements in the classification system, which are enabled by the adoption of N.J.A.C. 4A:3, will limit the number of situations when a tentative title will be necessary. These improvements also will reduce the amount of time in which an employee may have to serve in a tentative title, when use of that designation is necessary.

The effective date for a new title will differ from State to local service because of the need in many local jurisdictions for an ordinance or resolution of the governing body to implement these determinations. The more specific effective date for State service provides a reasonable implementation period for a State appointing authority.

Finally, salary concerns are taken up in N.J.A.C. 4A:3-4, N.J.S.A. 11A:3-7 authorizes a State Compensation Plan which is implemented through these rules.

COMMENT: A representative of CWA Local 1033, the Personnel Director for DEP and a representative of Camden Council No. 10 all favored OPTION TWO of the two options presented for N.J.A.C. 4A:3-3.7(b). The first two commenters were pleased with the inclusion of promotional opportunities in OPTION TWO.

RESPONSE: The support for OPTION TWO is recognized and OPTION TWO has been adopted by the Merit System Board.

COMMENT: A representative of IFPTE was concerned that N.J.A.C. 4A:3-3.7 could be read to permit trainee title training periods to last indefinitely. A representative of CWA Local 1033 favored the language in N.J.A.C. 4A:3-3.7(f)3.

RESPONSE: N.J.A.C. 4A:3-3.7(d) has been amended to specify that the length of the training period will be no longer than 12 months, subject to the limited exception found in (e).

COMMENT: The chief Personnel Officer for the Department of the Treasury urged that the adoption of N.J.A.C. 4A:3-3.8 be postponed until further review is done in light of that Department's experience with intermittent titles. A representative of IFPTE urged that furlough procedures for intermittent employees, under N.J.A.C. 4A:3-3.8(b), be the subject of negotiations. Two representatives of CWA Local 1033 stated that the rule should be changed to reflect a number of concerns including seniority, the definition of "furlough," recall notices, alterna-

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tives to furlough, the working test period, shift differentials and layoff rights.

RESPONSE: Although the entire subject of intermittent employees cannot be held in abeyance, the specific areas outlined above will be under further review.

COMMENT: A representative of CWA Local 1033 expressed support for N.J.A.C. 4A:3-3.9(b), which makes classification appeal procedures applicable to both career and unclassified employees. However, he stated, the documentation required in N.J.A.C. 4A:3-3.9(c) would be burdensome. The Personnel Director for DEP stated that subsection (c) should provide for a classification appeal format which would include a classification questionnaire. The CWA representative expressed concern that paragraph (c)1 does not require the current practice of a departmental desk audit within 30 days of a classification appeal and that appeals probably would only be decided on the written record. He stated that the time limit in paragraph (c)2 of 20 days for an appeal to the Department of Personnel is too restrictive. He proposed the deletion of the provision in subparagraph (c)3ii which would restrict arguments on appeal to the Department of Personnel to those raised at the departmental level. He also expressed this concern with respect to N.J.A.C. 4A:3-3.9(e). An IFPTE representative stated that paragraph (e)2 should be changed to permit the consideration of new duties added after the initial filing of the classification appeal. He also suggested that N.J.A.C. 4A:3-3.9(c)4 be amended to require that the Department of Personnel order a desk audit when a classification appeal reaches the Department level. A representative of IFPTE expressed concern that the requirement in paragraph (c)4, that the Department issue a decision letter within 60 days, has no enforcement mechanism. He also noted that N.J.A.C. 4A:3-3.9(d)1 only provides for the Department of Personnel to order a desk audit in a local government services matter in its discretion.

RESPONSE: It should be noted that N.J.A.C. 4A:3-3.9 provides little substantive deviation from the former rule on classification appeal procedures, N.J.A.C. 4:1-6.5A. A classification questionnaire is not specifically required in the new rule, due to the availability of other audit techniques. Desk audits will not be necessary in every situation. Accordingly, the new rule, like its predecessor, will not mandate desk audits in every situation.

In response to the comments regarding new information on a classification issue, language has been added to clarify that there could be a remand of the new issues raised to the previous level of appeal. Finally, enforcement mechanisms in the rules are generally found in N.J.A.C. 4A:10.

COMMENT: The Personnel Director for Camden County proposed that N.J.A.C. 4A:3-3.9(d)1ii be amended to include a provision that an employee be permitted to perform out-of-title duties as long as those duties comprise no more than 30 percent of the employee's total duties.

RESPONSE: This suggested amendment appears to be contrary to the statute and to classification principles.

COMMENT: The CWA representative and a representative of IFPTE proposed that N.J.A.C. 4A:3-3.9(e)1 be amended to provide for an independent classification reviewer for every appeal which reaches the Commissioner's level. The CWA representative also urged that the same person not serve as a classification reviewer on every appeal which is identified as requiring an independent reviewer.

RESPONSE: Experience with the classification appeal process has shown that it is not necessary to assign an independent classification reviewer in every instance. It is not intended that the same reviewer be assigned to every appeal.

COMMENT: A representative of IFPTE stated that N.J.A.C. 4A:3-3.9(f)2 would permit the Commissioner to arbitrarily set a date in local government service for the classification action to take effect.

RESPONSE: As noted in the response to comments on N.J.A.C. 4A:3-3.6, the effective date for a classification determination will vary in local jurisdictions.

COMMENT: A representative of CWA Local 1086 and an employee of the Division of Disabilities Services objected to N.J.A.C. 4A:3-4 because it could provide for wage reductions or freezes.

RESPONSE: The general thrust of N.J.A.C. 4A:3-4 is to provide fair rules for compensation adjustments, most of which are advancements. The rules provide limited circumstances in which compensation would decrease.

COMMENT: A representative of CWA Local 1033 proposed that N.J.A.C. 4A:3-4 include rules on the Salary Adjustment Committee.

RESPONSE: The responsibilities of the Salary Adjustment Committee arise from the annual Appropriations Act and SAC matters are not in these Merit System Board rules.

COMMENT: A representative of IFPTE stated that N.J.A.C. 4A:3-4.1(a) should provide for notice to unions of all compensation plans by local government jurisdictions. A representative of CWA Local 1033 stated that paragraph (a)2 furthers title consolidation, which he opposes. He proposed that paragraph (a)3 be changed to provide for union notification when a title is to have a maximum salary which is 175 percent above the minimum. The IFPTE representative suggested that the rule be amended to provide for technical assistance by the Department to a union. Both representatives stated that subsection (d) should be amended to require negotiations of the State compensation plan, pay rates and salary ranges.

RESPONSE: The language of N.J.A.C. 4A:3-4.1(a)2 is in accord with the statutory language found in N.J.S.A. 11A:3-7 concerning local government salaries. The requirement in N.J.A.C. 4A:3-4.1(a)1 that each local appointing authority provide a copy of the compensation plan to the Department of Personnel, and the authorization in paragraph (a)3, for an appointing authority to request technical assistance of the Department, are also consistent with that section of the statute.

The State Compensation Plan is required under N.J.S.A. 11A:3-7.

COMMENT: A representative of CWA Local 1033 urged that the provisions of N.J.A.C. 4A:3-4.2 be negotiated. A representative of IFPTE stated that the designation of titles as "no-range" or "single rate," as provided in subsection (a), and salary ranges for 10 month titles, as provided in paragraph (b)4, should be subject to negotiations. A CWA member expressed opposition to the provision in subsection (a) permitting the Commissioner to place restrictions on salary payments for "no-range" or "single rate" titles. The CWA member stated that the Department does not need a rule to change salary ranges, as provided in subsection (a), because the Department already has changed salary ranges.

RESPONSE: N.J.S.A. 11A:3-7 provides the authority for this rule, and the designation of titles as "no range" or "single rate" reflects current practice with respect to a small number of job titles, most of which are not in negotiations units. The Commissioner's authority to place restrictions on salaries for "no range" or "single rate" titles derives from the overall authority with respect to the State Compensation Plan.

COMMENT: A representative of CWA Local 1032 urged that N.J.A.C. 4A:3-4.3 include reasonable time frames for job reevaluation requests. The Personnel Director for DEP stated that the rule should include a six-month time consultant on Department actions.

A representative of IFPTE stated that the effect of N.J.A.C. 4A:3-4.3(a) is that job reevaluation requests for titles existing in more than one department will affect more than one local negotiations unit and become more problematic. He also noted that subsection (b) requires the employee or union representative to rewrite an existing job specification in a job reevaluation appeal. He urged that subsection (f) be changed to make the appointment of an independent salary reviewer mandatory. He further urged that paragraph (f)2 be changed to permit cross-exceptions to be filed within 15 days, rather than within 10 days.

RESPONSE: The rule includes a time restriction for actions that must be taken in the job reevaluation request and appeal process.

Subsection (b) requires that changes to a job specification be identified rather than being totally rewritten anew by an employee. The employee should be able to identify changes in job content with reference to the job specification.

An independent salary reviewer may not be necessary in every case. Further, the rule reflects the current job reevaluation system, which has provided an appropriate review system.

Finally, paragraph (f)2 permits five fewer days for cross-exceptions to be filed than provided for exceptions, because cross-exceptions are a response to the exceptions rather than a response to the report and recommendation of the independent salary reviewer. Thus, the cross-exception process should be less complicated and time-consuming than the exceptions process.

COMMENT: A representative of IFPTE stated that the provisions in N.J.A.C. 4A:3-4.4(a) which permit an employee to be hired with a salary up to the fourth step of the range at the same time that a new employee is defined as one with "no immediate prior State service" will create problems. He noted that subsection (c) authorizes the discretionary advancement of the salaries of certain employees. A representative of CWA Local 1033 expressed support for the provisions of subsection (c) but requested that the position go one step further by seeing salary advancements apply for any authorized salary system and not just the authorized hiring rate.

RESPONSE: The purpose of this rule is to attract qualified persons to State service and simultaneously provide proper salaries for current

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employees. It codifies several Salary Administration Memoranda (SAMs) which have been useful.

COMMENT: A reprensentative of IFPTE urged that payment of an employee at the ninth step of a salary range, as provided in N.J.A.C. 4A:3-4.5(a)3, be negotiated. He proposed that setting anniversary dates as a result of pay advancements, as provided in subsection (b), and when intermittent employees complete 1827 or 2088 work hours, as provided in subsection (c), be negotiated. A representative of CWA Local 1033 expressed support for subsection (c) because it provides for equal treatment of an intermittent employee with respect to anniversary dates where the intermittent employee becomes full-time. The IFPTE representative stated that N.J.A.C. 4A:3-4.6(b) should be changed so that union leave would not affect the setting of an employee's anniversary date.

RESPONSE: N.J.S.A. 11A:3-7 requires a State Compensation Plan as well as provisions for salary adjustments. The question of whether to include union leave in the list of types of leave which would not affect an employee's anniversary date is substantive and requires further review by the Merit System Board.

COMMENT: A representative of IFPTE stated that the provisions of N.J.A.C. 4A:3-4.7, 4.8 and 4.9 should be negotiated.

RESPONSE: N.J.S.A. 11A:3-7 requires a State Compensation Plan as well as procedures for salary adjustments.

COMMENT: A representative of CWA Local 1033 proposed, with respect to N.J.A.C. 4A:3-4.9(b) and (d), that where an employee's title is reevaluated upward, the employee should receive the pay at the same step in the higher salary range that he or she was receiving in the lower salary range.

RESPONSE: The Board has determined to retain the current practice, under which employees whose titles are reevaluated upward receive the same adjustment as employees who are promoted.

COMMENT: A representative of CWA Local 1033 stated that the provisions of N.J.A.C. 4A:3-4.10 would be punitive rather than corrective. The Personnel Officer of the Department of the Public Advocate asked whether subsection (c) would apply to demotions for reasons other than discipline. The personnel officer proposed that the rule be amended to permit non-disciplinary demotions to obtain permanent status for or retain the services of an employee. The amendment should require that an affected employee be in a title for four months and that such actions not take place more often than once every year or two years. A representative of IFPTE stated that the provisions of N.J.A.C. 4A:3-4.10 should be the subject of negotiations.

RESPONSE: The provisions of N.J.A.C. 4A:3-4.10(b) and (c) do apply to nondisciplinary demotions. Salary adjustments in the situations in N.J.A.C. 4A:3-4.10 are simply an outgrowth of disciplinary and nondisciplinary personnel actions which may be taken pursuant to other sections and chapters of the rules. In response to the comment, however, restrictions currently found in N.J.A.C. 4:2-7.6(c) and (d) have been added to prevent unfair treatment and promote proper treatment of employees.

The provisions of this rule are not negotiable because they implement the statutory requirement in N.J.S.A. 11A:3-7 that the Commissioner of Personnel set standards for salary adjustments.

COMMENT: Representatives of CWA Locals 1037 and 1038, and a representative of IFPTE, urged that the provisions of N.J.A.C. 4A:3-4.11 be negotiated. The National Staff Representative of CWA and representatives of CWA District 1 and representatives of CWA Locals 1033, 1039, 1031, and 1081, and a CWA member, expressed opposition to the rule. Also expressing opposition to the rule were an employee of the Division of Disabilities Services and representatives of the Rainbow Coalition, the National Organization for Women and the Industrial Union Council.

RESPONSE: The Merit System Board has decided not to adopt N.J.A.C. 4A:3-4.11 at this time. Subsection (c) of the current rule, N.J.A.C. 4:2-7.7, is not being repealed, due to the decision to not adopt N.J.A.C. 4A:3-4.11.

COMMENT: A representative of IFPTE stated that the provisions of N.J.A.C. 4A:3-4.13 should be negotiated.

RESPONSE: Salary adjustment standards are to be set by rule pursuant to N.J.S.A. 11A:3-7.

COMMENT: A representative of IFPTE and a CWA member stated that they opposed the concept of tentative title salaries as provided in N.J.A.C. 4A:3-4.15. The IFPTE representative stated that the concept should be negotiated if not deleted. The CWA member stated, however, that she did support the provision, paragraph (a)2, which would permit an employee in a tentative title to receive salary increments.

RESPONSE: As noted in the response to N.J.A.C. 4A:3-3.6(c), the improved classification system will result in fewer situations when a tentative title will be necessary. Nevertheless, when tentative titles are required, salary standards are necessary. Tentative title salaries are part of the State Compensation Plan.

COMMENT: A representative of IFPTE stated that N.J.A.C. 4A:3-4.17 may have been drafted improperly.

RESPONSE: The Merit System Board will not adopt N.J.A.C. 4A:3-4.17 at this time. The issues in that proposed rule will undergo further review.

COMMENT: A representative of CWA Local 1033 proposed that N.J.A.C. 4A:3-4.19 be amended to provide that the shift differential will be another form of compensation.

RESPONSE: The rule provides for "other allowances," which could include the item requested by the commenter.

COMMENT: Representatives of CWA Local 1033 and IFPTE objected to the exclusion of employees who have been separated from employment before a retroactive payment has been made from a retroactive pay opportunity set forth in N.J.A.C. 4A:3-4.20.

RESPONSE: The provisions of this rule reflect long-standing current practice. They also address the administrative and record-keeping problems with retroactive pay transactions involving separated employees.

COMMENT: A representative of IFPTE questioned whether the provisions of N.J.A.C. 4A:3-4.21 would work fairly in practice, although he supported them.

RESPONSE: To ensure that the provisions of this rule will work fairly in practice, repayment waivers will be reviewed pursuant to specific standards enumerated in N.J.A.C. 4A:3-4.21(a).

COMMENT: A representative of IFPTE stated that all overtime matters, found in N.J.A.C. 4A:3-5, should be the subject of negotiations. He also stated that N.J.A.C. 4A:3-5.3 should include incidental overtime payments. He argued that N.J.A.C. 4A:3-5.3(c)3 violates the Fair Labor Standards Act. He also objected to the provision in paragraph (d)2, which would give discretion to the appointing authorities on overtime payments to certain employees in non-limited titles. The IFPTE representative further objected to the provision in N.J.A.C. 4A:3-5.6(b)2 which would give discretion to appointing authorities on overtime payments to certain employees in non-limited titles. He objected to the discretion that would be given to appointing authorities by N.J.A.C. 4A:3-5.7(b)1ii, (b)2 and (c)1ii to pay overtime to employees under certain circumstances. Finally, he objected to the discretion that would be given to appointing authorities by N.J.A.C. 4A:3-5.8(b) to pay overtime compensation to employees in non-limited titles for holidays.

RESPONSE: Rules are necessary since overtime matters fall within the scope of N.J.S.A. 11A:3-7.

With respect to the comment on incidental overtime compensation, this rule provides for overtime payments when an eligible employee works at least one hour beyond the employee's regular workweek, but not over 40 hours, as provided in N.J.A.C. 4A:3-5.6(b)2. As to paragraph (c)3, the Fair Labor Standards Act only applies to employees who work more than 40 hours in a workweek. N.J.A.C. 4A:3-5.3 only applies to work of 40 hours in a week or less. However, special project rates are available to such employees for extraordinary work beyond the general workweek, as provided in N.J.A.C. 4A:3-5.7(e)2, and are reviewed by the Commissioner of Personnel or his or her designee. As to overtime compensation for training, as provided in N.J.A.C. 4A:3-5.7(b)1ii, (b)2 and (c)1ii, the language provides discretion that the overtime will be paid in compensatory time.

Summary of other changes made between proposal and adoption:

In addition to the changes described above and various technical and typographical corrections, the following changes have been made:

In N.J.A.C. 4A:3-2.6, concerning vacation leave for SES members, language has been added to clarify that unused leave can be paid to the employee only when failure to use the leave was due to business necessity.

In N.J.A.C. 4A:3-4.6, concerning anniversary dates, the rule has been changed to reflect current practice that days on which part-time employees are not scheduled to work will not be deducted from earned time for purposes of calculating anniversary dates.

In N.J.A.C. 4A:3-4.12, concerning movement of employees from no-range or single range titles to salary range titles, a provision has been added that, when salary and anniversary date are determined by reconstructing an employee's salary as if the employee had been serving in the range title on the date appointed to the no-range title, the employee's new salary in the range title cannot exceed the salary in the no range title. This provision continues current reportment procedure as set forth in a Salary Administration Memorandum.

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Full text of the repeals can be found in the New Jersey Administrative Code at N.J.A.C. 4:16, 7, 10.1 and 27; 4:2-6.4 through 4:1-6.10, 7.1 through 7.6, 7.8 through 7.13, and 27; and 4:3-2.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*):

4:2-7.7 Policy for determining salary and anniversary date of an employee affected by reassignment of an individual title to a new salary range as a result of reevaluation

(a) *[This section deals with the method of adjusting the salary of employees when the title in which they are employed is reassigned to a higher or lower salary range which is not a result of or affected by a change in work hours.]* ***Reserved***

(b) *[For upward range revisions:

1. When a title is reassigned to a higher salary range, the employee shall receive a salary adjustment that provides a pay increase of at least one increment of the present range plus the amount (if necessary) to adjust his/her salary to the next higher step of the new range (equalization).

Example:

An employee in step 4 Range A09 ($9,509.70-$12,838.55) receives an upward range reassignment to Range A12 ($11,007.22-$14,851.13).

Step 4 Range A09 = $10,936.35
Add Increment of Range A09 = $11,411.90
Equalization Range A12 = Step 2 $11,556.34
Anniversary date remains the same

i. When the total pay adjustment is less than two increments of the range from which the title is advanced, an employee shall retain his anniversary date.

ii. When the total amount of pay adjustment is equal to or greater than two increments of the range from which a title is advanced, an employee shall be assigned a new anniversary date on the basis of the effective date of the salary increase.

2. When an employee at the maximum has been at the maximum for at least one year s/he shall receive, if otherwise eligible, a performance increment in addition to the increment due him/her by reason of the range revision, providing s/he is not already at the maximum of the new range. The anniversary date shall be determined by the effective date of the salary adjustment.

Example:

An employee at the maximum of Range A09 ($9,509.70-$12,838.55) for two years receives an upward range reassignment to Range A12 ($11,007.22-$14,851.13).

Maximum Range A09 = $12,838.55
Add Increment of Range A09 = $13,314.10
Equalization into Range A12 = Step 6 $13,752.87
Performance Increment = Step 7 $14,307
New Anniversary Date based on effective date of Salary Adjustment

3. An employee who has been at the maximum for less than one year before the range revision shall retain his/her anniversary date and receive, if otherwise eligible, a performance increment on his/her anniversary date, providing s/he is not already at the maximum of the new range.]* ***Reserved***

(c) For downward range revisions:

1. The effective date of a downward range reassignment shall be the beginning of the payroll period that is at least 60 days after the date of the Civil Service Commission meeting at which the action was taken.

2. All employees affected by the downward range reassignment shall receive notice of the reduction in range 45 days prior to the effective date.

3. When a title is reassigned to a lower salary range the employee shall remain at his/her current salary rate, without change in anniversary date, until future within grade adjustments, upward range revisions, or other adjustments arising out of salary programs will entitle him/her to a rate of pay that is equivalent to his/her current rate of pay, or the next higher rate of pay within the lower salary range.

4. The part of his/her retained current salary that is above the nearest lower step in the lower range will be carried as extra salary until slotting into range at a step is possible. Retained rates that are above the maximum of the lower salary range will be considered as "Red Circled Rates".

Example:

An employee in step 4 of Range A12 ($11,007.22-$14,851.13) AD 8/82 receives a downward range revision to Range A11 ($10,483.98-$14,146.66) effective February 6, 1982.

Step 4 Range A12 = $12,654.61 February 6, 1982, salary remains at $12,654.61 between steps 5 and 6 of Range A11 March 20, 1982 (the beginning of pay-period 8/82 adjusts to sixth step $13,100.18 AD 8/83.

(d) *[This policy will have general application for salary adjustments as a result of reassignment of an individual title to a new salary range and shall not be used as a method to achieve salary increases. This section is superseded by specific situations or programs which come under the Joint Regulations of the President of the Civil Service Commission, the State Treasurer, and the Director of the Division of Budget and Accounting in the Department of the Treasury.]* ***Reserved***

CHAPTER 3
CLASSIFICATION, SERVICES AND COMPENSATION

Old Citation	New Citation	Old Citation	New Citation
4:1-6.1	4A:3-3.2	4:2-7.1	4A:3-4.3
4:1-6.2	4A:3-3.3	4:2-7.1A	4A:3-4.1
4:1-6.3	4A:3-3.1	4:2-7.2	4A:3-4.5
4:1-6.4	4A:3-3.4	4:2-7.3	4A:3-4.9
4:1-6.5	4A:3-3.5	4:2-7.4	4A:3-4.9
4:1-6.5A	4A:3-3.9	4:2-7.5	4A:3-4.6
4:1-6.6	REPEALED	4:2-7.6	4A:3-4.10
4:1-6.7	4A:3-1.1	4:2-7.7	4A:3-4.9
	4A:3-1.3		4A:3-4.11
4:1-6.8	4A:3-3.1	4:2-7.8	4A:3-4.8
		4:2-7.9	4A:3-4.7
4:1-7.1	4A:3-4.1	4:2-7.10	4A:3-4.7
4:1-7.2	REPEALED	4:2-7.11	4A:3-4.16
4:1-7.3	4A:3-4.1	4:2-7.12	4A:3-4.4
4:1-7.4	REPEALED	4:2-7.13	REPEALED
4:1-7.5	4A:3-4.19		
4:1-7.11	REPEALED	4:2-27.1	4A:3-5.1
		4:2-27.2	4A:3-5.2
4:1-10.1	4A:3-1.2	4:2-27.3	4A:3-5.3
4:1-27.1	4A:3-5.1	4:2-27.4	4A:3-5.4
			4A:3-5.5
4:2-6.4	REPEALED		4A:3-5.6
4:2-6.5	REPEALED	4:2-27.5	4A:3-5.7
4:2-6.6	4A:3-3.6	4:2-27.6	4A:3-5.8
4:2-6.7	REPEALED	4:2-27.7	4A:3-5.9
4:2-6.8	4A:3-3.7	4:2-27.8	4A:3-5.10
4:2-6.9	4A:3-1.4		
4:2-6.10	REPEALED	4:3-2.2	4A:3-1.3

SUBCHAPTER 1. CAREER AND UNCLASSIFIED SERVICES

4A:3-1.1 Career service

(a) All job titles shall be allocated to the career service, except for those job titles allocated by the Board to the unclassified service as provided in N.J.A.C. 4A:3-1.3 and those positions in State service allocated by the Board to the Senior Executive Service as provided in N.J.A.C. 4A:3-2.

(b) Before a title in the career service is reallocated to the unclassified service, the Board shall hold a public hearing to solicit comment with respect to the criteria set forth in N.J.A.C. 4A:3-1.3.

[OPTION ONE]

(c) When a title is reallocated from the career service to the unclassified service by the Board or by legislative enactment, incumbents with permanent status in the title shall retain all career service

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rights so long as they remain in that title. When a permanent incumbent is appointed to a different, unclassified title, the employee shall retain only those rights to a Merit System Board hearing available to career service employees upon separation from government service for disciplinary reasons (see N.J.A.C. 4A:2-2) or due to layoff (see N.J.A.C. 4A:8).

***[OPTION TWO**

(c) When a title is reallocated from the career service to the unclassified service by the Board or by legislative enactment, incumbents with permanent status in the title shall retain all career service rights so long as they remain in that title.]*

4A:3-1.2 Divisions within the career service

(a) The Commissioner shall allocate and reallocate career service titles between the competitive and noncompetitive divisions.

(b) A career service job title in the competitive division is subject to the competitive examination procedures. See N.J.A.C. 4A:4-2.

(c) A job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined by the Commissioner that it is appropriate to make permanent appointments to the title and one or more of the following criteria are met.

1. Competitive testing is not practicable due to the nature of the knowledge, skills and abilities associated with the job;

2. Certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems and working conditions; or

3. There is a need for immediate appointments arising from a new legislative program or major agency reorganization.

(d) All appointees to noncompetitive titles shall meet the minimum requirements set forth in the job specification and satisfactorily complete a working test period.

(e) Prior to any reallocation from the competitive to noncompetitive divisions, whether on an ongoing or interim basis, an administrative review shall be conducted and notice of the proposed reallocation shall be sent to affected appointing authorities and negotiations representatives. The notice shall designate the period of time, which in no event shall be less than 20 days, during which written comment may be submitted, and may provide for a public hearing.

1. Data, reports, analyses and other information utilized in the determination shall constitute the administrative record, and shall be available for review by affected employees, appointing authorities and negotiations representatives.

2. After the comment period and the public hearing, if any, the Commissioner shall issue a final administrative decision containing findings and conclusions with respect to the proposed reallocation, based upon the administrative record and any comment received, and implementation procedures.

(f) When a job title is reallocated from the competitive to noncompetitive divisions, the Commissioner's decision shall specify an effective date for reallocation.

1. Permanent employees in that title as of the effective date shall retain their permanent status in the noncompetitive division.

2. Probationary employees in that title as of the effective date shall continue serving their working test periods and, upon successful completion, attain permanent status in the noncompetitive division.

3. Provisional employees who remain in that title as of the effective date shall receive regular appointments and begin serving their working test periods on the effective date.

(g) If a title is designated noncompetitive on an interim basis, at the end of the interim non*[-]*competitive period, which shall be no greater than one year, the job title shall be redesignated as competitive. Individuals appointed during the interim non*[-]*competitive period shall, upon successful completion of their working test periods, attain permanent status in the competitive division.

4A:3-1.3 Unclassified service

(a) A job title shall be allocated by the Board to the unclassified service when:

1. In State service, the title is so designated under N.J.S.A. 11A:3-4;

2. In local service, the title is so designated under N.J.S.A. 11A:3-5;

3. The title is designated unclassified by another specific statute;

4. A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; or

5. The Board determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

(b) In local service, no more than 10 municipal department heads may be allocated to the unclassified service in each municipality. A department head in a municipality, where not otherwise set by statute, is a person whose position has been created by ordinance or resolution, as appropriate, to perform substantial managerial duties, and who has the authority and powers of appointment, removal, selection for promotion, and control of the assignment and work of subordinates subject only to the legislative power of the governing body and applicable statutes.

(c) In local service, a principal executive officer, for purposes of unclassified appointments under N.J.S.A. 11A:3-5(h) and (j), is a managerial title which is independent of other executive authority, and is established by statute or designated by the Merit System Board.

(d) In State service, a principal executive officer, for purposes of unclassified appointments under N.J.S.A. 11A:3-4(h), is one who is appointed by the Governor with the advice and consent of the Senate.

4A:3-1.4 Unclassified secretaries and confidential assistants: State service

(a) In State service, each department head, principal executive officer, board and commission may appoint one unclassified secretary and one unclassified confidential assistant.

(b) Requests for such unclassified appointments shall be made to the Commissioner, accompanied by documentation showing that no more than one person is serving in each such unclassified title in the requesting authority. In the case of boards and commissions, the following criteria must be satisfied:

1. The board or commission must have the actual power to administer a statutorily designated function; and

2. The board or commission must have the full power of an appointing authority with regard to its personnel.

(c) Upon recommendation by the Commissioner, such appointments may thereafter be approved by the Merit System Board and recorded in the Board minutes.

SUBCHAPTER 2. SENIOR EXECUTIVE SERVICE

4A:3-2.1 General provisions: State service

(a) The Senior Executive Service (abbreviated "SES") shall consist of those specific positions in State government allocated by the Merit System Board to the SES in accordance with N.J.S.A. 11A:3-3 and this subchapter.

(b) No more than 1,200 positions shall be allocated to the SES in all departments.

(c) No less than 85 percent of all positions allocated to the SES shall be filled by individuals with career status. Career status means permanent status in a career service title in State government, including those on an approved leave of absence from a permanent career position.

(d) The Commissioner shall establish and maintain an SES office within the Department of Personnel to administer and monitor the SES and to maintain the SES training and development program.

4A:3-2.2 Designation of SES positions: State service

(a) To be allocated to the SES, a position must have substantial managerial, policy influencing or policy executing responsibilities. Allocations to SES shall be determined on the basis of specific positions, not by job titles or category.

1. A substantial managerial or policy executing position is one which has significant control of substantial resources, responsibility for major programmatic outcomes and/or responsibility for a major organizational unit.

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2. A policy influencing position is one which has influence on the department's/agency's direction, mission, priorities, major goals or objectives. This does not include those positions which only influence internal operations.

(b) An SES position shall only report to a department head, higher level unclassified position, or higher level SES position.

(c) The Commissioner shall establish procedures for submission of SES position requests.

4A:3-2.3 SES appointments: State service

(a) The SES selection process includes the following:

1. Notice of the SES opening shall be filed with the Department of Personnel by the applicable department and posted in all departments. The posting requirement may be waived when a position is first allocated to the SES and the department head wishes to fill the position with the incumbent.

2. Applications shall be made to the department head on a form prescribed by the Department of Personnel.

3. The departmental selection process may consist of an interview, a structured interview before a panel, or an assessment-type evaluation or any combination thereof. However, once a selection process is chosen, it must be consistently applied to all candidates for that position.

4. The department head shall forward his or her selection(s) to the Commissioner along with the supporting materials, a description of the selection process, and detailed reasons for the selection(s).

5. Final appointment shall be subject to approval by the Commissioner, which approval may include modification of requirements.

(b) A permanent employee holding a position allocated to the SES who is not selected to join the SES or chooses not to join the SES (referred to as a "non-appointed incumbent"), shall be placed in a career service position in the same department for which he or she is qualified.

1. The position shall be in the same salary level as the incumbent's permanent career service title, or, if no career service position remains in the department at that level, then, the next lower level at which there are career service positions in that department for which the non-appointed incumbent is qualified.

2. In the event of movement to a position with a lower salary level, the non-appointed incumbent shall be placed at the closest lower step. The department head may, in his or her discretion, recommend to the Commissioner placement of a non-appointed incumbent at a salary higher than this minimum standard.

4A:3-2.4 SES performance evaluation: State service

(a) The performance of all SES members shall be evaluated annually by the department head or designee in accordance with evaluation procedures set by the Commissioner.

(b) Evaluations shall be based upon a performance agreement jointly developed by the SES member and the department head or designee and reviewed by the Commissioner.

4A:3-2.5 SES compensation: State service

(a) The initial salary of all appointees to the SES shall be no less than the minimum of the salary level assigned to the position, and shall be no more than the midpoint unless approved by the Commissioner.

(b) Incumbents with career status whose positions are allocated to the SES shall, upon initial appointment to the SES, also receive a one-time lump sum payment as authorized by the Commissioner.

(c) SES members shall be paid an annual salary no less than the minimum and no more than the maximum of the salary level assigned, not including performance or other awards.

(d) After initial appointment, salary advancement shall be based upon performance. There shall not be specific steps within each salary level, nor increments based upon length of service.

4A:3-2.6 SES benefits: State service

(a) SES members shall receive paid vacation leave as follows:

1. Up to 12 years of continuous State service, 20 working days;

2. After 12 and up to 20 years of continuous State *[S]**s*ervice, 25 working days;

3. Over 20 years of continuous State service, 30 working days.

(b) *[In]****Upon certification of the appointing authority and approval by the Commissioner that an SES member was unable to utilize all of his or her annual vacation leave due to legitimate business demands which prevented the use of such leave, in*** December of each year, accrued vacation days carried over from the preceding year, up to a maximum of one-half year's allotment, may be converted to cash*[.]* ***and either:***

1. Paid to the employee; or

2. Invested by the State and paid to the employee, with accumulated interest, at the time of separation from SES.

(c) SES members shall be entitled to the same sick and administrative leave benefits as employees in the career service. See N.J.A.C. 4A:6-1.3 and 4A:6-1.9.

(d) In addition to those benefits provided to career service employees, SES members shall receive such other non-salary benefits approved by the Commissioner.

4A:3-2.7 *[SES gainsharing: State service]****(Reserved)***

*[(a) SES members and State employees working under their supervision may be eligible for gainsharing projects. A gainsharing project is one in which a group of employees shares a monetary incentive for a project which measurably saves money, avoids cost or increases the value of a governmental service.

(b) All gainsharing projects shall be headed by an SES member or members, and shall be in addition to their normal duties and responsibilities.

(c) Before commencing a gainsharing project, a proposal shall be approved by the department head and be submitted to and approved by the Commissioner. The proposal shall contain, among other things:

1. A complete description of the project; and

2. The amount and percentage split of the monetary incentive between the SES members and the members of the project team.]*

4A:3-2.8 Movement within the SES: State service

(a) Temporary movement within the SES may take place as follows:

1. Loaned executive assignments for renewable six month periods, with the consent of the departments involved and the participating SES member; or

2. Participation in a program in which a group of SES members is assigned to work, for a specific duration, on matters which cross departmental lines or other special issues.

(b) During such temporary movement, the department head may make an interim appointment to the temporarily vacated SES position using the selection procedures set forth in N.J.A.C. 4A:3-2.3.

(c) Transfer to an SES position in another department may take place upon notice of at least 30 days by the SES member to the department he or she is leaving, unless a shorter time period is agreed to by that department.

1. Approval of the transfer by the department from which the SES member transfers shall not be required. If that department determines that the services of the SES member are essential beyond the notice period, and the SES member agrees to remain for an extended period, that department shall pay the difference in salary, if any, during the extension period.

2. Upon transfer, an SES member with career status shall have the right to return to a career service position only in the new department.

4A:3-2.9 Separation from the SES: State service

(a) Any SES member may be separated from the SES at the discretion of the department head upon 20 days' notice. A copy of the separation notice shall be provided to the Commissioner at the same time it is sent to the employee.

(b) In case of removal of an SES member with career status from State service, or return to a lower level than provided in (c) below, the procedures set forth in N.J.A.C. 4A:2-2 (major discipline) shall apply.

(c) An SES member with career status who is separated from the SES shall have a right to return to a career service position in the same department.

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1. The position shall be at the same salary level of the employee's permanent title ***held*** immediately prior to SES appointment, if there are career service titles in the department at that level. If there are no career service titles in the department at the same salary *[range]* ***level***, then the position shall be at the next lower level.

2. The employee shall have permanent status in the title immediately upon return to the career service, and shall have seniority as if it had continued to accrue in the permanent title held immediately prior to SES service.

3. Upon return to the career service, the salary shall be the same as if the employee had remained in the career service and had not been appointed to the SES, provided, however:

i. The salary shall in no event be greater than the salary earned in the SES; and

ii. If the minimum guaranteed in (c)3 above places the employee above the salary level of the title in which he or she is placed, the salary shall not change until such time as the salary range increases to include the guaranteed minimum salary;

iii. The department head may, at his or her discretion, recommend to the Commissioner placement of the employee at a higher salary than the minimum.

SUBCHAPTER 3. CLASSIFICATION

4A:3-3.1 Classification of positions

(a) Each position in the career and unclassified services shall be assigned by the Department of Personnel to a job title.

(b) Positions in the career service shall, on the basis of job analysis, be assigned the title which:

1. Describes the duties and responsibilities to be performed and the level of supervision exercised and received;

2. Establishes the minimum education and experience qualifications necessary for successful performance; and

3. In State service, sets the level of compensation.

(c) Assigned job titles shall be used in all records and communications relating to personnel and payroll, including budgets. Appointing authorities may designate *[official]* ***appropriate descriptive*** titles to be used for other purposes, such as correspondence with the public.

(d) Titles shall be identified by language which does not specify or imply a fixed gender.

(e) See N.J.A.C. 4A:3-3.9 for classification appeal procedures.

4A:3-3.2 Establishment of classification plans

(a) The Commissioner shall establish and maintain classification plans for all job titles in the career, senior executive and unclassified services.

(b) The classification plans shall consist of:

1. A list of job titles; and

2. A job specification for each title, which shall include a descriptive summary of duties and responsibilities of a position or group of positions which are sufficiently similar in content to be assigned a job title.

(c) A single specification may be used for a title series. In such cases, the distinction between different titles in the series will be set forth in the specification.

(d) To the extent feasible, the same job titles shall be used in the State and local classification plans.

4A:3-3 Administration of classification plans

(a) The Commissioner shall implement and administer the classification plans and in this regard shall:

1. Classify new positions and reclassify existing positions through job analysis;

2. Establish new titles, abolish unnecessary titles, and consolidate titles where a single title is appropriate for the grouping of positions with similar qualifications, authority and responsibility;

3. Modify specifications for existing titles or series to ensure their accuracy; and

4. Notify appointing authorities and provide for notice to other affected persons of changes in classification plans.

(b) Appointing authorities shall promptly notify the Department of Personnel of new positions to be established, the authority and reasons for their establishment and of all organizational changes or changes in the duties and responsibilities of individual positions, and such additional information as may be required.

(c) Appointing authorities shall provide the Department of Personnel with updated organization charts on an annual basis.

(d) Positions in the career, unclassified and senior executive services shall be subject to job audit by the Department of Personnel to ensure accurate classification and compliance with Title 11A, New Jersey Statutes and Title 4A, N.J.A.C.

4A:3-3.4 Title appropriate to duties performed

No person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds, unless otherwise provided by law or these rules.

4A:3-3.5 Reclassification of positions

(a) When the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, the Commissioner shall after review;

1. Reclassify the position to a more appropriate title if there is one;

2. Establish a new title to which the position shall be reclassified; or

3. Take other appropriate action based on the organizational structure of the appointing authority.

(b) A request for reclassification shall be submitted by the appointing authority to the Department of Personnel in a manner and form as determined by the Commissioner.

(c) No reclassification of any position shall become effective until notice is given affected permanent employees and approval is given by the Commissioner. However, the Commissioner may provide for delegation of reclassifications as provided in N.J.A.C. 4A:1-4.1, subject to post-audit.

1. Within 30 days of receipt of the reclassification determination, unless extended by the Commissioner in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or redesign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional or lateral, shall be affected in accordance with all applicable rules.

2. Should an appointing authority or an employee in the career or unclassified service disagree with reclassification, an appeal may be filed in accordance with N.J.A.C. 4A:3-3.9.

4A:3-3.6 Requests for new titles

(a) Requests for new titles must be submitted in writing by the appointing authority to the Department of Personnel on a designated form. The request must include:

1. A detailed explanation of why the new title is needed and why an existing title cannot be used or specification modified;

2. Designation of any title to be abolished or replaced; and

3. Any other information requested by the Department of Personnel.

(b) If the Department of Personnel staff makes an initial determination that there is a need for the requested new title, a new job specification will be prepared and in State service the title will be evaluated for compensation purposes. Thereafter, the matter will be presented to the Commissioner for approval or disapproval.

(c) Pending approval by the Commissioner, the designation "Tentative Title" may be used for affected positions. See N.J.A.C. 4A:3-4.15 for compensation procedures in State *[S]**s*ervice.

(d) Appeals from the denial of a new title request will be processed in accordance with N.J.A.C. 4A:3-3.9. In State service, appeals from a salary evaluation will be processed in accordance with N.J.A.C. 4A:3-4.3.

(e) The effective date of the creation of a new title by the Commissioner will be:

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1. In State service, the beginning of the pay period immediately after 14 days from the date the Department of Personnel receives the new title request and all requested information; or

2. In local service, an appropriate date as established by the Commissioner.

4A:3-3.7 Trainee titles

(a) Trainee titles may be established in State and local service to provide for entry level employment.

1. This section applies to all titles designated by the term "trainee" and to other titles where the specification designates the application of the trainee rule, for example, Correction Officer Recruit.

2. A single trainee title may provide entry level employment for more than one title or title series, under appropriate circumstances.

3. In State service, trainee positions are established by the temporary downward classification of another title.

***[OPTION ONE**

(b) Positions in competitive trainee titles may only be filled by regular appointments from open competitive, regular or special reemployment lists, or, in the absence of such lists, by provisional appointments subject to open competitive examination. Positions in noncompetitive trainee titles may only be filled by regular appointments, including appointments from regular or special reemployment lists.

OPTION TWO]*

(b) Positions in competitive trainee titles may only be filled by regular appointments from open competitive, promotional, regular or special reemployment lists, or, in the absence of such lists, by provisional appointments. Positions in noncompetitive trainee titles may only be filled by regular appointments, inlcuding appointments from regular or special reemployment lists. Eligibility for promotion to a trainee title shall include open competitive requirements.

(c) Upon regular appointment, trainees must successfully complete their working test periods.

(d) Advancement to the lowest title in the related title series, referred to in this section as the primary title, shall take place only upon successful completion of the training period. The length of the training period shall be designated in the specification for the particular trainee title. ***The designated length shall not be longer than 12 months.*** The training period must be continuous, except if interrupted by leave or layoff from the trainee title, and may include provisional service in the trainee or higher related title.

(e) The training period shall be extended, upon approval by the Department of Personnel, beyond the time designated in the specification when:

1. The trainee has not yet completed the working test period; or

2. A trainee is serving provisionally and an eligible list for the title has not yet been issued.

(f) The training period may be reduced, upon approval by the Department of Personnel, to a shorter period than designated in the specification when:

1. The trainee has completed the working test period;

2. The trainee meets the minimum qualifications for the primary title; and

3. All trainees in that title in the same appointing authority who meet these conditions are provided with a reduced training period.

(g) The advancement of the successful, permanent trainee to the appropriate primary title shall be accomplished without the usual promotional examination process, but rather by reclassifying the trainee position to an appropriate primary title and by concurrent regular appointment of the trainee to the position.

1. To effect advancement, the appointing authority must certify the trainee's successful completion of the training period, and, for those primary titles requiring extra training courses or the attainment of a proficiency standard over the trainee title requirements, that the trainee has successfully completed such requirements.

2. In State service, advancement to a primary title shall coincide with the beginning of a pay period.

3. The inability of a permanent trainee to attain a level of performance warranting advancement to the appropriate primary title shall be considered cause for separation.

4. Trainees advanced to a primary title shall be required to complete a working test period in the primary title.

4A:3-3.8 Intermittent titles: State service

(a) In State service, the designation "intermittent" shall be used for those titles in the career service where work responsibilities are characterized by unpredictable work schedules and which do not meet the normal criteria for regular, year-round, full-time or part-time assignments.

(b) Intermittent employees may be subject to furlough when due to managerial needs, the employee cannot be scheduled for work within the next week.

1. A furlough shall not be considered a layoff, nor shall the notice obligations or layoff rights set forth in N.J.A.C. 4A:8 be applicable to intermittent employees subject to furlough. However, reasonable advance written notice shall be given to furloughed employees.

2. Furloughing shall be done in the inverse order of seniority in the designated work unit based on official records at the end of the last pay period. Prior to use by the appointing authority, designated work units must be submitted to and approved by the Department of Personnel.

3. Recall from furlough shall be made in seniority order from among furloughed employees assigned to the designated work unit.

4. In case of equal seniority, the tie shall be broken based on the number of hours in pay status under temporary employment during the last two years immediately preceding conversion to an intermittent title.

5. Recall may be extended on a regional or Statewide basis if the recall list for the designated work unit is exhausted.

6. Additional furlough precedures may be set by the Commissioner.

(c) Records for intermittent employees, including hours worked, recall lists, telephone contact lists and benefit time accumulation, shall be maintained by the appointing authority in a manner acceptable to, and subject to audit by, the Department of Personnel.

(d) See N.J.A.C. 4A:4-5.2 for working test periods for intermittent employees.

(e) See N.J.A.C. 4A:6-1.2(d), 4A:6-1.3(b) and 4A:6-1.9(c) for vacation, sick and administrative leave provisions applicable to intermittent employees. See N.J.A.C. 4A:6-2.4(a) for holiday pay.

4A:3-3.9 Appeal procedure

(a) An appeal from the classification or reclassification of a position is a request for review, or a complaint that the duties of a specific position do not conform to the *[aproved]****approved*** job specification for the title assigned to that position.

(b) The procedures in this section are applicable to employees in the career and unclassified services.

(c) In State service, a classification appeal from an employee or union representative shall be submitted, in writing, to the appointing authority personnel officer. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different existing title for the position, an explanation of how that title more accurately describes the duties of the position than the current or proposed title.

1. The appointing authority shall review the appeal and notify the appellant of its decision within 30 days of receipt of the appeal. This decision letter must include a summary of the duties of the position, findings of fact, conclusions, notice of appeal rights, and a determination that:

i. The position is properly classified;

ii. The position is properly classified, but that out-of-title duties are being performed, in which case the appointing authority shall order, in writing, the immediate removal of inappropriate duties; or

iii. The position should be reclassified, in which case, normal reclassification procedures shall be initiated immediately.

2. An appeal may be filed with the Department of Personnel within 20 days of receipt of the appointing authority's determination or, if the appellant does not receive a timely decision letter from the appointing authority, within 20 days from the final day for the appointing authority's decision.

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3. Appeals from an employee or union representative to the Department of Personnel are second level appeals. Appeals from an appointing authority are first level appeals.

i. An appeal from an appointing authority shall include the same information as an appeal from an employee or union representative as stated in (c) above.

ii. An employee or union representative submitting a second level appeal must submit a copy of all materials submitted at the first level and a copy of an appointing authority's decision letter, if issued. The appeal must state what specific portions of the decision are contested and the basis for appeal. Information and/or argument which was not presented at a prior level of appeal shall not be considered.

4. A representative of the Department of Personnel shall review the appeal, order a desk audit where warranted, and issue a written decision. The decision letter shall be issued within 60 days of receipt of the appeal and shall include a summary of the duties of the position, findings of fact, conclusions, determination and a notice of appeal rights to the Commissioner.

(d) In local service*,* an appeal from an employee, union representative, or appointing authority shall be submitted, in writing, to the appropriate regional office of the Department of Personnel. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different title for the position, an explanation of how that existing title more accurately describes the duties of the position than the current or proposed title.

1. A representative of the Department of Personnel shall review the appeal, order a desk audit where warranted, and determine that:

i. The position is properly classified;

ii. The position is properly classified, but that out-of-title duties are being performed, in which case the representative shall order, in writing, the immediate removal of inappropriate duties; or

iii. The position should be reclassified, in which case normal reclassification procedures shall be initiated.

2. The representative's decision letter shall be issued within 60 days of receipt of the appeal and shall include a summary of the duties of the position, findings of fact, conclusions, determination and a notice of appeal rights to the Commissioner.

(e) All appeals to the Commissioner shall be submitted, in writing, within 20 days of receipt of the decision letter and must include copies of all materials submitted and determinations received from the lower levels, state which determinations are being disputed and the basis for appeal. Information and/or argumment which was not presented at a prior level of appeal shall not be considered. ***When new information and/or argument is presented, the appeal may be remanded to the prior level.***

1. The Commissioner may render a decision based on the written record or appoint an independent classification reviewer. If the Commissioner appoints an independent classification reviewer to conduct an informal review of the appeal, all parties will be advised of the review date and given the opportunity to present their arguments before the reviewer. An employee may be represented by counsel or by a union representative.

2. The classification reviewer shall submit a report and recommendation to the Commissioner within 30 days of the review. The report and recommendation shall include an analysis of the duties of the position as they relate to the job specification, findings, conclusions, and recommendation. The report and recommendation shall be sent to all parties with notice that exceptions are to be filed within 15 days of receipt of the report and recommendation. Exceptions must be served on all parties. If exceptions are filed, cross-exceptions may be filed within *[ten]* ***10*** days of receipt of exceptions.

(f) If an appeal is upheld, the effective date of implementation shall be:

1. In State service, the pay period immediately after 14 days from the date the Department of Personnel received the appeal or reclassification request, or at such earlier date as directed by the Commissioner; or

2. In local service, an appropriate date established by the Commissioner.

(g) The decision by the Commissioner is the final administrative determination.

(h) See N.J.A.C. 4A:10-2 for enforcement of determinations by the Commissioner.

SUBCHAPTER 4. COMPENSATION

4A:3-4.1 General provisions

(a) In local service, appointing authorities shall establish compensation plans which provide for paying employees in reasonable relationship to their job titles.

1. Each appointing authority shall provide a current copy of its compensation plan to the Department of Personnel, and shall provide any subsequent modifications within 20 days after adoption.

2. When a salary range is established for a job title, an employee shall not be paid a base salary below the minimum or above the maximum established for that range.

3. An appointing authority may request information and technical assistance from the Department of Personnel in developing compensation plans.

(b) In State and local service, the Department of Personnel may audit an appointing authority's payroll records to determine compliance with Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., and orders issued by the Commissioner or the Board.

(c) In local service, payroll records may be audited through on-site examinations, submission of payrolls for specified time periods, or a combination of both. Upon request by the Department of Personnel, an appointing authority shall submit a payroll, certified by an authorized financial officer, which contains the following information and such other information as may be requested:

1. Name of jurisdiction;
2. Name of department;
3. Names, titles and social security numbers of employees;
4. Actual amount of pay for pay period, including dates employed;
5. Annual rate of pay; and
6. Beginning and ending dates for current pay period.

(d) In State service, the Commissioner shall establish, maintain and approve changes in a compensation plan for all employees in the career and unclassified services. See N.J.A.C. 4A:3-2.5 for Senior Executive Service compensation.

1. The compensation plan shall establish pay rates and a series of salary ranges.

2. Each employee in the career and unclassified services shall be paid within the salary range or at the pay rate assigned to the employee's job title and pay shall be adjusted in accordance with this subchapter, except as otherwise provided by law, rule or action of the Commissioner.

4A:3-4.2 Job evaluation: State service

(a) Each new job title shall be evaluated, and existing job titles reevaluated*,* based upon the New Jersey Job Content Evaluation System as approved by the Commissioner. Class codes shall be designated for job titles through this evaluation process. However, the Commissioner may, in appropriate circumstances, designate a job title as no-range, meaning that no class code is designated, or may assign a single rate, and may include restrictions on salary payments for such titles.

(b) Once the class code for a job title is designated, the salary range shall be determined according to workweek and work year as follows (see N.J.A.C. 4A:6-2.2 and 2.3 for designation of workweek):

1. The salary range for NL and NE titles shall be the same as the class code;

2. The salary range for 35 hour and 3E titles shall be one range lower than the class code;

3. The salary range for 40 hour, 4E and N4 titles shall be one range higher than the class code;

4. The salary range for 10 month titles shall be three ranges lower than the class code.

EXAMPLE: A job title has been designated class code 18 through the evaluation process. The salary range will be determined based on work week and work year as follows:

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Work Week	Salary Range
NL, NE	18
35, 3E	17
40, 4E, N4	19
Work Year	
10 Month (NL or NE)	15

(c) For use of class codes in determining types of pay adjustments, see N.J.A.C. 4A:3-4.7.

4A:3-4.3 Job reevaluation requests and appeals: State service

(a) Employees, authorized employee representatives, or appointing authorities may request a reevaluation of a job title to determine its proper class code. A request by an employee or the employee's representative shall first be submitted to the appointing authority when the title exists only in that appointing authority. All other requests shall first be submitted to the Department of Personnel.

(b) A request for a reevaluation must identify and explain the areas of substantive change in job content or other change in job evaluation factors through written narrative and a revised job specification, which shall be marked to indicate changes, and include evidence that the change in job content affects all employees in the title.

(c) An appointing authority that receives a request for reevaluation shall conduct a review based on the New Jersey Job Content Evaluation System and notify all parties of its decision, including appeal rights to the Department of Personnel, within 30 days of receipt of the request. The decision letter shall indicate either that there is no substantive change in job content or that the request will be submitted to the Department of Personnel, in which case the appointing authority shall submit a request for reevaluation pursuant to (b) above.

1. An employee who disagrees with the appointing authority's decision may appeal the decision within 20 days of notification to the Department of Personnel. The appeal shall include a copy of the initial request, the appointing authority's decision letter, a statement identifying the specific portions of the decision being contested, and the basis for the appeal.

2. If the employee requesting reevaluation does not receive a decision letter from the appointing authority within the specified 30 days, he or she may, in the following 20 days, submit an appeal, with a copy of the original request, to the Department of Personnel.

(d) The Department of Personnel shall review and render a written decision on evaluation requests under (a) above and appeals under (c) above within 60 days.

(e) Any affected party may appeal the first level determination in (d) above to the Commissioner within 20 days of its receipt. The appeal shall contain all information which was presented to the prior levels, a statement identifying the specific portions of the prior level determination being contested, the basis for appeal, and copies shall be provided by the appellant to all parties.

(f) The Commissioner may render a decision based on the written record or appoint an independent salary reviewer. All parties, either personally, through counsel or authorized union representative, shall have the opportunity to present argument. Information and/or argument which was not presented at a prior level of appeal shall not be considered.

1. If a salary reviewer is appointed, he or she shall submit a report and recommendation to the Commissioner within 30 days after the review.

2. The report and recommendation shall be sent to all parties. Exceptions may be filed within 15 days of receipt of the report and recommendation. If exceptions are filed, cross-exceptions may be filed within 10 days of receipt of the exceptions. Exceptions and cross-exceptions shall be served on all parties.

(g) A decision by the Commissioner is the final administrative determination.

(h) If a title is approved for reevaluation, the effective date of the reevaluation shall be the first full pay period following the receipt of a filing with the Department of Personnel of a fully documented request for reevaluation under (a) above or a fully documented appeal under (c) above.

4A:3-4.4 Salary rates for initial appointments: State service

(a) An appointing authority may place a new employee at a salary step up to and including the fourth step of the salary range for the employee's title. A new employee, for purposes of this section, is one who has had no immediate prior State service with that appointing authority. ***See N.J.A.C. 4A:4-7.4(b) for transfers.***

(b) When the employee has separated from another State appointing authority, Rutgers, the State University, the New Jersey Institute of Technology, or the University of Medicine and Dentistry of New Jersey, and has been hired without an interruption in service, the employee may be placed up to and including that step of the salary range that the employee would receive if the employee had been continuously employed in the new agency.

(c) An authorized hiring rate (AHR) is the set salary for initial appointments to particular job titles as established by the Commissioner. When an AHR is established or changed, current employees in such titles whose salaries are below the AHR shall be advanced to the AHR, and current employees in such titles whose salaries are the same as the AHR may be advanced by the Commissioner.

4A:3-4.5 Anniversary dates: State service

(a) An anniversary date is the biweekly pay period in which an employee is eligible, if warranted by performance and place in the salary range, for a salary increase.

1. An employee's anniversary date shall be assigned upon initial appointment to the first pay period following the completion of 26 full pay periods after appointment. In years which contain 27 pay periods, anniversary dates shall be determined in accordance with a schedule issued by the Department of Personnel.

EXAMPLE: An employee is appointed to a position on Monday, August 10, 1987. The first full pay period following the date of appointment is pay period 18, which begins on August 15, 1987. The employee's anniversary date is pay period 18 in calendar year 1988, expressed as 18/88.

2. An employee who starts work on the first Tuesday of a pay period immediately following a Monday holiday or special day off shall be assigned the anniversary date of that pay period.

3. An employee at the eighth step of the range only becomes eligible for advancement to the ninth step, if warranted by performance, following the completion of 39 pay periods.

(b) A current employee's anniversary date may change as a result of an advancement pay adjustment. See N.J.A.C. 4A:3-4.9. If *[changed]* ***the anniversary date is advanced based on the date of adjustment***, the new anniversary date is the first pay period following the completion of 26 full pay periods after the date of that adjustment.

1. An employee's anniversary date may also change as a result of time spent in non-pay status. See N.J.A.C. 4A:3-4.6.

(c) Employees in intermittent titles shall receive initial and subsequent anniversary dates which correspond to the first pay period after completion of 1827 work hours (NL, NE, 35 and 3E titles) or 2088 work hours (40, 4E and N4 titles) in regular pay status. When an employee moves from an intermittent title, 80 hours of service in an intermittent title shall equal one pay period for 40, 4E and N4 titles and 70 hours of service in an intermittent title shall equal one pay period for NL, NE, 35 and 3E titles.

4A:3-4.6 Anniversary date change when employee is in non-pay status: State service

(a) Except as provided in (b) below, time spent by employees in non-pay status, including suspensions, shall not be included in total time of employment when calculating eligibility for annual increments.

1. An employee's anniversary date shall be advanced by one full pay period for each full pay period in non-pay status.

2. If an employee is in non-pay status on an intermittent basis during the course of a calendar year, the employee's anniversary date shall be advanced by one pay period for each 10 working days in non-pay status.

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(b) The following periods of non-pay status shall not be deducted from earned time for purposes of calculating anniversary dates:

1. Military leave;
2. Educational leave;
3. The two month period when employees in 10 month job titles are not scheduled to work;

4. Days on which part-time employees are not scheduled to work;

*[4.]***5.*** Leave without pay following exhaustion of sick leave injury;

*[5.]***6.*** Leave without pay while receiving workers' compensation benefits; and

*[6.]***7.*** Leave without pay under a voluntary alternative to layoff program.

(c) When an employee returns from one full pay period or more in non-pay status, or when an employee accumulates 10 or more working days in non-pay status on an intermittent basis, the appointing authority shall notify the Department of Personnel and the employee in writing that the anniversary date is to be changed.

4A:3-4.7 Determining types of pay adjustments: State service

When an employee moves to a different title, including a change in workweek and/or work year, the type of pay adjustment shall be determined according to class code change as follows:

Class Code of New Title Compared to Old Title	Type of Pay Adjustment	Applicable Section
Same	Lateral	N.J.A.C. 4A:3-4.8
Higher	Promotion, upward title reevaluation, and other advancements	N.J.A.C. 4A:3-4.9
Lower	Demotion	N.J.A.C. 4A:3-4.10
	Downward title reevaluation	N.J.A.C. 4A:3-4.11

4A:3-4.8 Lateral pay adjustments: State service

(a) A lateral pay adjustment occurs when an employee moves to a title having the same class code. An employee affected by such lateral pay adjustment shall not be considered to have been promoted or demoted, even if actual salary changes.

(b) Employees affected by a lateral pay adjustment shall have their pay adjusted to the same step in the salary range of the new title as that step at which they were paid in the salary range of the former title. The employee's anniversary date shall not be changed.

EXAMPLE: An employee currently on step four, salary range A10 ($15,800.94), in a 35-hour workweek title (class code 11), is appointed to a 40-hour workweek title in class code 11. The new salary range will be A12, and the employee will be placed on step four ($17,415.44). NOTE: Salaries effective September 12, 1987.

4A:3-4.9 Advancement pay adjustments: State service

(a) Employees in the following situations shall have their pay advanced under (b) below, and anniversary date set under (e) below when there is no workweek change or under (f) below when their workweek changes:

1. Employees promoted from one title to a title with a higher class code following or subject to a promotional examination;
2. Employees serving in a title which is reevaluated to a higher class code; or
3. Employees appointed to a title with a higher class code, when that action will not be subject to promotional examination, provided the following criteria are met:

i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement;

ii. The higher title is in the same occupational group as the lower title; and

iii. The service in the lower title provided significant preparation and training for service in the higher title.

(b) Employees under (a) above shall have their salaries calculated as follows:

1. When there is no change in workweek or workweek decreases, the employee shall have his or her salary in the lower range increased by one increment in that range. Then, the employee's salary in the higher range will be set at the lowest step in that range that equals or exceeds this increased salary.

EXAMPLE: An employee on step four on salary range A10 ($15,800.94) is promoted to a title with salary range A13. An increase of one increment in the lower salary range would bring the employee to step five in range A10, or $16,487.30. The step in the higher range which would provide at least this increase is step two of salary range A13, or $16,699.13. NOTE: Salaries effective September 12, 1987.

2. If workweek increases (for example, 35 to NL or NL to 40), the employee's salary is determined by the following three steps:

i. Performing the workweek adjustment (see (f) below);

ii. Increasing the employee's salary by one increment in the workweek adjusted range; and

iii. Setting the employee's salary at the lowest step in the new range that equals or exceeds the increased salary in the workweek adjusted range.

EXAMPLE: An employee at step four, range A10, in a 35 hour workweek is promoted to a title in range A13 with a 40 hour workweek. The workweek adjustment, as seen in the example under (f)1 below, would bring the employee to the same step (four) two ranges higher (A12), or $17,415.44. One additional increment in range A12 would bring the employee to step five, or $18,171.15. The step in range A13 which would provide at least this increase is step four, or $18,289.35. NOTE: Salaries effective September 12, 1987.

3. When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (b)1 or 2 above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

4. When an employee has been at the maximum of his or her previous salary range for at least 39 pay periods, the employee shall receive, if warranted by performance, an additional increment in the new range beyond the advancement under (b)1 or 2 above, providing:

i. The employee is not already at the maximum of the new range; and

ii. The total salary increase, after workweek adjustment if applicable, is not greater than three increments of the employee's previous range.

(c) Employees in the following situations shall have their pay advanced under (d) below, and anniversary date set under (e) below when there is no workweek change or under (f) below when their workweek changes:

1. Employees appointed to a title with a higher class code when that action will not be subject to a promotional examination and the conditions specified in (a) 3 above are not met;
2. Employees appointed to an upwardly reevaluated title after the effective date of the reevaluation but prior to the implementation date.

(d) Employees under (c) above shall receive the lowest step of the new range that equals or exceeds the prior salary.

EXAMPLE: An employee on step four on salary range A10 ($15,800.94) is appointed to an unrelated, unclassified title with salary range A13. The lowest step in range A13 that equals or exceeds the prior salary is step one, or $15,904.02. NOTE: Salaries effective September 12, 1987.

1. When an employee has been at the maximum of his or her previous salary range for at least 39 pay periods, he or she shall also

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receive, if warranted by performance, an increment in the new range, provided:

i. The employee is not already at the maximum of the new range; and

ii. The total salary increase, after workweek adjustment if applicable (see (f) below), is not greater than three increments of the employee's previous range.

(e) When there is no change in workweek, the anniversary date of an employee whose pay is advanced under (a) or (c) above shall be determined as follows:

1. If the pay increase due to advancement is less than two increments in his or her previous range, the employee shall retain his or her anniversary date.

2. If the pay increase due to advancement is equal to or greater than two increments in his or her previous range, the employee's anniversary date shall be advanced based on the effective date of the advancement.

3. If the employee has been at the eighth or ninth step of a range for less than 39 pay periods before advancement: ***and***

i. If an advancement results in step seven or less, the employee's anniversary date will be the pay period which reflects the difference between the time previously served at step eight or nine and 39 pay periods, but in no case shall the anniversary date exceed one year from the effective date of the advancement;

ii. If an advancement results in step eight, the anniversary date is retained;

iii. If an advancement results in step nine, the anniversary date *[is advanced based on]* ***becomes*** the effective date of the advancement.

(f) When there is a change in workweek, the anniversary date of an employee whose pay is advanced under (a) or (c) above shall be determined by following two steps: first, computing the workweek adjustment as provided in (f)1 below; second, applying one of the formulas in (f)2 or (f)3 below, as appropriate. However, if an employee has been at the eighth or ninth step in the prior range for less than 39 pay periods before advancement which results in step seven or less, the workweek adjustment is skipped and the anniversary date is determined under (e)3 above.

1. The workweek adjustment is computed by finding the workweek adjusted range, according to the following chart, and then placing the employee on the same step in the workweek adjusted range as the employee's step on the former range.

WORKWEEK OF EMPLOYEE'S NEW TITLE

		35 or 3E	NL or NE	40, 4E or N4
Workweek of Employee's Former Title	35 or 3E	NO CHANGE	+1 SALARY RANGE	+2 SALARY RANGES
	NL or NE	-1 SALARY RANGE	NO CHANGE	+1 SALARY RANGE
	40, 4E or N4	-2 SALARY RANGES	-1 SALARY RANGE	NO CHANGE

EXAMPLE: An employee on step four in salary range A10 in a 35-hour week title is appointed to a 40-hour week title. Adjusting salary range A10 (35 hours) to the 40-hour week (+2 salary ranges) will result in a range A12, step four.

2. When an employee receives a pay increase after workweek adjustment which is less than two increments in his or her workweek adjusted range, the employee shall retain his or her anniversary date.

EXAMPLE: An employee at step four, range A10, in a 35 hour workweek is promoted to a title in range A13 with a 40 hour workweek. The workweek adjustment, as seen in the example above, would bring the employee to the same step (four) two ranges higher (A12), or $17,415.44. The employee's new pay rate, as seen from the example in (b)2 above, is $18,289.35. Since the pay increase after workweek adjustment ($18,289.35 minus $17,415.44 = $873.91) is less than two increments in the workweek adjusted range ($755.71 + $755.71 = $1511.42), the anniversary date is retained. NOTE: Salaries effective September 12, 1987.

3. When an employee receives a pay increase after workweek adjustment which is equal to or greater than two increments in his or her workweek adjusted range, the employee's anniversary date shall be advanced based on the effective date of the advancement.

EXAMPLE: An employee at step four, range A10, in a 40 hour workweek, is promoted to a title in range A13 with a *[45]* ***35*** hour workweek. The workweek adjustment would bring the employee to the same step (four) two ranges lower (A8), or $14,336.32. The employee's new pay rate is $16,699.13 (step two, range A13). Since the pay increase after workweek adjustment ($16,699.13 minus $14,336.32 = $2,362.81) is more than two increments in the workweek adjusted range ($624.46 ***+ $624.46*** = $1,248.92), the anniversary date is advanced. NOTE: Salaries effective September 12, 1987.

(g) When an employee's work year changes, a work year adjustment shall first be performed before making any other adjustments under this section. The work year adjustment is computed by placing the employee in the same step three ranges up, when work year is increased from 10 to 12 months, or three ranges down, when work year is decreased from 12 to 10 months.

EXAMPLE: An employee on step four, range A10 in a 10 month title, is promoted to a 12 month title with salary range A15. There is no change in workweek. The work year adjustment would bring the employee to step four, range A13 ($18,289.35). Then, salary is calculated based on (b) above and anniversary date set under (e) above.

4A:3-4.10 Demotional pay adjustments: State service

(a) The salary of an employee who receives a disciplinary demotion shall be adjusted by reducing the employee's salary one increment in the higher range. Then, the employee's salary in the lower range will be set at the step that is equal to or next lower than such reduced salary. The anniversary date is retained.

EXAMPLE: An employee on step four, range A18 ($23,341.28) is demoted to a job title in range A15. First, the employee's salary is reduced one increment in range A18 to step three ($22,326.77). Then, the step in range A15 that is equal to or next lower than this reduced salary is step six ($21,912.36). NOTE: Salaries effective September 12, 1987.

(b) When an appointing authority demotes an employee in lieu of removal due to loss of qualifications for job title (for example, a Truck Driver whose license is suspended is demoted to a Building Maintenance Worker), salary and anniversary date shall be determined as provided in (a) above.

(c) If the demotion is other than disciplinary or in lieu of removal under (b) above, the employee's salary shall be reduced one increment in the higher range, Then the employee's salary in the lower range will be set at the step that is equal to or next higher than such reduced salary. The anniversary date is retained.

EXAMPLE: An employee on step four, range A18 ($23,341.28) is demoted in lieu of layoff to a job title in range A15. First, the employee's salary is reduced one increment in range A18 to step three ($22,326.77). Then, the step in range A15 that is equal to or next higher than this reduced salary is step seven ($22,788.11).

***1. This adjustment shall be applied only when the employee has served at least one year in the higher title and:**

i. The employee has previously held the lower title;

ii. The lower title is in the same occupational group as the higher title; or

iii. The service in the higher title provided significant preparation and training for service in the lower title.

2. If the conditions in (c)1 above are not met, then salary and anniversary date shall be determined by reconstructing the employee's

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salary as if the employee had remained in the lower title on the date he or she was appointed to the higher title.*

(d) For all non-disciplinary demotions except voluntary demotions and those provided in (b) above, an employee demoted to a title lower than the class code of his or her permanent title must be given 45 days' notice of demotion by the appointing authority.

4A:3-4.11 *[Downward title reevaluation pay adjustments: State service]****(Reserved)***

*[(a) When a title is reevaluated to a lower class code, or when a title is eliminated and incumbents are placed in a title having a lower class code, each employee in that title shall remain at his or her current base salary. The part of an employee's base salary that is above the nearest lower step in the lower range will be carried as extra salary until the employee's anniversary date, at which time the employee's salary shall be moved to the next higher step, if warranted by performance, in lieu of the normal performance increment. If the employee's base salary is at the maximum step, the employee will remain at that salary until the maximum step of the lower range is increased to a level at or above the employee's base salary, at which time the employee's salary shall be moved to that maximum step of the lower range.

1. The effective date of a downward title reevaluation shall be the first pay period that is 60 days after the date of the reevaluation determination by the Commissioner.

2. All employees affected by a downward title reevaluation shall be given notice by the appointing authority of the reduction in range at least 45 days prior to the effective date.

3. When a title has been eliminated and incumbents placed in a title having a lower class code, the Commissioner may provide for additional adjustments for affected employees.]*

4A:3-4.12 Movement of employees from no-range or single rate titles to titles having salary ranges: State service

(a) When a title is changed from a no-range or single rate category to a range in the Compensation Plan, or when an employee moves from a no-range title to a title having a salary range, the salary and anniversary dates of employees serving in that title shall be adjusted in accordance with N.J.A.C. 4A:3-4.9(d), providing the following two criteria are met:

1. The service in the no-range title provided the employee with significant experience and training for service in the range title; and

2. The employee has served in the former title for four months or more.

(b) When the employee's appointment does not satisfy the conditions in (a) above, salary and anniversary date shall be determined by reconstructing the employee's salary as if the employee had been serving in the range title on the date the employee was appointed to the no-range title***, provided, however, that in no event shall the new salary be higher than the salary in the no-range title***.

(c) This section shall not apply to employees appointed from a Tentative Title or to a Trainee Title. See N.J.A.C. 4A:3-4.14 regarding Trainee Titles and 4A:3-4.15 regarding Tentative Titles.

4A:3-4.13 Salaries of employees whose annual salaries are not on a step in their salary range: State service

Except as otherwise provided by the Commissioner, an employee whose base salary is not on a step in his or her salary range shall remain at his or her current base salary. That part of an employee's salary that is above the nearest lower step in the salary range will be carried as extra salary until the employee's anniversary date, at which time the employee's salary shall be moved to the next higher step, if warranted by performance, in lieu of the normal performance increment.

4A:3-4.14 Movement of employees to trainee titles from titles having higher pay rates: State service

(a) Except as provided in (b) below, an employee with permanent status or with at least six months' continuous service may, at the option of the appointing authority, retain his or her *[base]* ***current*** salary when appointed to a trainee title. The employee shall remain at his or her salary until the salary rate of the trainee title exceeds the employee's salary, the employee advances to the primary title after completing the training period, or the employee is advanced to a higher title. Upon advancement from the trainee title to the primary title, the employee's salary shall be determined by *[reconstruction (see N.J.A.C. 4A:3-4.10(a)),]* ***reconstructing the employee's salary as if the employee had continued to serve in his or her permanent title during the training period*** or by the normal advancement from a trainee to a primary title, whichever is greater.

(b) An employee in (a) above shall not be paid higher than the maximum step of the primary title.

4A:3-4.15 Salaries for employees appointed to tentative title positions: State service

(a) When appointed to positions designated "Tentative Title":

1. New employees, at the discretion of their appointing authority, may be appointed at a salary up to the fourth step of the salary range initially recommended for the title by the Department of Personnel, based on the new title request materials submitted by an appointing authority.

2. Current employees of an agency *[will]* ***shall*** have their salaries adjusted in accordance with rules which would be applicable if, in fact, the title were actually compensated at the salary range specified in (a)1 above.

(b) If the final evaluated range is lower than the initially recommended range, the salaries of employees serving in affected Tentative Title positions shall be adjusted in accordance with downward title reevaluations. See N.J.A.C. 4A:3-4.11.

(c) Anniversary dates shall be set based on the date of appointment to the Tentative Title.

4A:3-4.16 Salaries of employees on military leave during a trainee period: State service

(a) Upon return from military leave, a regularly appointed employee in a trainee title shall receive a salary at the six months rate, provided the total time in the trainee title on the job and on leave equals six months or more.

(b) Upon successful completion of the total 12 months of trainee service on the job, including the required working test period, the employee will be advanced to the primary title at the salary rate the employee would have received had the employee not been on military leave.

(c) The employee's personnel record shall indicate seniority in all pertinent titles retroactive to dates on which the employee would have gained such seniority had the employee not gone on military leave.

4A:3-4.17 *[Salaries and anniversary dates for employees appointed from a special reemployment list: State service]* ***(Reserved)***

*[(a) The salary and anniversary date of an employee appointed from a special reemployment list shall be set in accordance with the most beneficial of the following:

1. The appropriate pay adjustment under N.J.A.C. 4A:3-4.8 through 4A:3-4.11;

2. When the appointment is to the employee's permanent title at the time of the layoff, the same step the employee was on at the time of the layoff; or

3. Setting the anniversary date to the same pay period in the current year as the anniversary date at the time of the layoff.]*

4A:3-4.18 Salaries and anniversary dates for employees appointed from a regular reemployment list: State service

(a) A current State employee who is appointed from a regular reemployment list shall have the salary and anniversary date determined in accordance with N.J.A.C. 4A:3-4.8 through 4A:3-4.11, as appropriate. If the employee would receive a greater salary under the provisions of (b) below, the appointing authority may request application of those provisions.

(b) An individual not currently employed by the State who is appointed from a regular reemployment list shall receive an anniversary date based on the new date of appointment and, at the request of the appointing authority, be paid:

1. When re-appointed to the prior permanent title, up to the same step in the salary range which the employee was receiving in that title; or, if the employee was serving in an unclassified title or provisionally in another title at the time of the separation, up to the same step in the salary range which the employee would have received

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had the employee been returned to his or her permanent title on the date of the separation.

2. When reappointed to a title other than the prior permanent title, up to the same step in the salary range which the employee would have received if the employee had been appointed to the title on the date of the separation.

(c) When an employee has been reappointed to a title which has been reevaluated since the separation, the employee's salary shall be set up to an amount determined by reconstruction. See N.J.A.C. 4A:3-4.10.

4A:3-4.19 Other forms of compensation: State service

The Commissioner shall issue annual updates to the Compensation Plan regarding computing pay for temporary employees, extra compensation on special projects, emergency rates and other allowances to employees.

4A:3-4.20 Retroactive pay: State service

Personnel actions having retroactive effective dates shall apply only to employees who remain on a State payroll on the date of the retroactive payment and employees who retire during the period of retroactive application.

4A:3-4.21 Salary overpayments: State service

(a) The Commissioner may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:

1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;

2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status; or

3. The terms of the repayment schedule would result in economic hardship to the employee.

(b) An employee ***or appointing authority*** may request a waiver of repayment in accordance with the procedure for written record appeals. See N.J.A.C. 4A:2-1.

SUBCHAPTER 5. OVERTIME COMPENSATION

4A:3-5.1 General provisions

(a) In local service, overtime compensation shall be paid pursuant to standards prepared and administered by the appointing authority in accordance with the Fair Labor Standards Act, 29 U.S.C. 201 et seq.

(b) In State service, overtime compensation for employees in the career, senior executive and unclassified services shall be paid pursuant to this subchapter. See chart (Appendix A) at the end of this subchapter which outlines these overtime provisions.

(c) See N.J.A.C. 4A:6-2 for State service hours of work and workweek designation rules.

4A:3-5.2 Definitions: State *[S]**s*ervice

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

"Base salary" means the employee's rate of pay exclusive of any additional payments or allowances.

"Cash overtime compensation" means payment at a rate of one and one-half times the hourly proration of the employee's base salary, or one and one-half times the employee's regular rate, as specified.

"Compensatory time off" means the granting of time off in lieu of cash payment where permitted for excess or unusual work time.

"Covered position" means a position which is subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq.

"Exempt position" means a position which is excluded from the provisions of the Fair Labor Standards Act.

"Fixed workweek title" means a title specified in the State Compensation Plan as having a 35 hour (35, 3E) or 40 hour (40, 4E) workweek. See N.J.A.C. 4A:6-2.2.

"Holiday" means a legal holiday or a special holiday authorized by law or executive order.

"Non-limited title" means a title having irregular or variable work hours. Such titles may be designated as exempt non-limited (NL, N4), or covered, also known as non-exempt, non-limited (NE). See N.J.A.C. 4A:6-2.3.

"Overtime compensation" means cash overtime compensation or compensatory time off as permitted.

"Pay period" means the period beginning 12:01 A.M. Saturday and ending midnight the second Friday following. (Note: A schedule of pay periods is published annually by the New Jersey Department of the Treasury).

"Regular rate" means the hourly proration of the employee's annual base salary plus the fair market value of goods and facilities received as part of the wages. Employees in covered non-limited titles (NE) shall be deemed to have a 40 hour workweek for determining the hourly proration. Employees who work at different pay rates in a single workweek shall have their hourly proration based on a weighted average of the different rates.

"Seven day coverage position" means a position assigned to an area where work coverage is required on a seven day basis throughout the year.

"Workweek" means the period beginning 12:01 A.M. Saturday and ending midnight the following Friday except in those instances where the Commissioner or his or her representative has approved an alternate workweek for overtime purposes for employees engaged in seven day operations.

4A:3-5.3 40 hours or less in a workweek: State service

(a) Employees in the following groups may be eligible for overtime compensation for work performed beyond their regular work hours, but not more than 40 hours:

1. Employees in 35 hour fixed workweek titles (35, 3E) for time worked in excess of the regular workweek.

2. Employees in non-limited titles (NL, NE) who meet unusual work time requirements, at the discretion of the appointing authority.

3. State Police law enforcement officers, at the request of the Office of Employee Relations.

4. Part-time employees only when they work beyond the regular workweek established for full-time employees in their titles.

(b) Temporary employees shall not be eligible for overtime compensation under this section.

(c) An employee shall be eligible for overtime compensation under this section only when:

1. The employee is in pay status for the full number of hours in his or her regular workweek;

2. The employee works at least one hour beyond the regular workweek; and

3. The work is covered by the job specification for the employee's title, except for emergencies as provided in N.J.A.C. 4A:3-5.7(d).

(d) Overtime compensation under this section shall be paid as follows:

1. Employees in 35 hour fixed workweek titles (35, 3E) shall be compensated either in cash payment or compensatory time off at the discretion of the appointing authority with the approval of the Commissioner or his or her designee for time worked in excess of the regular workweek but not more than 40 hours.

i. Cash compensation for overtime work shall be at the rate of one and one-half times the hourly proration of an employee's base salary. An overtime rate conversion table shall be published with the State Compensation Plan.

ii. Compensatory time off shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

2. Employees in non-limited titles (NL, NE) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time. They shall have no entitlement to cash overtime compensation.

3. Work credited toward overtime compensation must be in one-half hour units of continuous work beyond each regular work day.

4A:3-5.4 Criteria for exemption from Federal Fair Labor Standards Act: State service

(a) The following are the criteria for exemption from the Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.:

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1. An unclassified employee is exempt if he or she:

i. Holds a public elective office of the State:

ii. Is a member of the personal staff of an elected office holder;

iii. Is appointed by such an office holder to serve on a policy making level;

iv. Is an immediate adviser to such an office holder with respect to the constitutional or legal powers of the office; or

v. Meets one of the criteria for exemption set forth in (a)2 through 6 below.

2. An executive employee paid at least $250.00 a week on a salary basis exclusive of board, lodging and other facilities is exempt if the employee regularly directs the work of two or more other employees and the employee's primary duty is management of the enterprise or a recognized department or subdivision thereof.

3. An administrative employee who is paid on a salary or fee basis at least $250.00 a week, exclusive of board, lodging or other facilities, is exempt if his or her primary duty is responsible office or non-manual work directly related to management policies or general business operations or responsibile work in the administration of an educational institution and his or her work requires the exercise of discretion and independent judgment.

4. A professional employee who is paid at least $250.00 per week is exempt if his or her primary duty requires advanced knowledge in a field of science or learning or involves work as a teacher, and requires the consistent exercise of discretion of judgement; or his or her primary duty involves artistic work in a recognized field of artistic endeavor.

5. Executive, administrative and professional employees who are paid less than $250.00 per week may be exempt under conditions specified in Federal regulations. See 29 C.F.R. 541.

6. Employees engaged in law enforcement or fire protection activities, including security personnel in correctional institutions, who are employed by a public agency that employs less than five law enforcement or five fire protection workers in a workweek, are exempt.

(b) An individual position may be exempt if it meets the criteria in this section, even if it is in a covered title. See N.J.A.C. 4A:3-5.10(b) for position designation appeals.

4A:3-5.5 Federal fair labor standards applicable to more than 40 hours in a workweek for 35, 40 and NE titles: State service

(a) Employees in covered positions may be eligible for overtime compensation under this section as follows:

1. Employees in covered fixed workweek titles (35, 40) and covered non-limited titles (NE), shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her representative for time worked in excess of 40 hours per week, provided that compensatory time off in lieu of cash overtime compensation is permitted by one of the following agreements:

i. Applicable provisions of a collective negotiations agreement, memorandum of understanding, or any other agreement between the State and representatives of such employees;

ii. In the case of employees who do not have a collective negotiations representative, an agreement or understanding made between the appointing authority and the employee before the performance of the overtime work. For such employees who were hired prior to April 15, 1986, the regular practice in effect on April 15, 1986 regarding compensatory time off in lieu of cash overtime compensation shall constitute an agreement or understanding.

2. The Commissioner or his or her designee may approve an alternate work period and corresponding maximum hour designation for covered law enforcement and fire protection employees as set forth in the table below. Such employees shall receive overtime compensation for time worked in excess of maximum allowable hours in the work period.

Maximum Hours in Work Period

Work Period (days)	Firefighters	Law Enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

3. A hospital or residential care facility may, under a prior agreement with affected employees and as approved by the Commissioner or his or her designee, use a work period of 14 consecutive days for computing overtime compensation for covered employees.

4. Temporary employees shall be entitled to overtime compensation unless their work duties meet the criteria for exemption under the Fair Labor Standards Act.

(b) Overtime compensation under this section shall be paid as follows:

1. Covered employees (35, 40 or NE titles) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her designee for time worked in excess of 40 hours per week as provided in (a)1 above. However, if an alternate work period is adopted pursuant to (a)2 above, overtime compensation shall be paid in accordance with that schedule.

2. Cash compensation for overtime work shall be at the rate of one and one-half times the regular rate.

3. Compensatory time off shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

4. Employees engaged in a public safety activity, an emergency response activity, or a seasonal activity may accrue not more than 480 hours of compensatory time off. Employees engaged in any other work may accrue not more than 240 hours of compensatory time off.

5. Cash compensation for accrued compensatory time off shall be paid at the regular rate earned by the employee at the time such employee receives such payment. However, upon termination of employment, an employee shall be paid for unused compensatory time at a rate not less than the average regular rate received during the last three years of employment, or the final regular rate received by such employee, whichever is higher.

6. Overtime compensation for work in excess of 40 hours for covered employees who work at different pay rates during the same workweek shall be paid as follows:

i. Cash overtime compensation shall be at the rate of one and one-half times the weighted average of the different rates paid during that workweek.

ii. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

7. If a 14 day work period is elected for hospital employees under (a)3 above, covered employees shall receive overtime compensation for work in excess of eight hours in a workday or 80 hours in a work period at a rate representing one and one-half times the regular rate

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of pay. The extra compensation at the premium rate paid for hours worked in excess of eight in a workday may be credited toward any overtime compensation payable for hours worked in excess of 80 in the 14 day work period.

4A:3-5.6 Federal fair labor standards applicable to more than 40 hours in a workweek for 3E, 4E, NL and N4 titles: State service

(a) Employees in exempt positions may be eligible for overtime compensation under this section as follows:

1. Employees in exempt fixed workweek titles (3E, 4E) shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her designee for time worked in excess of 40 hours per week.

2. Employees in exempt non-limited titles (NL, N4) shall not be eligible for cash overtime compensation except as provided in N.J.A.C. 4A:3-5.7(d).

(b) Overtime compensation for employees in exempt positions shall be as follows:

1. Exempt employees in fixed workweek titles (3E, 4E) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her designee for time worked in excess of the regular workweek.

i. Cash compensation for overtime work shall be at the rate of one and one-half times the hourly proration of an employee's base salary.

ii. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

2. Exempt employees in non-limited workweek titles (NL, N4) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work time patterns or a grant of comparable amounts of time off to a maximum of one hour for each of unusual work time. See N.J.A.C. 4A:3-5.7(e)2 as to special project rates.

4A:3-5.7 Special circumstances: State service

(a) Eligibility for overtime compensation for on call employees shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required to remain on call and cannot use their own time effectively shall be considered to be working and shall have such on call time included in the total hours worked. In those situations where employees are merely required to remain at home or leave word with appropriate officials where they may be reached, they are not considered to be working while on call unless their freedom to engage in personal activities during that period is severely restricted.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

2. Employees in exempt positions (3E, 4E, NL, N4) shall have no entitlement to compensation for such time.

(b) Eligibility for overtime compensation for training shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required by their employer to participate in job related training shall have such training time included in the total hours worked.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only by payable for that period after total hours worked exceed 40 hours in a workweek.

ii. For time worked in excess of a 35 hour fixed workweek but not over 40 hours, hour for hour compensation may be granted in the form of cash or time off, at the discretion of the appointing authority.

2. Employees in exempt fixed workweek positions (3E, 4E) may be granted hour for hour compensation in the form of cash or time off, at the discretion of the appointing authority.

3. Employees in exempt non-limited positions (NL, N4) shall have no entitlement to compensation for such time.

(c) Eligibility for overtime compensation for travel shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required to travel contiguous to the normal workday in excess of normal commutation time shall have such hours included in the total hours worked.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

ii. For time worked in excess of a 35 hour fixed workweek but not over 40 hours, hour for hour compensation may be granted in the form of cash or time off, at the discretion of the appointing authority.

2. Employees in exempt fixed workweek positions (3E, 4E) may be granted hour for hour compensation in the form of cash or time off, at the discretion of the appointing authority.

3. Employees in exempt non-limited positions (NL, N4) shall have no entitlement to compensation for such time.

(d) Eligibility for overtime compensation for exceptional emergencies shall be as follows:

1. When an agency head declares an exceptional emergency involving a critical service disruption that poses a danger to health or safety, he or she may authorize:

i. Cash overtime compensation for non-limited employees in titles with established salary ranges below range 35 performing emergency related work. For these circumstances employees in non-limited titles shall be deemed to have a 40 hour workweek.

ii. Overtime compensation for work not covered by the job specification. See N.J.A.C. 4A:3-5.3(c)3.

2. An agency head shall file with Commissioner two reports concerning an exceptional emergency as follows:

i. Within seven days of the declaration of the exceptional emergency, a fully detailed justification for the declaration. The report shall describe the critical services which could have been or were disrupted and what dangers were posed to health or safety.

ii. Within 30 days of the conclusion of the exceptional emergency, a list of the names, titles, hours of work designations and number of hours of emergency related overtime work of employees who performed emergency related work on an overtime basis.

3. These provisions shall not apply to work performed beyond the regular work hours on emergency maintenance, construction, snow removal or other related work in situations which constitute unreasonable safety hazards to the public, employees, other persons or property of the State. The Commissioner shall establish special project rates for these circumstances.

(e) Eligibility for special project rate compensation shall be as follows:

1. If an employee works on a part time, occasional or sporadic basis, and solely at the employee's option, in a different capacity from which the employee is regularly employed, the hours employed in the different capacity shall be excluded from the calculation of the hours to which the employee is entitled to overtime compensation. Such employment may be paid at special project rates as approved by the Commissioner.

2. NL and N4 employees who perform extraordinary work activities on a limited or periodic basis necessitating work time beyond the general workweek in the same capacity from which the employee is regularly employed may be paid special project rates as approved by the Commissioner.

3. A fully detailed justification for a special project for which (e)1 or 2 above would be applicable must be filed with the Commissioner or his or her representative for review and approval.

4A:3-5.8 Holiday pay: State *[S]**s*ervice

(a) Full-time and part-time employees in fixed workweek titles shall be entitled to overtime compensation in addition to their regular rate of compensation for all work performed on a holiday, except as provided in (d) below, even if they are not in pay status for a full workweek.

(b) Employees in non-limited titles are not entitled to overtime compensation for work performed on a holiday, except as provided

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in N.J.A.C. 4A:3-5.6. However, those in titles below that of agency head may, at the discretion of the appointing authority, be granted comparable time off to a maximum of hour for hour for such work in addition to their regular rate of compensation.

(c) The following shall govern overtime compensation for full-time and part-time employees in fixed workweek titles who are employed in a seven day coverage operation:

1. If a holiday occurs on a regular workday of an employee, the employee is entitled to overtime compensation for all work performed on that holiday in addition to the regular rate of compensation.

2. If a holiday occurs on a regular day off, an employee shall be given an additional day off in the same workweek. If, as a result of an emergency, the employee is required to work on the additional day, he or she shall be entitled to overtime compensation for all work performed on the additional day.

3. If a holiday occurs on a regular workday of an employee and the employee does not report for duty, he or she shall not be eligible for overtime compensation or an alternate day off.

(d) A part-time or full-time employee in a fixed workweek title, in conjunction with his or her appointing authority, may agree to work on a holiday in exchange for a specified day of personal preference off. If the employee is required to work on the specified personal preference day, she or he shall be entitled to overtime compensation for all hours worked on the personal preference day as if that day were the holiday.

(e) Eligibility for overtime compensation for temporary employees shall be as follows:

1. Unless permitted by a negotiated labor contract, temporary employees shall not be entitled to overtime compensation for work performed on a holiday, except as provided in N.J.A.C. 4A:3-5.5(a)(4).

2. Unless permitted by a negotiated labor contract, temporary employees shall not be entitled to any form of compensation for a holiday not worked.

4A:3-5.9 Appointing authority responsibilities: State service

(a) Each appointing authority shall develop procedures for administering overtime that are consistent with this subchapter and at a minimum provide for:

1. Written authorization by the appointing authority or his or her designee in advance of overtime to be worked. Whenever circumstances are such that prior authorization is not possible, the overtime must be authorized in writing immediately thereafter;

2. Records of approved overtime requests and work accomplished;

3. Systems for continuous and periodic review of overtime requirements with a view toward accomplishing the work during regular work time; and

4. Written procedures for supervisory personnel to follow in the authorization of either compensatory time or cash payment for overtime.

(b) A copy of each department's procedures, written interpretations and any subsequent changes are to be filed with the Commissioner or his or her designee and approved prior to promulgation.

(c) For budget requests, the appointing authority shall provide an annual summary to include the extent and justification for overtime required during the past fiscal year, current fiscal year, and the extent and justification of anticipated overtime during the next fiscal year. The latter shall be supported by a description of the work programs to be accomplished, the amount of hours and money involved, the circumstances dictating that it be overtime, and alternatives that would permit accomplishment of the overtime work on regular time. The instructions for the above shall be included in the "Manual for Preparation of Budget Request" which is published and distributed to all State agencies by the Office of Management and Budget in the Department of the Treasury. The appointing authority shall file a copy of this summary with the Commissioner or his or her representative.

(d) The following records shall be kept:

1. Name of employee in full;

2. Home address, including zip code;

3. Date of birth, if under 19;

4. Sex and occupation;

5. Time of day and day of week on which the employee's workweek begins;

6. Regular hourly rate of pay in any workweek in which overtime premium is due, or other basis of wage payment (such as "$5.00 hr.," "$40.00 day," "$200.00 wk.");

7. Daily and weekly hours of work;

8. Total daily or weekly straight time earnings;

9. Total overtime compensation for the workweek;

10. Total additions to or deductions from wages paid;

11. Total wages paid each pay period;

12. Date of payment and the pay period covered by payment; and

13. Approved overtime requests and a summary of work accomplished.

(e) Upon demand, the appointing authority shall make available to the Commissioner or his or her representative all records and accounts of overtime work at the time(s) and location(s) specified.

(f) Procedures for payments of compensable overtime will be published as part of the payroll manual.

4A:3-5.10 Appeal procedures: State service

(a) Appeals may be filed under this subchapter as follows:

1. Position designation appeals, in which the issue is the status of a particular position as exempt or covered under the Fair Labor Standards Act, 29 U.S.C. 201 et seq. and/or

2. Title designation appeals, in which the issue is the status of an entire job title in the State classification plan as exempt or covered under the Fair Labor Standards Act.

(b) Position designation appeals may be filed by an employee and shall be submitted, in writing, to the appointing authority through the personnel office.

1. The appeal must identify the specific duties at issue and must be accompanied by a Classification Questionnaire, *[DPF-44,]* signed by the employee and the supervisor. If the appellant proposes a different status for the position (exempt or covered), he or she must explain how the requested status more accurately reflects the duties of the position under the Fair Labor Standards Act. See N.J.A.C. 4A:3-5.4.

2. The appointing authority shall review the appeal and notify the appellant of its decision within 20 days of receipt of the appeal. This decision letter must include the duties of the position, findings of fact, conclusions and the determination that:

i. The position is properly classified as exempt or covered; or

ii. The position is improperly designated, in which case the appointing authority shall provide appropriate duties or designate the appropriate status.

3. The decision letter shall state that the appellant has the right to appeal an adverse decision. Additionally, if the appellant does not receive a decision letter from the appointing authority within 20 days, he or she may file an appeal, in writing, within 10 days from the final day for the appointing authority's decision. All second level appeals shall be submitted to the Department of Personnel.

i. An employee submitting a second level appeal must include a copy of the initial appeal letter to the appointing authority, a copy of the completed Classification Questionnaire, *[DPF-44,]* and the appointing authority's decision letter, if issued. The appeal must state what specific portions of that decision are contested and the reasons.

4. The appropriate section of the Department of Personnel shall review the appeal, order an audit where warranted, and issue a written decision. The decision letter shall be issued within 20 days of receipt of the appeal and shall include findings of fact, conclusions, a determination and a statement that the appellant has the right of appeal to the Commissioner.

5. All appeals to the Commissioner must include copies of the determinations and decision letters from the lower levels and state which findings are being disputed and the reasons. Appeals shall be submitted, in writing, within 20 days of receipt of the decision letter from the prior level in the Department of Personnel.

i. The Commissioner shall render a decision based on the written record or such other procedures as he or she deems appropriate.

ii. The decision of the Commissioner shall be the final administrative decision.

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(c) Title designation appeals may be filed either by the appointing authority or an affected employee.

1. The appeal must explain how the requested status more accurately reflects the duties of the title under the Fair Labor Standards Act. See N.J.A.C. 4A:3-5.4. Such appeals shall be submitted, in writing, to the Department of Personnel.

2. The appeal shall be reviewed and a written decision issued in accordance with (b)4 above.

3. An appeal of the first level decision may be filed with the Commissioner in accordance with (a)5 above.

(d) Other issues relating to overtime payments may be reviewed through the grievance process. See N.J.A.C. 4A:2-3.

APPENDIX A: OVERTIME ELIGIBILITY AND COMPENSATION CHART

ELIGIBILITY STATUS	Comp Plan Code	COMPENSATION: In excess of 35 but not more than 40 hours per workweek	COMPENSATION: In excess of 40 hours per workweek as prescribed by FLSA
35 (covered)	35	Cash compensation at one and one-half times the hourly proration of the base salary or compensatory time off (CTO) at one and one-half times the hours worked.	Cash compensation at one and one-half times the regular rate[1] or CTO at one and one-half times the hours worked providing the employee has not accrued more than 240 hours of CTO.[2]
35 (exempt)	3E	Cash compensation at one and one-half times the hourly proration of the base salary or CTO at one and one-half times the hours worked.	Cash compensation at one and one-half times the hourly proration of the base salary or CTO at one and one-half times the hours worked.
40 (covered)	40	Not applicable	Cash compensation at one and one-half times the regular rate[1] or CTO at one and one-half times the hours worked providing the employee has not accrued more than 240 hours of CTO.[2]
40 (exempt)	4E	Not applicable	Cash compensation at one and one-half times the regular proration of the base salary or CTO at one and one-half times the hours worked.
NL (covered)	NE	No cash compensation*.* CTO for unusual work time to a maximum of hour for hour (discretionary).	Cash compensation at one and one-half times the regular rate[1] or CTO at one and one-half times the hours worked providing the employee has not accrued more than 240 hours of CTO.[2]
NL (exempt)	NL	No cash compensation. CTO for unusual work time to a maximum of hour for hour (discretionary).	No cash compensation.[3] CTO for unusual work time to a maximum of hour for hour (discretionary).
NL4 (exempt)	N4	Not applicable.	No cash compensation.[3] CTO for unusual work time to a maximum of hour for hour (discretionary).

[1]Regular rate is the hourly proration of the employee's annual base salary plus the fair market value of goods and facilities received as part of the wages. Employees who work at different pay rates in a single workweek shall have their hourly proration based on a weighted average of the different rates.

[2]Note: Employees engaged in a public safety activity, an emergency response activity, or a seasonal activity may accrue not more than 480 hours of CTO.

[3]Except as provided in N.J.A.C. 4A:3-5.7(d) (Exceptional Emergencies).

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Energy Subcode

Adopted Amendment: N.J.A.C. 5:23-3.18

Proposed: April 4, 1988 at 20 N.J.R. 699(b).

Adopted: August 1, 1988 by Dr. Anthony M. Villane, Jr., Acting Commissioner, Department of Community Affairs.

Filed: August 3, 1988 as R.1988 d.417, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-124 and 52:27F-11q.

Effective Date: September 6, 1988.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Builders Association (N.J.B.A.) commented that the rule summary contained in the notice of proposal failed to make it clear that the rule provides that maximum allowable thermal transmittance values for roof/ceiling assemblies would apply to buildings other than one- and two-family houses. The comment was correct. The N.J.B.A. further expressed its satisfaction that several of its recommendations were included in the proposed amendment and requested that consideration be given to other issues that it had raised in the past.

At the same time, however, the N.J.B.A. was involved in litigation with the Department of Community Affairs (DCA) challenging the Department's right to adopt, as part of the energy subcode of the State Uniform Construction Code, technical standards at variance with the BOCA National Energy Conservation Code. The Department's position was that it was vested with the same power to modify the energy subcode as was the Department of Energy prior to the transfer of those powers to DCA by executive order and subsequently by statute.

On June 30, 1988, the Appellate Division issued its decision in the case (*New Jersey Builders Association v. Coleman*, Dkt. No. A-1237-87T8). It held that neither DCA, nor the Department of Energy before it, had the

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power to make technical amendments at variance with the adopted subcode, declared the thermal efficiency standards which were at variance with those of the BOCA Code to be invalid, and directed that the rule be amended forthwith in order to avoid public confusion.

The Department is, therefore, changing the rule by this adoption in accordance with the court's directive. The only amendments to the energy subcode which are being retained, either expressly or in substance, are those which are administrative in nature, or which are in the nature of technical interpretations addressing issues for which definitive standards are not established by the BOCA code, or which are necessary in order to avoid conflict with another adopted subcode.

N.J.A.C. 5:23-3.18(a)1 and 2 are adopted as proposed, as their reference to the BOCA Code is of an administrative, rather than amendatory, nature. Paragraph (a)3 is deleted, as the U.S. Farmers Home Administration (FmHA) standards contained in the referenced manual are not permissible under the court decision previously referenced.

N.J.A.C. 5:23-3.18(b)1 is retained upon adoption, as the BOCA Code amendment in subparagraph (b)1 does not relate to thermal efficiency standards. The definitions in paragraph (b)2 are retained as clarifying terms not otherwise defined under the BOCA Code. Current subparagraphs (b)3i through xvii are deleted, and subparagraph (b)3iv as proposed is not adopted, pursuant to the referenced court decision. The addition upon adoption of new subparagraph (b)3i is necessary in order to set the degree day standard lacking in the BOCA Code but required to properly interpret the Code's standards graphs.

Paragraph (b)4 is retained as not being in conflict with the BOCA Code, since it provides the established local weather data allowed as a standard. Proposed subparagraph (b)5i is retained in order to avoid a conflict between the BOCA Code requirements and the National Standard Plumbing Subcode, which provides the plumbing standards in this State. Subparagraph (b)5ii (current (b)5i) is deleted pursuant to the court decision. Subparagraph (b)5iii (current (b)5ii) is retained as regulating an area of thermal efficiency not addressed by, and, therefore, not in conflict with, the BOCA Code.

Paragraphs (b)6 through 8 are retained as providing amendments to the BOCA Code of a technical/administrative nature as opposed to a thermal efficiency standard. Paragraphs (c)1 and 2 are retained as setting forth the applicability of the BOCA Code. Paragraph (c)3 is retained as providing needed definitions of terms not otherwise defined in the BOCA Code.

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

5:23-3.18 Energy Subcode

(a) Rules concerning the Energy Subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217 as amended, the commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc., known as the BOCA National Energy Conservation Code/1987, including all subsequent revisions and amendments thereto, as well as the Illuminating Engineering Society's standard known as LEM-1, 1982, "IES Recommended Procedure for Lighting Power Limit Determination," including all subsequent revisions and amendments thereto.

i. Copies of the BOCA National Energy Conservation Code/1987 may be obtained from the sponsor at BOCA, 4501 West Flossmoor Road, Country Club Hills, Illinois 60477-5795.

ii. (No change.)

2. (No change.)

[3. One and two-family homes may comply with the Energy Subcode by meeting the requirements, adhering to the calculation procedures, employing the reference data or utilizing the standard building envelopes contained in the current issue of the "Manual of Accepted Practice of the Energy Provisions to the New Jersey Uniform Construction Code" which is available from the Bureau of Technical Services, Department of Community Affairs.]

(b) The following chapters or articles of the Energy Subcode are amended as follows.

1.-2. (No change.)

3. The following amendments are made to Article 3 of the Energy Subcode entitled "Building Envelope":

i. In Section E-301.1, add the words "In all municipalities of the State of New Jersey, thermal transmittance values shall be determined using the figure of 5,500 annual Fahrenheit heating degree days.

*[i. In Section E-301.2.1, delete the words "those specified in Figure E-301.2.1a" and add the words "0.135 Btu/hr.-ft.^{2} °F.".

ii. Delete Figure E-301.2.1a.

iii. In Section E-301.2.1, delete exceptions 1 and 2 and Figures E-301.2.1b and E-301.2.1c.

iv. In Section E-301.2.2, delete the words "combined thermal transmittance value U_0 as specified in Table E-301.2.2" and add the words "thermal transmittance value U in the cavity not exceedng 0.03 Btu/hr.-ft.^{2} °F. Values calculated for the cavity of roof/ceiling assemblies may be rounded; for example, a U value of 0.0349 may be rounded to 0.03." Delete Figure E-301.2.2. In Exception 1 to Section E-301.2.2, delete the word "deck" and substitute the word "assembly."

v. In Section E-301.2.3, delete the words "combined thermal transmittance value U° as specified in Figure E-301.2.3" and add the words "maximum allowable transmittance value U° of 0.052 Btu/hr.-ft.^{2} °F." Delete the words "meet the same requirements as for roofs in Section E-301.2.2 and add the words "be 0.045."

vi. Delete Figure E-301.2.3.

vii. In Section E-301.2.4, delete the words "those specified in Figure E-301.2.4" and add the words "6.7 if the slab is heated, or 4.5 if the slab is unheated."

viii. Delete Figure E-301.2.4.

ix. In Section E-301.3.1, delete the words "those specified in Figure E-301.3.1" and add the words "0.345 Btu/hr.-ft.^{2} °F. for buildings over three stories, and 0.285 Btu/hr.-ft.^{2} °F for buildings of three stories and under."

x. Delete Figure E-301.3.1.

xi. In Section E-301.3.2, delete the words "those specified in Figure E-301.3.2" and add the words "0.080 Btu/hr.-ft.^{2} °F.".

xii. Delete Figure E-301.3.2.

xiii. In Section E-301.3.3, delete the words "those specified in Figure E-301.2.3" and substitute "0.080 Btu/hr.-ft.^{2} °F.".

xiv. In Section E-301.3.4, delete the words "Figure E-301.2.4" and add the words "Section E-301.2.4".

xv. In Section E-301.3.5, delete the words "those specified in the following Figure E-301.3.5" and add the words "33.5 Btu/hr.-ft.^{2}".

xvi. Delete Figure E-301.3.5.

xvii. In Section 301-3.7, delete the words "those specified in Figure E-301.2.3" and substitute "0.045 Btu/hr.-ft.^{2} °F.".]*

4. (No change.)

5. The following amendments are made to Article 5 of the Energy Subcode entitled "Plumbing Systems":

i. Section E-502.4 is amended to add the words "unless the water heater outlet temperature is limited to 110 degrees Fahrenheit" after "Appendix A".

[ii. In section E-503.1.1, delete numbers 15 and 47 and substitute the numbers 13.6 and 43, respectively.]

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

6.-7. (No change.)

(c) (No change.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

Special Education Pilot Project
Moderate Behavior Handicap Class Types
Adopted Amendment: N.J.A.C. 6:28-11.12

Proposed: June 6, 1988 at 20 N.J.R. 1141(a).

Adopted: August 5, 1988 by Saul Cooperman, Commissioner, Department of Education and Secretary, State Board of Education.

Filed: August 11, 1988 as R.1988 d.430, **without change.**

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 16, 23 and 24, 18A:46-1 et seq. and 18A:7A-(5)i.

Effective Date: September 6, 1988.

Expiration Date: June 1, 1989.

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Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

6:28-11.12 Full-time class types
(a)-(d) (No change.)
(e) Moderate behavior handicap class types shall meet the following requirements:
1.-4. (No change.)
5. Maximum class size shall be eight for both elementary and secondary.
6. Staff/pupil ratio shall be 1:8 for both elementary and secondary.
7. (No change.)
(f)-(o) (No change.)

HEALTH

(a)

RESEARCH, POLICY AND PLANNING

Uncompensated Care Trust Fund Financial Elements

Adopted New Rule: N.J.A.C. 8:31B-4.37
Adopted Amendment: N.J.A.C. 8:31B-4.39

Proposed: March 21, 1988 at 20 N.J.R. 595(a).
Adopted: August 5, 1988 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).
Filed: August 5, 1988 as R.1988 d.420, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and **with a portion not adopted.**
Authority: N.J.S.A. 26:2H et seq., specifically 26:2H-5b and 26:2H-18d.
Effective Date: September 6, 1988.
Operative Date: January 1, 1989.
Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:
The Department received a large number of comments from the Office of the Public Advocate, the New Jersey Hospital Association, Blue Cross and a number of New Jersey hospitals.

GENERAL COMMENTS

COMMENT: The charity care rules would require changes to both the Uncompensated Care Trust Fund Documentation Requirements and the Uncompensated Care Audit guidelines. Appropriate timeframes need to be developed for the submission of documentation (currently 12/1/88). Revised audit guidelines must be prospective in nature.

RESPONSE: The Department agrees that implementation of the proposed rules must be prospective in nature. If the Department makes any changes to the format for submission of the Documentation Requirements, pursuant to N.J.A.C. 8:31B-7.6, the Department will provide adequate notice to the hospitals. In addition, any audit changes would be issued prospectively.

COMMENT: The emphasis of the proposed revisions appears to shift the balance of uncompensated care over to charity care. The reimbursement for charity care and bad debt is derived from the same pool. Therefore, the commenters are unsure as to why the Department of Health feels it necessary to weigh the balance of uncompensated care in favor of charity care.

RESPONSE: Although the Uncompensated Care Trust Fund pays for both charity care and bad debt, the treatment of patients in each of these categories is very different. Collection efforts must be expended on the latter. The Department is seeking to standardize treatment of charity care patients throughout the State.

COMMENT: Concern should also be expressed as to whether these guidelines will encourage increased use of uncompensated care when other funded programs (for example, Medicaid) might be more appropriate. It is unclear whether these new demands are justified by the benefits that the State seems to want.

RESPONSE: The rules include language that bars the reporting as charity care any services for which payment is eligible under Medicaid. N.J.A.C. 8:31B-7.1 already requires that all sources of public and private funding be tapped before services are reported as uncompensated care (charity care or bad debt).

COMMENT: The rules are long overdue in establishing uniform poverty guidelines for hospital indigent care. These standards should be implemented immediately to enable those individuals needing assistance to receive the proper care they require.

RESPONSE: The rules, if approved, will be implemented January 1, 1989 in order to give all parties sufficient lead time to implement any necessary changes.

COMMENT: The commenter, Newark Beth Israel Hospital, has reviewed the NJHA's comments on behalf of the industry and is in agreement with those comments.

RESPONSE: No response necessary.

COMMENT: The adoption of clear rules related to uncompensated and reduced charge care for the indigent will foster a more equitable system of treatment for indigent patients.

RESPONSE: No response necessary.

COMMENT: The adoption of such rules would also eliminate the existing requirement that providers sue the indigent for unpaid bills and thereafter declare such accounts as bad debt as a step precedent to being compensated in the rate setting process for the services rendered.

RESPONSE: There is no existing requirement that indigent persons be sued. The rules do not change the responsibility of hospitals to screen patients for eligibility for charity care and to suspend the billing process for those found eligible. The rules also do not change the responsibility of hospitals to take all appropriate collection measures for those patients who are not eligible for charity care.

COMMENT: There should be semi-annual audits by the Department of Health which should be conducted within 90 days of the close of the calendar quarter. This action would obviate the maintaining of information, both in the information system and in the files, for long and extensive periods.

RESPONSE: The audit process is tied to the submission of the Chapter 83 actuals. The Department intends to begin 1987 uncompensated care audits shortly after the hospitals submit their 1987 actuals in May 1988. The timeliness of these audits relieves the hospitals from retaining files for an extensive period.

COMMENT: The commenter, Newark Beth Israel Hospital, supports the Department's effort to standardize the guidelines and criteria governing the provision of uncompensated care to medically indigent patients.

RESPONSE: No response necessary.

COMMENT: Charity care should be available only to emergency or urgent admissions. Charity care should not be available for elective admissions.

RESPONSE: Charity care services are available for medically necessary and appropriate services per N.J.A.C. 8:31B-4.40. This would bar cosmetic surgery and medically denied services, but would not bar medically necessary and appropriate elective surgery.

COMMENT: Unbundled services, or the separation for billing purposes of various hospital functions (such as anesthesiology and radiology services, and individual physicians), are not covered for charity care. As a condition for privileges to practice at each hospital, each of these doctors and services should be covered by the charity care rules.

RESPONSE: This would result in a significant expansion in the costs and scope of uncompensated care. Hospitals are paid for uncompensated care in exchange for rate regulation. Unbundled services are not regulated and therefore do not receive uncompensated care payments.

COMMENT: Facilities with high indigent patient populations would be the most affected by these rules. Since they would take the most applications, these facilities would have to increase staff to a much greater extent than those with a smaller indigent population. Additional full time equivalent FTE's should be authorized to accommodate these changes.

RESPONSE: Hospitals would be permitted to appeal for additional costs associated with these rules pursuant to N.J.A.C. 8:31B-3.58. However, these rules, for the most part, codify the existing audit guidelines with which most hospitals are in compliance. Moreover, since charity care patients would not have to be billed/dunned, etc., these savings would be offset against any additional costs for charity care screenings.

COMMENT: The proposed rules reflect an additional workload on hospitals; the addition of staff may be necessary. There should be a provision that would allow hospitals to appeal the costs of complying with these rules.

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RESPONSE: Hospitals would be permitted to appeal for limited new costs associated with these rules under any option pursuant to N.J.A.C. 8:31B-3.58. However, these rules merely codify activities that were required under the Commission-approved audit guidelines. Additional funds would not be approved for activities that were required in the base year. Moreover, since charity care patients are not subject to the billing and collection procedures required for bad debt patients, these savings would be offset against new costs.

COMMENT: The structure of the proposed rules will require the addition of a significant administrative burden to hospitals to ensure their ability to comply. As proposed, the hospital must follow the entire eligibility determination process for each patient. This may necessitate additional hospital staff with increased accounting and/or software revision. We recommend that a provision be included that would allow hospitals additional dollars to cover the cost of complying with these rules.

RESPONSE: The comment is incorrect in stating that the hospital must follow the entire eligibility determination process for each patient. If the hospital provides adequate posted and individual notice, the burden of applying for charity care shifts to the patient. Only patients requesting charity care must be screened. A "request" for charity care can include presenting characteristics indicating an inability to pay for care.

COMMENT: The commenter concurs with and urges the fostering of rules which will encourage equitable treatment for all patients, and believes in the principle of patient responsibility in documenting charity care eligibility. The commenter believes, though, that these rules have serious flaws in addressing these obligations and principles. Additionally, there has not been sufficient recourse to address the economic impact on hospitals of responding to the cost increases resulting from these rules.

RESPONSE: Hospitals would be permitted to appeal for limited new costs associated with these rules under any option pursuant to N.J.A.C. 8:31B-3.58. However, these rules merely codify activities that were required under the Commission-approved audit guidelines. Additional funds would not be approved for activities that were required in the base year. Moreover, since charity care patients are not subject to the billing and collection procedures required for bad debt patients, these savings would be offset against new costs.

COMMENT: The economic impact should also provide for additional cost for accounting and/or software revisions if the hospital must maintain additional information for adjusting from reduced charge charity to full charity care.

RESPONSE: Hospitals would be permitted to appeal for limited new costs associated with these rules under any option pursuant to N.J.A.C. 8:31B-3.58.

COMMENT: These rules finally clarify hospitals' responsibilities regarding the charity care requirements. This is a big step forward for indigent patients, who have a great deal of trouble obtaining appropriate medical care.

RESPONSE: No response necessary.

COMMENT: Most hospitals have paperless information processing systems; these rules will present a new and costly burden for retaining this information. Program changes affecting collection and retention of action taken, along with the extensive retention of documents, will be necessary. The application of income and asset eligibility criteria will require further recordkeeping, as well as information system changes, which are costly and inefficient to maintain. Rate relief should be recognized in the form of an adjustment to the mark-up factor equal to a specific percentage of the charity care provided.

RESPONSE: Hospitals are currently required in the audit guidelines to maintain hard copy documentation of charity care and bad debt files until audit. Therefore, these rules do not present a new and costly burden. An adjustment to the mark-up factor equal to the specific percentage of charity care provided may be inadequate in some cases and an overpayment in others. Therefore, the Department supports using the appeal mechanism at N.J.A.C. 8:31B-3.58, with due recognition of the costs of previous audit guidelines and former treatment of these accounts as bad debts.

COMMENT: The Economic Impact statement suggests that the rules will not increase uncompensated care, but merely shift cost from bad debts to charity care. The commenter has been advised by several hospitals that the proposed rules will contribute to significant increases in the amount of uncompensated care furnished by hospitals. Any further increase in the cost of uncompensated care is unacceptable to the purchaser of health care.

RESPONSE: The Department shares the commenter's concern about increases in uncompensated care costs. However, the Department has no reason to believe that these rules will cause an increase in uncompensated care.

COMMENT: The affect of these rules is likely to change the distribution of uncompensated care and will have an overall effect of increasing uncompensated care.

RESPONSE: The Department agrees that these rules are likely to change the distribution of uncompensated care and the Department finds this to be appropriate, in that indigent patients will not be billed. The Department has no reason to believe that these rules will cause an increase in uncompensated care.

COMMENT: These proposed changes are contrary to previous rules and will present a financial hardship to many cost efficient hospitals, if the monitoring system is not adapted to conform with the proposed rules.

RESPONSE: The Department intends to issue audit guidelines in advance of the implementation of these rules.

COMMENT: The Diagnostic Related Group (DRG), Chapter 83, Billing and Reimbursement is becoming overbearing with appeals, penalties and time delays. There is nothing wrong with reasonable procedures so that everyone is following the same rules, however, the appeals, penalties and time delays must be eliminated or greatly reduced if the system is going to survive.

RESPONSE: The Department has attempted to structure the rules to limit the amount of the administrative burden these rules place on both hospitals and patients.

COMMENT: As proposed, the commenter hospital is forced to follow the entire process for **every** patient as there is no guarantee of total coverage, even with insurance verification. Full financial evaluation and counseling will require informing every patient of the information needs, and for many patients, require a second visit to the hospital before service can be provided. These additional demands will require a minimum of five full time equivalents (FTE's).

RESPONSE: The commenter is incorrent in stating that the hospital is required to screen every patient for charity care. Provided that the hospital provides the required posted and individual notice, the burden shifts to the patient to apply for charity care. An application for charity care can take the form of showing characteristics of inability to pay, as defined in N.J.A.C. 8:31B-4.38.

If necessary, services may be provided before all the documentation is submitted. If the patient does not document his or her application, the hospital would follow appropriate collection procedures.

COMMENT: The commenter concurs with the proposed provision to provide notice of availability of charity care, but is concerned with the proposed financial accountability in favor of a process in which another determination could be made, which would minimize these financial obligations. The commenter believes the proposed process will foster unnecessary assessments and provide a clumsy and costly program in which equitable treatment would be impossible to administer.

RESPONSE: The Department believes that the proposed process will foster proper classification and financial treatment of hospital patients, while ensuring that persons who are capable of paying are the focus of the hospital's collection efforts.

COMMENT: These proposed rules fill a significant gap in the regulation of hospitals, a gap that has troubled both hospital administrators and advocates for the medically indigent. As Rate Counsel, the Public Advocate has long been troubled by the practice of some New Jersey hospitals of pursuing expensive and time-consuming collection procedures against patients who are obviously unable to pay and clearly eligible for uncompensated care coverage. Many hospital administrators have justified this practice by reference to ambiguous collection requirements in the current rules. The proposed rules will permit hospitals to concentrate their collection efforts on those billings which are collectible, and the collection of which will not represent an unconscionable hardship on the medically indigent patient.

RESPONSE: No response necessary.

COMMENT: The proposed rules constitute a carefully tailored and responsible implementation of the Legislature's declaration that "access to quality health care shall not be denied to residents of the State because of their inability to pay for care." P.L. 1986, c.204 paragraph 1. The quality of the regulatory proposal flows from the Department of Health's efforts for many months prior to publication to gain the insights of hospital managers, advocates for the medically indigent, and payer organizations.

RESPONSE: No response necessary.

COMMENT: As advocate for the interests of the medically indigent, the Public Advocate has long been troubled by the inequities in the current rules' effect on access to hospital care for the medically indigent.

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The current rules provide little or no guidance for determining eligibility for free or reduced cost hospital care. As a result, each hospital creates its own guidelines for determining whether it would treat patients as medically indigent. A patient might be accepted for free or reduced fee care in one hospital, but be denied such treatment at another hospital. This harms hospitals by creating irrational and unjustifiable inefficiencies in the distribution of medically indigent patients. More troubling, however, is the effect this system has on patients. Medically indigent patients are denied uncompensated care or suffer the humiliation and trauma of aggressive collection practices, notwithstanding their clear inability to pay. As a result, these medically indigent patients forgo necessary hospital care, or put off needed care until their health has been impaired.

RESPONSE: No response necessary.

COMMENT: Are the hospitals to pursue collection if the individual does not remit payment? Would it be reasonable to advise other hospitals that the patient has defaulted in their payments?

RESPONSE: If a patient is eligible for charity care, the hospital may not pursue collection. If a patient is eligible for reduced charge charity care, the hospital may not pursue collection for the portion of the bill that is reduced charge charity care. Otherwise, hospitals are expected to pursue collection on all accounts.

There is no responsibility for a hospital to advise other hospitals that the patient has defaulted on hospital payments.

COMMENT: While the commenter concurs with the intent of the proposal, the commenter feels that it needs much further exploration and development. It is the commenter's opinion that the rules as proposed will have a significant negative, as well as inequitable, impact on certain institutions.

RESPONSE: This subject of these proposed rules was originally put forth by the Public Advocate's Office in Summer 1985. In the intervening years, it has been the subject of meetings with hospitals, payers, government, legal service groups, and the general public. It has been reviewed at all stages in its development by the Cost Containment Subcommittee of the Steering Committee on Health Care for the Uninsured and by the full Steering Committee. The Department concludes that further exploration and development is unnecessary.

COMMENT: The specific and detailed guidelines will aid hospitals in the effort to contain the costs of providing uncompensated care. More importantly, however, the rules will provide needed assurances that the patients who are medically indigent will receive needed hospital care without facing humiliating and irrational collection procedures.

RESPONSE: No response necessary.

COMMENT: The Department, with the cooperation of the State Department of Taxation, could issue identification cards to all persons filing a tax return with income within the State guidelines for charity. The patients, on admission, would present the card and automatically qualify for charity care or a reduced charge. Such a program could be managed by Medicaid. The program would eliminate the need for complex regulation and encourage compliance. Additionally, the patient need not be inconvenienced upon each admission. Patients aware of their illness would seek medical attention earlier in their illness, thus requiring reduced resource consumption.

RESPONSE: The suggestion will be taken under advisement for future consideration.

COMMENT: The Department could establish a network of terminals which would communicate with a central data bank which could be used to monitor patients eligible for charity. Upon admission the admitting clerk, through the use of the Social Security number could access the system and receive certification of patient eligibility.

RESPONSE: The suggestion will be taken under advisement for future consideration.

COMMENT: The proposed rules contradict the existing State and Federally funded grant programs for indigent patients. These grant funded programs have unique provisions designed to aid the patient's access to low cost quality health care. These grants have prohibitions which preclude fees that place obstacles to health care access. The commenter recommended where hospitals have such grant programs, that they be waivered in the final rules.

RESPONSE: The commenter hospital is essentially suggesting that when a hospital voluntarily enters into an agreement with a governmental agency, receives a grant, but as a condition of the grant, agrees to provide below cost services to a designated population group, that the hospital's agreement should be subsidized by the uncompensated care payment system. This is inappropriate for two reasons. First, it would delegate to any grantmaking agency the power to obligate or draw down uncompensated care funds simply by making a grant with the stipulation that the hospital provide more services than the grant pays for. Secondly, it is unfair for the uncompensated care system to treat one group of patients differently than another, simply because one receives services under a grant program. It is the Department's position that all patients must be subject to the same criteria as regards charity care. A hospital may still enter into this type of grant, but if it accepts from the patient less than the sliding fee scale in these rules, the difference must be considered a courtesy adjustment, or lost revenue to the hospital.

COMMENT: The proposed fee schedule will increase the cost to the patient for non-grant funded services. It will actually achieve a reduction in access for some patients and shifting of costs from indigency care allowances to bad debts for others. The only real cost would be an increase in the use of clerical staff to enroll, bill and monitor the overall proposed methodology. All hospitals with written standards or guidelines should be allowed to continue their programs under either a waiver mechanism or incorporation of their standards in the rules.

RESPONSE: The intent of these rules is to establish a uniform system that is equitable to patients, hospitals and payers. Therefore, waivers are considered at this time to be inappropriate.

COMMENT: While the rules will improve access to charity care for indigent patients, they are apt to prove confusing and burdensome to patients.

RESPONSE: The Department has attempted to minimize confusion and burden by simplifying the system as much as is consistent with equity.

COMMENT: Many institutions have established extensive, well-documented systems for determining medical indigency, mostly patterned after the Hill-Burton program. The State should not overlook such systems, but rather consider waivers or incorporate the elements of such hospital programs in the State's proposed rules.

RESPONSE: The Department has attempted to mirror the Hill-Burton program in all areas where it was practicable, in conjunction with the decade-old charity care payment system.

COMMENT: Hidden costs relate to the delayed cash flow, related to the inability to bill during the application and appeal process. Additionally, bad debts will increase; due to the extended age of the accounts when billed and the inability to request cash payments at the time of service.

RESPONSE: The application process should not unduly delay hospital billing. Billing is to be suspended only if the patient has submitted a completed application. The maximum delay this can cause is five working days, or less if the hospital expeditiously processes the application.

If hospitals provide proper notice, the Department does not expect a large volume of appeals; therefore, this should not unduly limit cash flow. Finally, cash payments should still be requested, unless the patient has requested charity care.

COMMENT: The Economic Impact statement indicates that the rules are likely to change the distribution of uncompensated care: more charity care will be provided which should lead to a reduction in the bad debt component of uncompensated care, the rules' effect will be to shift out-of-State charity care from charity care to bad debt, increasing bad debt and decreasing charity care.

RESPONSE: Based on the small amount of general hospital care that is provided to out-of-State residents, the Department does not believe that the unpaid portion of this amount will offset the shift of indigent New Jerseyans into the charity care system.

COMMENT: Hospitals are the most knowledgeable on what services should be offered as free or reduced charge care. The hospital should have such discretion, upon approval of the Department.

RESPONSE: Pursuant to these rules, all medically necessary and appropriate services should be available to persons eligible for charity care. The commentor provides no rationale to justify any discrimination in services offered.

COMMENT: The commentor disagrees with the statement of little overall economic impact. In addition to the costs to be borne by the Department of Health, namely, audit of compliance with the rule, cost of signs, and staff to perform reviews as provided for under the appeal process, the hospital will incur significant costs.

RESPONSE: The Department recognizes that there will be costs to it and to hospitals associated with implementation of these rules. The latter costs are addressed in the prior response, three above.

N.J.A.C. 8:31B-4.37(a)

COMMENT: The Department should provide an approved recommended wording for the required notice to inform patients about the availability of charity care.

RESPONSE: The Department will provide a recommendation for standard language for the required individual notice, prior to the implementation of these rules.

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COMMENT: These rules require the posting of a notice, in addition to any Hill-Burton notice already required by the federal government. Two signs will confuse the patients.

RESPONSE: Two signs are necessary, because the two programs have separate eligibility criteria, appeal mechanisms, etc. The Hill-Burton signs are required by Federal law. Failure to post notice of the more expansive State program would not give potential applicants for charity care the information they need in order to apply.

COMMENT: The requirement for the additional posted notice should be for non-Hill-Burton hospitals only.

RESPONSE: The Hill-Burton sign is inadequate for the purpose of this program, because it makes reference to a different set of criteria than the State program. Failure to post both notices could discourage persons eligible for charity care from applying.

COMMENT: It may be administratively impractical to have to operate under similar yet different sets of regulations (Hill-Burton and Chapter 83) and to have to try to explain differences to patients.

RESPONSE: The Department recognizes that administering two programs with different eligibility standards may be confusing to patients at those hospitals that still have a Hill-Burton obligation. However, the New Jersey eligibility standards more accurately reflect ability to pay a hospital bill. Therefore, since New Jersey cannot supercede Federal regulations, it is necessary for hospitals to administer these programs concurrently.

COMMENT: The two day time requirement for making a decision on a charity care application should be changed to "two days after receiving the application and required documentation".

RESPONSE: This provision at N.J.A.C. 8:31B-4.37(a)2iv is changed on adoption so that a determination of charity care must be made within five days of receiving a completed application. A completed application includes all required documentation.

COMMENT: Two commenters recommend extending the determination period to a minimum of five working days, based on the volume of requests received at certain institutions.

RESPONSE: This provision (N.J.A.C. 8:31B-4.37(a)2iv) is changed on adoption so that a determination of charity care must be made within five working days of receiving a completed application. A completed application includes all required documentation.

COMMENT: A five day period would be easier to work with. The clock should start upon receipt of the completed application, not from the date of the request for charity care.

RESPONSE: This provision (N.J.A.C. 8:31B-4.37(a)2iv) is changed on adoption so that a determination of charity care must be made within five days of receiving a completed application. A completed application includes all required documentation.

COMMENT: This requirement should be modified to five working days. If a person requires urgent medical care but does not have sufficient documentation, can the hospital make a "presumptive eligibility determination" and provide the requested services prior to the final determination?

RESPONSE: The requirement will be modified to five working days after receiving a completed application. If the patient requires services, they must be provided prior to this determination. However, there is no provision for a presumptive eligibility determination. If the patient does not document charity care eligibility, the hospital must attempt to collect and classify the patient as bad debt in the event of nonpayment.

COMMENT: Two working days is not a reasonable time to process applications, without increasing staff specifically for that purpose.

RESPONSE: The requirement at N.J.A.C. 8:31B-4.37(a)2iv is changed on adoption to five working days after receiving a completed application. This should ameliorate the need to increase staff.

COMMENT: Imposing a turnaround time of two working days from time of request is impractical and arbitrary. The commenter hospital's experience has shown a majority of ER and clinic patients have no phones, live with other families, and have other social conditions which make it impossible to communicate in a timely and considerate manner. The commenter urges at least 10 days for making a determination.

RESPONSE: The requirement is modified on adoption to five working days after receiving a completed application.

COMMENT: What is also questionable, is why a patient should be provided with 30 days to file an appeal when denied; the Department of Health has 60 days to make their determination of the appeal, yet hospitals are only allowed two days to determine eligibility or denial of free care.

RESPONSE: The requirement is modified upon adoption to five working days after the receipt of a completed application.

COMMENT: Two working days is not sufficient time for some patients to provide this information to the hospital. Often the applicants are too ill or unable to supply proof of income and/or assets within the two working day span. This rule gives the hospital a short time to receive and determine eligibility. This rule may result in numerous denials, yet this same rule provides patients with 12 months to request charity care.

RESPONSE: The requirement is modified on adoption to five working days after the receipt of a completed application.

COMMENT: Since the rules were based on the Hill-Burton guidelines, then consider the new changes to the Hill-Burton program, as outlined in the December 3, 1987 Federal Register.

The provisions concerning written determinations define two separate procedures for issuing determinations of eligibility: 1) preservice determinations must be issued within two working days following a request, for requests made before receipt of outpatient services or before inpatient discharge; 2) for requests received after outpatient services or inpatient discharge, written determination must be issued no later than the end of the first full billing cycle following the receipt of the request.

RESPONSE: The requirement is modified on adoption to five working days after the receipt of a completed application.

COMMENT: The term "medically necessary care" should be defined as to what services and care are excluded from the charity rules.

RESPONSE: The term "medically necessary care" at a minimum excludes care found to be medically unnecessary by a Utilization Review Organization/Professional Review Organizational (URO/PRO); non-medical services; treatment that is not necessary and appropriate; and patient convenience items. Non-Chapter 83 services (that is, Excluded Health Care, "Case C Items") are also not paid for under uncompensated care.

COMMENT: Facilities should be required to provide individual written notice to patients requiring medical assistance upon entrance to the hospital. This will allow the individual time to become aware of his or her eligibility for assistance in paying their hospital bill.

RESPONSE: No response necessary.

COMMENT: To provide individuals with written notice of the availability of charity care is unreasonable and unnecessary. Hospitals are already prohibited from denying services, based on ability to pay.

RESPONSE: Hospitals are prohibited from denying services, based on ability to pay. However, the hospital must take the responsibility to provide adequate (general and individual) notice of the availability of charity care, in order that the patient may be held responsible for applying for charity care.

COMMENT: Presenting written notice to the patient not later than when first presenting a bill for services may be impossible on the outpatient side, due to volume. It is also rather difficult to control and may require additional personnel to perform.

RESPONSE: Presenting written notice can be done as part of the intake process for outpatients. The Department does not believe that handing out notices as patients come in the door is burdensome.

COMMENT: N.J.A.C. 8:31B-4.37(a)2i states that a facility can request payment from the Trust Fund if it provides charity care. The Uncompensated Care Trust Fund distributes uncompensated care funds among all the hospitals. It is not a specific payer paying on a case by case basis.

RESPONSE: Hospitals are paid for the full amount of their documented charity care. Although payment is not made on a case by case basis, it is "requested" when the hospitals file their Chapter 83 actuals.

COMMENT: The word payment should not be used. Many hospitals pay into the fund. It also implies a direct payment to a facility. A better phrasing is needed that does not imply to the patients, community and physicians that any money changes hands.

RESPONSE: Hospitals, regardless of whether they receive money from or pay into the Trust Fund, receive full payment for their charity care through the Statewide add-on to the Chapter 83 rates and the Uncompensated Care Trust Fund. Since money is paid for these services, it is appropriate to let the community know that these services do receive funding from outside the hospital.

COMMENT: Define "emergency nature of services" in N.J.A.C. 8:31B-4.37(a)3 and specify how compliance with N.J.A.C. 8:31B-4.37(a)4 is to be achieved.

RESPONSE: Persons arriving at the hospital in a life threatening condition may be given notice of the availability of charity care after services are rendered, but before a bill is presented.

If the hospital has reason to believe that a patient cannot read the posted and individual notices of the availability of charity care (that is,

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the patient is blind, illiterate or unable to read the language of the notice), the hospital must orally communicate the contents of the notice.

COMMENT: Where additional reasonable time is allowed for the applicant to submit additional information, what is meant by "reasonable time"?

RESPONSE: The rule does not mention additional reasonable time in connection with a patient's submission of additional information. N.J.A.C. 8:31B-4.37(a)2iv and (d)2 both state that if a request is denied for lack of documentation, the applicant will be allowed to present additional documentation. No time limit is mentioned.

N.J.A.C. 8:31B-4.37(b)

COMMENT: New Federal income poverty guidelines have been established. These new standards should be listed which would accurately reflect the poverty income guidelines for indigent care.

RESPONSE: The Department intends to use the most current poverty income standards as they are revised each year by the Federal government. The Federal government implements the new guidelines at different times for different programs. For the purposes of charity care determinations, hospitals should use the new guidelines as of the date they become effective for the Hill-Burton program.

COMMENT: The degree of indigency should be set at an appropriate level. The Federal Income Poverty guidelines do not address the cost of living in New Jersey, since the index is based on a nationwide average. After considering the cost of living in New Jersey, the threshold for charity care without charge should be raised to 175 percent.

RESPONSE: It was determined that 150 percent of the poverty guidelines was an appropriate cut off for full charity care and an appropriate start for the sliding fee scale that goes from 150 percent to 250 percent. This is above the typical Hill-Burton standard of 100 percent for free care and a sliding scale between 100 percent and 200 percent and should ameliorate any difference between the New Jersey and national costs of living.

COMMENT: A clear cut definition of family is necessary.

RESPONSE: The proposed rule defines family as including, for adults, spouses and for minor children, and parents. The income, assets, and medical expenses of other household members are not relevant for the purpose of determining eligibility for charity care.

COMMENT: The income from live-in boyfriends or girlfriends should be counted towards family income.

RESPONSE: Non-related persons sharing living quarters have no legal responsibility for each other's medical bills. Therefore, it would be inappropriate to count their income or assets for the purpose of determining eligibility for charity care.

COMMENT: How should adult children living at home be treated for the purpose of eligibility determinations?

RESPONSE: Adult children living at home would not be counted in determining family size, nor would their income or assets be considered in an eligibility determination for their parents. One exception would be that any board they paid would be considered income to the parents. The parents' income and assets would not be imputed to the adult child, unless the child was a student and supported by the parents.

COMMENT: Since adult children's income is not considered, why will a minor child's income be considered (child support)? Why shouldn't an adult child's income be considered if he resides in a family unit and provides some income into the home? (Example: Residing with aged parents).

RESPONSE: A minor child's income will be considered as available to the family. To the extent that an adult child provides resources to the family (that is, board payments), those payments will be considered to be income to the family.

COMMENT: What should the hospital do in the following situation? Patient was employed or made very little income during the prior three month period. The day the patient is interviewed, he is employed and making a wage which could disqualify him for any charity care.

RESPONSE: The determination of eligibility for charity care is based on the three or 12 months prior to the date of service. Future earnings would not be counted.

COMMENT: The more liberal income test dollar amount thresholds contained within the proposed rules will allow the more economically stable individual or families to avail themselves of the provisions under the rules. It should then be expected that "charity care" will increase by the expansion of the scales as well as other spend-down options which will allow more middle income families to receive free care/charity as a level of reduced charges.

RESPONSE: Although the scales are higher than those used in most states, the poverty guidelines have not kept pace with inflation, and at 150 percent of poverty, most New Jerseyans would not be able to afford hospital care. Although the sliding scale goes up to 250 percent of poverty, at that level a patient would pay 80 percent of a hospital bill. The rule is proposed for amendment elsewhere in this issue of the New Jersey Register to increase the threshold for full charity care for the population between 150 and 250 percent of the poverty level from 10 percent of annual income to 30 percent.

COMMENT: Further explanation is needed on "Persons eligible for reduced charge charity will be eligible for charity care after the amount of charges payable by the person equals ten percent of annual income."

RESPONSE: Persons between 150 percent and 250 percent of the poverty guideline are eligible for reduced charge charity care based on a sliding fee scale. If the amount of Chapter 83 charges for which the patient is responsible exceeds a percentage of annual income (the original proposal used 10 percent, the Department is proposing an amendment to change this to 30 percent) all subsequent charges during the year will be treated as charity care.

COMMENT: Does the 10 percent of income exception apply to all medical or hospital expenses within a given year, or for each occasion of service? What about multimember families?

RESPONSE: First, the Department is, elsewhere in this issue of the New Jersey Register, proposing changing the proposed 10 percent threshold to 30 percent. This threhsold must be met once per family per year. It is the patient's responsibility to track this and notify the hospital when the threshold is met.

COMMENT: How is the 10 percent of income exception allocated between hospitals if there is multi-hospital usage? How is this information verified?

RESPONSE: The patient is responsible to present documentation that he/she has met the required threshold.

COMMENT: The 10 percent annual income threshold is going to be very difficult to monitor and/or document. This section should be completely eliminated from the rules.

RESPONSE: The 10 percent threshold is proposed, elsewhere in this issue of the New Jersey Register, to be raised to 30 percent. Moreover, it is the patient's responsibility to document that he or she has reached this threshold.

COMMENT: The proposal to extend reduced charge charity care on a sliding fee scale up to 250 percent of the HHS Income Poverty Guidelines is too liberal. If this is implemented, a large portion of the commenter hospitals' catchment area will be eligible for reduced charge charity care and total uncompensated care costs will increase substantially.

RESPONSE: Although the sliding fee scale does go up to 250 percent of the poverty level, at the top of the range, the charity care reduction is fairly small (20 percent). Further, this reduction is taken only on amounts payable by the patient. This means that if the patient has insurance that covered some portion of the bill, the charity care write off would be based only on the portion payable by the patient.

COMMENT: Investment income is often difficult to verify. A signed statement from the patient stating that investment income as stated in the application is accurate should serve as appropriate documentation.

RESPONSE: The Department will provide additional guidance to the hospitals on methods to verify assets in advance of the implementation of these rules.

COMMENT: Income should be defined as gross income.

RESPONSE: Income will be defined as gross income. The rule has been changed at N.J.A.C. 8:31B-4.37(b)2.

COMMENT: The rules should define income to be included in the eligibility determination.

RESPONSE: The Department will provide guidelines to define what should be considered as income to the hospitals in advance of the implementation of these rules.

COMMENT: The methodology of going from reduced charge charity to full charity care will be very difficult if not impossible to implement without increased accounting and/or software revision costs. If a person is responsible for a given percentage based upon the screening, that percentage should remain fixed until another screening is performed.

RESPONSE: The provision in the rule which changes a person's classification from reduced charge charity care to full charity care is designed to recognize those persons who are capable of paying a portion of hospital costs but whose bills are so high (catastrophic) as to be unaffordable in relation to their income.

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The proposed rule originally set the thresholds between reduced charge charity care at 10 percent of annual income. This threshold will be amended (see proposal elsewhere in this issue of the New Jersey Register) so that charity care is available to persons between 150 and 250 percent of the poverty line only when the Chapter 83 hospital bills exceed 30 percent of annual income.

COMMENT: It is not possible, with existing hospital financial systems, to maintain running balances of total services received by indigent patients or their families. This is unmanageable and a totally unreasonable burden for a hospital to maintain.

RESPONSE: The hospital is not required to maintain a running balance of services for patients who exceed the threshold for charging reduced charge charity care to charity care. As long as the hospital provides adequate notice of the availability of full charity care after a certain percentage of annual income is reached, the patient is responsible to document the income and expenditures necessary to comply with this threshold.

COMMENT: A patient may not qualify for charity care or only a portion of such according to poverty guidelines; however, after completing the financial screening, it may be determined the patient is medically indigent, due to many outstanding medical bills, not because they are overextended on normal credit.

RESPONSE: These rules do not take into account a patient's medical or nonmedical liabilities, except to the extent that a person who is eligible for reduced charge charity care has Chapter 83 medical bills in a 12 month period greater than a percentage of annual income. This percentage was 10 percent as originally proposed and the Department is proposing to change it to 30 percent, elsewhere in this issue of the New Jersey Register.

COMMENT: To include only Chapter 83 hospitals as medical expense is very unfair to the patient. Many families have primary treatment in Philadelphia and New York Medical Centers and then are referred to their community hospital for on-going care. If the Department feels it is excessive to include all medical expenses, a possible compromise is to allow documented hospital expense at any hospital for medically necessary treatment. This should also include New Jersey mental health care facilities. Many patients have utilized their health benefits at a mental health care facility and now have been appropriately returned to the community for continuing care. Out-patient treatment at their local facility or an occasional in-patient treatment should not exclude these patients from the health care system or force them to return to non-community settings.

RESPONSE: Only Chapter 83 hospital treatment charges will be considered in evaluating whether a person with income between 150 and 250 percent of the poverty level has met the threshold for changing from reduced charge charity care to charity care. First, uncompensated care funding under Chapter 83 is available only to New Jersey acute care hospitals. Second, uncompensated care is paid in exchange for hospital rate regulation and non-New Jersey or non-acute care hospitals are not subject to rate regulation.

COMMENT: If a patient also has major medical insurance, it is the patient's responsibility to submit a claim to major medical. How should this be treated for the purpose of determining the amount of reduced charge charity care?

RESPONSE: N.J.A.C. 8:31B-7.1 requires that all sources of public and private financing be accessed before costs are attributed to charity care. Therefore, the amount of reduced charge charity care would be determined after the patient has documented that major medical has paid.

COMMENT: Besides income eligibility, a patient should be reviewed for net worth eligibility. For example, a patient that may be ineligible because his or her income exceeds the criteria may be deemed eligible based upon a negative net worth. The patient may have his or her income and assets encumbered, due to previous medical bills. Consequently, the commenter would propose that any patient who can prove a negative or zero net worth, due to outstanding medical debts, should be eligible for charity care, regardless of income criteria.

RESPONSE: The Department will not institute eligibility criteria based on net worth. Persons eligible for reduced charge charity care (persons between 150 and 250 percent of poverty) have some protection from catastrophic bills, in that when their portion of the reduced charge charity care exceeds a percentage of their annual income they will be eligible for charity care.

COMMENT: When determining number of dependents in maternity situations, should the unborn child be considered as a dependent?

Under the New Jersey HealthStart Maternal Care Program, the unborn child is considered a dependent.

RESPONSE: In order to maximize consistency with other governmental programs, an unborn child should be counted for the purpose of determining family size for the eligibility determination.

COMMENT: N.J.A.C. 8:31B-4.37(b)3 specifies the amount of reduced rates. Hill-Burton regulations leave determination of reduction up to the hospital and to what services they will apply.

RESPONSE: The hospitals will still be able to determine what services they will attribute to Hill-Burton. However, all hospitals will have to make all medically necessary services available to any patients who meet the criteria in these rules. The purpose of these rules is to make hospital policies uniform. This purpose would be undermined if an exception was granted to Hill-Burton hospitals.

COMMENT: Ten categories are confusing and unworkable, not only for the hospital, but also the patient. It precludes any computerization of the calculations without extensive programming changes. It will be difficult for the patient to determine a category, especially patients with limited financial experience. It would also lead to appeals increase if a patient disagrees with the category they are placed in. The maximum should be three categories, possibly 25, 50, and 75 percent.

RESPONSE: The Department will amend the proposal to include a sliding fee scale with four steps: 20, 40, 60 and 80 percent (see proposal elsewhere in this issue of the New Jersey Register).

COMMENT: The proposed rule establishes a complex 10-tiered charge/fee schedule. This will require hospitals to add additional staff to administer the eligibility determination, billing, and collection efforts beyond those already accomplished for existing programs. These costs will be absorbed by the hospital. Elaborately tiered fee schedules only add to an already difficult and time consuming registration process. The commenter recommends that a simple sliding schedule be developed with no more than three tiers; one for free care such as the Federal and Hill-Burton Uncompensated Care Program and two levels for reduced charge medical indigency care. The State should establish the income ceilings for such tiers but the institutions should be permitted the discretion of determining the amount or percent of allowances.

RESPONSE: The Department has proposed reducing the number of steps on the sliding fee scale to one for charity care and four, at fixed intervals, for reduced charge charity care (see proposal elsewhere in this issue of the New Jersey Register).

COMMENT: What constitutes a 12-month period? A calendar year? From the date of this hospitalization, when does the 12-month period restart?

RESPONSE: A 12-month period means 12 months from the admission date or date of service covered by an eligibility determination. It does not mean a calendar year.

COMMENT: Beyond the access issue, the commenter hospital will be faced with undermining the hospital's efforts to direct the medically indigent to comprehensive outpatient services. Patients who are deterred will seek care in the commenter's Emergency Department. This action will only serve to shift charges from a less expensive outpatient modality to more expensive emergency care, thereby increasing the cost to the overall health care system. It is the commenter's recommendation that verification of income should be applied only to the free care category.

RESPONSE: The Department cannot determine from this comment the relationship between encouraging patients to use more appropriate treatment sites and the income verification issue. Hospitals will still, under this program, be able to direct the medically indigent to more appropriate outpatient services; at any site, however, income must have independent verification in order for the patient to be eligible for charity care.

N.J.A.C. 8:31B-4.37(c)

COMMENT: Define what is to be considered a liquid asset and the proofs that must be included with the financial records.

RESPONSE: The proposed rule defines liquid assets as those that can be readily converted to cash and lists several examples of the types of financial instruments included under this definition. Applicants must, at a minimum, provide bank statements and/or written attestations of their liquid assets or that they have no liquid assets.

COMMENT: Are trust funds established in a minor child's name to be considered as a liquid asset?

RESPONSE: This would depend on the structure of the trust. If the applicant or a family member can readily convert the trust into cash, it would be considered a liquid asset.

COMMENT: Should consideration also be given for the liquid asset of cash value of life insurance, home equity or automobiles?

RESPONSE: Liquid assets are assets that can readily be converted into cash. In most situations, that would include the cash value of a life

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insurance policy but would not include assets such as automobiles. An amendment is proposed elsewhere in this issue of the New Jersey Register to include equity in real estate, other than the primary residence.

COMMENT: In contrast to the liberalization of the income eligibility guidelines are the extremely conservative tests relating to individual/family assets. An example of this is the inclusion in family assets of savings for a child's education, or the future purchase of a home (which is excluded from the asset test).

RESPONSE: It is appropriate to require persons with liquid assets to defray their medical bills before allowing them to receive assistance from the uncompensated care system.

COMMENT: The asset limits are set at extremely low levels—$1,000 for an individual applicant and $2,000 for a family. These levels are considerably lower, for example, than those of the Medicaid (Title XIX) program, (see N.J.A.C. 10:71-4.5.

RESPONSE: The asset levels are set at a low level. However, to minimize administrative burden on the hospitals, the assets test looks only at liquid assets and at equity in real property other than the primary residence. The Medicaid program also looks at certain non-liquid assets. Secondly, the Department feels it is appropriate to have a stringent assets test and deny charity care to persons who have liquid assets available to defray the costs of their care.

COMMENT: The asset eligibility criterion, $1,000 per individual and $2,000 per family, is too low and should be raised in order not to take away the patients' only liquid assets. Requiring patients to spend their very last dollar in order to qualify for charity care is unconscionable.

RESPONSE: The assets eligibility criteria have been set to ensure that persons with substantial amounts of liquid assets (cash and items easily convertible to cash) must first use those assets prior to obtaining charity care.

COMMENT: While the dollar figures of these asset limits are very low, the overall description of the assets test demonstrates that the Department of Health has approached a difficult area in a practical and sensitive manner. The limitation of countable assets to those "which consist of, or which can be readily converted into, cash", proposed N.J.A.C. 8:31B-4.37(c)2, permits the eligibility determination to be both simple and fair.

RESPONSE: No response necessary.

COMMENT: The commenter hospital recommends that the assets test be eliminated.

RESPONSE: The assets test is an important control on eligibility for charity care. It would be inequitable to require hospitals not to bill patients who have liquid assets and to have those costs paid for by the payers of hospital care.

COMMENT: The definition of liquid assets should be expanded. Equity in real estate should also be included.

RESPONSE: An amendment has been proposed elsewhere in this issue of the New Jersey Register to include equity in real estate, other than the principal residence in the definition of liquid assets.

COMMENT: These rules include an assets test, while the Hill-Burton regulations do not. The Department has not addressed the differences between Hill-Burton requirements and the State requirements. The Department has orally stated that those hospitals still under a Hill-Burton obligation will be permitted to follow those applicable regulations without penalty. A statement certifying this fact should be included in the proposed rules.

RESPONSE: The Department takes this opportunity to state that it will accept on audit proof that a patient met Hill-Burton eligibility criteria for the period during the year that the hospital is fulfilling its Hill-Burton requirement. All other requirements under these rules (documentation, etc.) are not waived.

COMMENT: Hospitals that are Hill-Burton recipients and have been operating under current Federal regulations will face differences in criteria for income and asset eligibility and also documentation requirements versus the Department's proposed state criteria.

RESPONSE: The eligibility criteria in the State program differ from the Hill-Burton program. In addition, the New Jersey program imposes different documentation for charity care. If a New Jersey hospital wishes to receive charity care funding for an account that is used to fulfill the hospital's Hill-Burton obligation, this account must meet the standards for charity care. However, during the portion of the year when a hospital has a Hill-Burton obligation, the hospital may provide services payable as charity care to persons who meet either the Hill-Burton or the New Jersey eligibility criteria.

COMMENT: Patients whose assets include real estate and personal property such as art, jewelry, etc. should be deemed ineligible for charity care if these patients have the wherewithal to collateralize such assets for purposes of satisfying their hospital debt.

RESPONSE: An amendment has been proposed elsewhere in the issue of the New Jersey Register to include in liquid assets equity in real estate other than the patient's primary residence. The Department finds that it would be administratively impracticable to require hospitals to identify and evaluate a patient's non-liquid assets.

COMMENT: Could the Department of Health provide a list identifying their definition of liquid assets (without only identifying as not limited to)?

RESPONSE: Due to the changes in the nature of financial instruments, it would be impracticable for the Department to provide an exhaustive list of liquid assets. The rule provides a definition against which to test types of financial instruments and provides a list of the most common types. However, if an asset not on the list meets the definition, it should be counted as a liquid asset.

COMMENT: What requirements are imposed upon the hospitals to perform the assets test? Is it reasonable to expect hospitals to join a credit bureau? Are hospitals to request bank statements, income tax returns, etc.?

RESPONSE: The Department will not, at this time, require hospitals to join a credit bureau. They are, however, expected to request information that will document the presence and the value of an asset. Since proving the non-possession of an asset is quite difficult, a hospital may have the patient attest that he or she has no assets, or, alternatively, that all assets have been disclosed.

COMMENT: The rule should be amended to clarify that a family can qualify for charity care whether it expends its assets on the hospital bill before or after its application for charity care. This change could be effected simply by adding a new paragraph N.J.A.C. 8:31B-4.37(c)4, which would read: "The assets of an applicant for charity care shall be counted only after the applicant has had an opportunity to apply any assets to the hospital charges for which the applicant seeks charity care."

RESPONSE: The Department has proposed this concurrently elsewhere in this issue of the New Jersey Register.

COMMENT: First, the proposed rule defines "family assets" for eligibility purposes as including "a spouse's assets for an adult and parent's(s) assets for a minor child." This language displays the proper intent of assessing a family's ability to pay on the basis of available resources. It fails to allow, however, for the situation in which a spouse is absent and his or her assets are unknown or unavailable. This circumstance is not uncommon and is, in fact, a situation which causes some families to become medically indigent. It would be ironic for the remaining spouse to be unable to establish a child's eligibility for free hospital care due to this situation. The rule should be amended to permit a custodial spouse to establish that the assets of an absent spouse are factually and/or legally unavailable for payment of medical expenses. The proposed rule should be clarified in this regard by defining eligibility in terms of "**available** spouse's assets" and "**available** parent's(s) assets." Similarly, the proposed rule should be modified to make it clear that the **income** of only an **available** spouse or an **available** parent should be counted for eligibility purposes.

RESPONSE: The rule will be amended (see proposal published elsewhere in this issue of the New Jersey Register) to indicate that a charity care applicant may establish, through documentary evidence, that a separated spouse's income/assets are unavailable. However, an absent parent may not avoid his or her responsibility to pay for a child's medical care and have it paid by the uncompensated care trust fund.

COMMENT: N.J.A.C. 8:31B-4.37(c)1 specifies an individual's liquid assets as criteria. This is not required for Hill-Burton.

RESPONSE: The Department has determined the necessity for a liquid assets test. However, because Hill-Burton does not have an assets test, the Department will accept on audit persons who are eligible either under these rules or who meet the eligibility criteria of Hill-Burton. It should be noted that only the eligibility criteria for Hill-Burton will be accepted for payment in lieu of the New Jersey standards.

COMMENT: The assets verification process is cumbersome and, in most instances, may be impossible to accomplish. The rule does not propose a methodology to verify assets and, unless the patient lists the assets on the application, the hospital will not be easily able to verify the accuracy of the application.

RESPONSE: The Department will provide additional guidance to the hospitals on methods to verify assets in advance of the implementation of these rules.

COMMENT: Proposed N.J.A.C. 8:31B-4.37(c) 1 through 3 requires a determination of liquid assets for eligibility of either free or reduced

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charge medical indigency care. The rules identify that an individual is eligible if his or her gross income falls within 250 percent of the Health and Human Services Poverty Income Guidelines. According to the Federal Register, Volume 51, Number 28, income for eligibility determination under the Community Service Agency's Poverty Guidelines refers to total annual receipts before taxes from all sources. This includes money wages and salaries, receipts from person's own business, payments from Social Security, railroad retirement, unemployment compensation and workmen's compensation, etc. According to the commenter's understanding of these two proposed sections, it would appear that they are in contradiction with each other, as well as the Health and Human Services Poverty Income Guidelines.

RESPONSE: The Department and the Hill-Burton definition of gross income are not in conflict. What does differ between the two programs are the presence or absence of any assets test and the eligibility cut off points within the poverty income guidelines.

COMMENT: "Income eligibility criteria for identifying charity care patients." While financial criteria are discussed for eligibility, the rule is silent as to what constitutes adequate evidence of personal income, liquid assets and family assets. The rules do not address real property.

RESPONSE: The Department will provide guidance to the hospitals as to what will be accepted as adequate evidence on audit. An amendment has been proposed elsewhere in this issue of the New Jersey Register to recognize equity in real estate other than the primary residence as a liquid asset.

N.J.A.C. 8:31B-4.37(d)

COMMENT: The proposed rule is unclear as to whether both the income and asset criteria determine a patient's eligibility for charity care, or if meeting either criterion qualifies a patient for charity care. The asset test is burdensome on a hospital and will require additional employees and costs in verifying the assets of a patient.

RESPONSE: N.J.A.C. 8:31B-4.37(d) states that a charity care patient must meet both the income criteria in subsection (b) and the assets criteria in subsection (c). The Department has attempted to ease the burden on the hospitals by limiting the focus of the rules to liquid assets.

COMMENT: Many patients feel demeaned if asked to apply for public assistance. This section could be interpreted as an invasion of privacy. The section referring to characteristics of an inability to pay for care should be deleted. It should be left to the patient to request a determination.

RESPONSE: The patient does have the responsibility to request a determination if adequate notice has been provided. However, the rule provides that presenting characteristics of any inability to pay (that is, statements of inability to pay, documentation of eligibility for general assistance, or unemployment benefits) is a form of such a request. Patients are free to refuse screening; however, hospitals should document this refusal.

COMMENT: The status of college students should be considered. The parent's ability to pay should determine eligibility under both the income and assets test. To take the college student as a separate entity is contrary to current practice in other state agencies.

RESPONSE: The Department will follow Hill-Burton precedent and consider a nonminor student supported by his or her family as part of the family unit for the purpose of charity care eligibility determination, regardless of where the student resides.

COMMENT: The proposed rule states that a request can be made up to one year from the date of service. This will be difficult for the hospital to monitor, since the request can be received after an account has already been written off to bad debt.

RESPONSE: The proposed rule has not been amended. If the account has already been written off to bad debt and sent to collection, it should be returned by the collection agency and transferred to charity care.

COMMENT: The one year statute of limitations is unreasonable, particularly in view of the fact that providers have up to six years to bring a collection action. Additionally, since the proposed rules place the burden of proof related to establishing eligibility on the patient, the inclusion of this limitation cannot be justified, on the theory that it would limit or lessen the proof of burden on the providers. The rule should instead read that "a patient or patient guardian may request a facility to make a determination for charity care of reduced charge charity care at any time in response to a demand by that facility for payment." Lastly, limiting to one year the time during which the defense of eligibility may be raised would render meaningless the penalties provided under N.J.A.C. 8:31B-4.37

RESPONSE: The proposal has not been amended. Patients would be able to raise the defense of lack of notice of the availability of charity care services at any time. Hospitals may, at their discretion, accept charity care applications after the one year period.

COMMENT: Requests for charity care should be made prior to admission, during the confinement or up until 30 days from receipt of the hospital. Hospitals are not unreasonable when making this type of request. The rule providing the patient with 12 months from the date of service to request free care is disregarding the fact that hospitals are required to follow the New Jersey Department Uncompensated Care guidelines.

RESPONSE: Patients will be given one year from the date of treatment (outpatient) or from the date of discharge (inpatient) to request charity care.

COMMENT: For recurring patients, does date of service mean first or last date of service?

RESPONSE: For inpatients, date of services means date of discharge. For outpatients, date of service means date of treatment. This means that recurring patients may have to reapply for charity care during their course of treatment.

COMMENT: A patient should not be given one year from date of service to apply for a charity care determination. This procedure would be an administrative nightmare. Patients who have been written-off to collection agencies would be entitled to a reversal if deemed appropriate. This would result in a number of administrative transactions which would become exceedingly burdensome if required for a number of patients. The commenter's recommendation would be that any patient would be eligible to apply for charity care determination up to the point he or she is written-off to bad debt or sent to a collection agency.

RESPONSE: The Department has determined that one year is a reasonable period to allow application. Hospitals may continue to follow appropriate collection procedures until and unless a completed application is received.

COMMENT: The patient/guardian should be required to request a determination within 120 days from date of service/discharge which falls in line with the hospital's appropriate collection procedures.

RESPONSE: The Department will retain the one year time period for filing applications.

COMMENT: The rule provides that a patient who is eligible for, but not enrolled in, Medicaid for the services in question may not be determined to be eligible for charity care. This is a potential loophole for providers intent on turning away certain types of persons, many of whom might not be eligible for Medicaid. The rules should require that where a denial of uncompensated care is based on the provider's belief that the individual seeking care is Medicaid eligible, the provider must document that said person is indeed prima facie eligible for Medicaid, and/or that the services required are Medicaid-eligible. This section should be amended to specifically require that where a denial is predicated on Medicaid eligibility the Medicaid related information upon which the denial is based must be documented.

RESPONSE: The proposed rule will be amended to require that where a denial is predicated on Medicaid eligibility, the Medicaid-related information upon which the denial is based must be documented.

COMMENT: The hospital cannot determine Medicaid eligibility. This is a complicated process done by the County Welfare Board. Also, some patients may be eligible but, due to the nature of their illness or lifestyle (addiction, street people, aliens, etc.), will not follow through on an application process.

RESPONSE: The hospital must determine whether the patient is income-eligible for Medicaid and whether the services required are Medicaid-eligible. If the patient is denied eligibility at the County Welfare Board, the hospital may screen the patient for charity care. If patients do not follow through on an application, they may receive services for which they will be billed.

COMMENT: Further clarification is needed on this section, which denies charity care status to Medicaid eligibles.

RESPONSE: The Trust Fund is designed to pay for care for which no other source of funding is available. Patients who are income-eligible for Medicaid will be required to demonstrate that they are not, in fact, eligible for Medicaid before they can be provided charity care.

COMMENT: Can a person who is "eligible for but not enrolled in Medicaid" be written off as bad debt? If a person is Medicaid eligible and, therefore, clinic eligible, but chooses not to apply for Medicaid or other financial assistance, can the hospital still offer them clinic care? Please clarify the hospital's limits and responsibilities.

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RESPONSE: If a person who is eligible for, but not enrolled in, Medicaid receives services at a Chapter 83 hospital, those services cannot be reported as charity care. Therefore, the hospital must follow appropriate collection procedures for these accounts; if an account is not paid, it may be written off to bad debt. The hospital may provide any necessary and appropriate service to the patient under this methodology. The hospital is further barred, pursuant to N.J.A.C. 8:31B-4.40(c), from denying necessary and appropriate outpatient treatment to patients who cannot meet financial requirements.

COMMENT: Since hospitals are not in a position to make determinations as to Medicaid eligibility, a patient who presents him or herself for care at a hospital is going to be told to make an application for Medicaid before the hospital will make any determination for Charity Care or admit them. Since hospitals already have an obligation to assist patients in making applications for available benefits, perhaps a better wording would be, "A person who willfully refuses to accept Medicaid when eligible therefore shall not be eligible for Charity Care."

RESPONSE: The Uncompensated Care Trust Fund pays for care only if there is no other available source of public or private funding. Therefore, it is reasonable to require income eligible persons to document that they are not, in fact, eligible for Medicaid before they will be approved for charity care.

COMMENT: Charity Care should not be limited to residents of New Jersey. Those hospitals located near a State border receive payments from out-of-State patients which may cover not only the charity care provided to out-of-State residents but also residents of the State of New Jersey.

RESPONSE: Out-of-State residents may receive treatment as bad debt. Therefore, it is not inappropriate to bill out-of-State paying patients for uncompensated care since it will offset bad debts attributable to out-of-State patients.

COMMENT: Reimbursement for uncompensated care should be available to all eligible patients, regardless of residency status. The Uncompensated Care Audit guidelines state that all patients shall be given the opportunity to qualify as medically indigent and are therefore eligible for uncompensated care. Many hospitals near State borders have within their primary service area communities in another state.

RESPONSE: The audit guidelines have been revised to indicate that all out-of-State residents are to be treated as bad debts.

COMMENT: To limit care to New Jersey residents only defeats hospitals' goal as health care institutions to care for everyone, without discrimination.

RESPONSE: The hospital is still barred from denying treatment to persons who cannot meet financial requirements (N.J.A.C. 8:31B-4.40). However out-of-State residents must be billed, as New Jersey residents would be billed in out-of-State hospitals.

COMMENT: The commenter's concern is that if hospitals in New Jersey are no longer provided with charity care reimbursement for non-resident patients, these hospitals may turn away non-resident patients who are otherwise eligible for charity care qualification. This may result, in turn, in out-of-State hospitals rejecting referrals of New Jersey residents who are unable to pay.

RESPONSE: The rule (N.J.A.C. 8:31B-4.40) that bars hospitals from denying necessary and appropriate treatment to any patient who cannot meet financial requirements has not been changed. Hospitals in New Jersey must treat these out-of-State patients and bill them. If they do not pay after appropriate collection efforts are followed, they may be written off as bad debt. This means that non-New Jersey residents in New Jersey hospitals will be treated in the same way as New Jersey residents in out-of-State hospitals.

COMMENT: From both an ethical and practical standpoint, there is absolutely no reason why a non-resident indigent person should be treated differently from a resident indigent person. It is the commenter's understanding that the Department has always shared its view that the indigent patient should not be harassed by the relentless billing process required of hospitals to be reimbursed for bad debt.

RESPONSE: A non-resident indigent patient will be treated differently from a resident indigent person for two reasons. First, uncompensated care in New Jersey hospitals is funded primarily by New Jersey residents through insurance premiums and taxes used to finance Medicaid. Secondly, New Jersey is unique in the fact that it provides full reimbursement for charity care and has higher eligibility standards for charity care than other state or Federal programs. Care must be taken to prevent persons from other states or countries from accessing health care in New Jersey for which they will not be expected to pay and for which they would not be eligible in their home state or country.

COMMENT: If hospitals in New Jersey are no longer provided with charity care reimbursement for non-resident patients, those hospitals may turn away non-resident patients who are otherwise eligible for charity care. This means that out-of-State hospitals may reject referrals of New Jersey patients who are unable to pay.

RESPONSE: There is no reason that out-of-State hospitals would reject New Jersey patients because of these rules. These rules provide that New Jersey hospitals would treat out-of-State residents in the same manner as out-of-State hospitals treat both in and out-of-State patients.

COMMENT: By permitting payment to New Jersey hospitals for charity care on behalf of residents while denying such payment for treatment of non-resident charity patients, the proposed rule chills the exercise of constitutionally protected privileges and immunities by non-residents.

RESPONSE: The rule does not alter the current requirement that hospitals may not deny necessary and appropriate care to anyone for financial reasons. This ensures that just as New Jersey residents are billed out-of-State hospitals, that non-residents will be billed for the services they receive at New Jersey hospitals. It is altogether appropriate to retain a benefit primarily paid for by New Jersey residents solely for the use of New Jersey residents.

COMMENT: It also would represent an unlawful taking under the Fifth and Fourteenth Amendments. On the one hand, health care facilities subject to the proposed rule are required under the Uncompensated Care Trust Fund to collect the uncompensated care add-on for all paying patients regardless of residence while paragraph (e)4 of the proposed rule deprives those same facilities of adequate compensation for the mandatory care to be delivered to indigent non-residents. Thus, the proposed rule would impose on health care facilities the one-sided and unique burden of dealing with the problem of treatment of non-residents who seek medical treatment in New Jersey.

RESPONSE: Uncompensated Care is made up of two components, charity care and bad debts. The bad debts associated with non-State residents would still be paid through the Trust Fund; therefore it is appropriate to bill out-of-State residents for the Statewide uncompensated care add-on. The proposed regulation does not deprive hospitals of adequate compensation for care delivered to out-of-State residents. While this care will not be paid as charity care, hospitals may, provided that appropriate collection efforts are taken, have them paid as bad debts.

COMMENT: Given that the right to travel and the right to receive medical treatment are constitutionally protected privileges and immunities, the State of New Jersey may not attempt to chill the exercise of those rights or place a burden upon or penalize the exercise thereof solely on the basis of nonresidence, absent a showing by the state of a compelling state interest.

RESPONSE: This rule does not bar patients from traveling to New Jersey for medical treatment at New Jersey hospitals. It is proper, without a showing of compelling State interest, to allow only State residents to take advantage of a State-based payment system funded primarily by State residents.

COMMENT: If it is the Department's position that these rules will preclude a hospital from claiming reimbursement for non-resident charity patients but will permit reimbursement to those same hospitals for those same patients only if the hospital bills those patients and then claims them as bad debt the commenter hospital (Deborah) will be uniquely harmed. It will then be the only institution in this State not receiving reimbursement for any of its non-resident charity patients. Other hospitals will treat these charity patients, bill them, and then claim reimbursement as bad debt.

RESPONSE: No hospital will receive payment for any non-resident patient, if it chooses not to follow appropriate collection practices.

COMMENT: If it is the intention of the Department to treat non-resident charity care patients differently than resident charity care patients by requiring hospitals to bill the former group in order to be paid the costs of their care, then this rule should be amended to say so clearly, and resubmitted for comment. This aspect of the rule will put hospitals through a rather unnecessary and meaningless exercise. Even the economic impact statement accompanying the proposed rules does not project one dollar of additional revenue as a result of the proposal to bill nonresident charity patients.

RESPONSE: The Department has concurrently proposed an amendment to N.J.A.C. 8:31B-4.37(d) to specify the treatment of nonresidents who apply for charity care.

COMMENT: Since these patients are considered indigents, the process of billing the patient is futile. There is no financial reason to put people

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who are poor through the billing and the dunning process when it is known beforehand that they are unable to pay. The determination of whether the patient is medically indigent can be performed prior to admission.

RESPONSE: The requirement to bill and dun out-of-State patients who may be unable to pay is a consequence of the need to ensure that indigent patients do not come to New Jersey in order to access health services that should be provided in their home state.

COMMENT: An applicant for a Certificate of Need must agree to the mandatory conditions for approval that require the hospital to provide access to indigent patients. These mandatory conditions provide no distinctions between residents and non-residents.

RESPONSE: Hospitals are expected to provide access to necessary and appropriate services for all patients; however, out-of-State patients must be treated as bad debt rather than charity care.

COMMENT: While hospitals may not be reimbursed their cost of charity care provided to non-residents, they may be reimbursed the cost of providing that non-resident cost as bad debt. It is not clear whether this will just be a mechanical bookkeeping process or if the Department intends hospitals to actually engage in the fruitless and lengthy procedure of billing nonresident charity patients, who by definition have "an inability to pay for services"

RESPONSE: Hospitals are expected to engage in all pre- and post-discharge efforts specified in N.J.A.C. 8:31B-4.40 and the Commission-approved audit guidelines for any patient for whom payment is claimed as bad debt.

COMMENT: None of the operative provisions of the Uncompensated Care Trust Fund Act makes any distinction between residents and non-residents. Section 2(g) expressly defines uncompensated care as "inpatient and outpatient care provided to medically indigent persons and bad debts . . ." without regard to residence. The continued recognition of non-resident bad debt as uncompensated care under the Act evidences the Department's recognition that there is no statutory basis or mandate for any distinction between residents and non-residents.

RESPONSE: The Uncompensated Care Trust Fund Act states that access to quality health care shall not be denied to residents of the State because of their inability to pay for care. Bad debts are paid to fulfill another legislative goal: the protection of the fiscal solvency of the State's general hospitals.

COMMENT: The rule itself contradicts any such compelling State interest. For example, paragraph (e)4 of the proposed rule expressly prohibits hospitals subject to the rule from "denying persons medically necessary treatment if the hospital has the medical capacity to provide such care" without regard to state residence. Futhermore, the proposed rule, while prohibiting reimbursement for non-resident charity care, does not preclude reimbursement for non-resident bad debt, thereby negating any implication that there is any compelling interest to justify exclusion of non-residents from medical services in New Jersey.

RESPONSE: Non-residents are not excluded from medical services in New Jersey. They are merely precluded from receiving the benefit of not being billed for care if they are documented as indigent.

COMMENT: The statutes which purport to authorize the adoption of the proposed rule do not contain any legislative finding that New Jersey hospitals are being used to their capacity by New Jersey residents, or that the facilities of those hospitals are a scarce resource which must be preserved for New Jersey residents.

RESPONSE: Hospitals and facilities are not a scarce resource in New Jersey. However, it is not hospital care that is being preserved for New Jersey residents. Under current rules, New Jersey hospitals may not deny necessary and appropriate treatment because of financial requirements. What is being preserved for New Jersey residents is payment through the Uncompensated Care Trust Fund for charity care. These funds are a scarce resource and are primarily paid by New Jersey residents.

COMMENT: To establish a compelling State interest, the State would have to demonstrate that all the medical facilities subject to the rule are currently being used to capacity by State residents, or that the medical facilities involved are such a scarce resource that they need to be preserved for use by State residents. No such finding could be factually sustained nor is there any such finding in the rule.

RESPONSE: This finding is not necessary because this rule does not deny access to hospital care to non-New Jersey residents. It merely denies them access to one component of payment, that charity care portion of the Uncompensated Care Trust Fund, for that care.

COMMENT: Initially, it must be recognized that the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1, establishes the following goals: ". . . to provide for the protection and promotion of the health of the inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the raising costs of health care services . . ." The goal of promoting the financial solvency of hospitals certainly will be jeopardized by these proposed rules.

RESPONSE: By limiting charity care to New Jersey residents, these rules provide for the protection and promotion of the health of the inhabitants of the State and contain the rising cost of health care services. By allowing hospitals to report services to non-state residents as bad debts provided appropriate collection procedures are followed, these rules ensure that hospital's financial solvency is protected.

COMMENT: The proposed rule does not contain a definition of the term "New Jersey residents." New Jersey courts have recognized however, that the word "residence" does not connote "permanency, continuity and kinship with the physical, cultural, social and political attributes associated with one's 'home' . . ." Thus, a migrant laborer may be a New Jersey resident while working in the State of New Jersey. An individual who resides in a New Jersey nursing home is a New Jersey resident, even if that individual lived outside the State of New Jersey immediately prior to entering the facility. Even an individual who lives with family or friends in New Jersey while undergoing pre-admission medical tests before entering a New Jersey hospital may be considered a New Jersey resident under the term's broad legal interpretation. The lack of a definition of the term "New Jersey resident" renders this aspect of the rule too vague for accurate application. Deborah submits that a definition of "resident" should be added to the rule and re-submitted for comments.

RESPONSE: The Department agrees that the definition of resident is very broad and that it can include migrant workers, the homeless and residents in New Jersey nursing homes. The Department does not agree that a transient who comes to New Jersey for the purpose of entering a New Jersey hospital would be considered a New Jersey resident. The Department will provide additional guidance on the definition of residency prior to the implementation of these rules.

COMMENT: The proposed rule, to the extent that it limits eligibility for charity care to New Jersey residents, is beyond the power of the Department to issue. The rule purports to be authorized by N.J.S.A. 26:2H-18 and the Uncompensated Care Trust Fund Act, N.J.S.A. 26:2H-4.1. A thorough review of those provisions, however, demonstrates that the proposed rule is inconsistent with legislature intent and authority.

RESPONSE: Chapter 83 states that among its purposes are the promotion of health of the residents of the State, cost containment, and the protection of the financial solvency of hospitals. The first two purposes are fostered by limiting charity care to State residents. The last is fostered by permitting hospitals to recover the costs for caring for out-of-State residents who do not pay for their care through bad debts, provided appropriate collection procedures are followed.

COMMENT: To further the statutory goal of financial solvency, Section 18 of the Act provides that hospitals shall be reimbursed for the reasonable cost of ". . . direct patient care," "provision of health care services to individuals unable to pay for them by reason of indigency" and "bad debts, provided adequate recovery procedures are followed . . ." No distinction is made between any of those three elements as to residency and no distinction is made as to all three of those elements between residents and non-residents.

RESPONSE: The Act makes a distinction in the purpose section, where it indicates that a goal of the Act is the promotion of health of the inhabitants of the State. Therefore, this rule is an appropriate use of regulatory authority under the Act.

COMMENT: The duty of hospitals is to care for any outpatient presented them in an emergency. By limiting this program to residents, the department will penalize those non-residents who are in emergency status. Also, those hospitals on State borders might be the nearest provider of health care for non-residents even in a non-emergency situation.

RESPONSE: The Department has proposed, elsewhere in this issue of the New Jersey Register, an amendment to allow non-residents to be screened for charity care for emergency care resulting in an inpatient admission.

COMMENT: The rule states that a hospital may not provide charity care on the basis of a determination that is more than three months old. Rescreenings should be done at longer intervals of no less than 12 months.

RESPONSE: Hospitals will be permitted to provide charity care on the basis of a determination that is not more than one year old. A patient may request a rescreening at any time if he or she feels that his or her income has changed sufficiently to justify a change within the sliding fee scale or from reduced charge charity care to charity care.

COMMENT: To burden ill persons with paperwork every three

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months, just to get a clinic visit, is unfair to the patient. It will discourage use of the system.

RESPONSE: Hospitals will be permitted to provide charity care on the basis of a determination that is not more than one year old. A patient may request a rescreening at any time if he or she feels that his or her income has changed sufficiently to justify a change within the sliding fee scale or from reduced charge charity care to charity care.

COMMENT: The implementation of a three-month re-review requirement will result not only in a marked increase in manpower requirements, but also in possible decrease in cooperation of those who have demonstrated a willingness to cooperate in the past. The commenter feels that this requirement will place an unfair burden on inner-city hospitals dealing with a multitide of charity patients, particularly in an Outpatient setting. The commenter requests that this requirement be reviewed and revised before final approval.

RESPONSE: Hospitals will be permitted to provide charity care on the basis of a determination that is not more than one year old.

COMMENT: Persons on fixed income should be re-evaluated once a year. Persons on umemployment, disability or welfare should be re-evaluated every six months.

RESPONSE: Hospitals will be permitted to provide charity care on the basis of a determination that is not more than one year old. A patient may request a rescreening at any time if he or she feels that his or her income has changed sufficiently to justify a change within the sliding fee scale or from reduced charge charity care to charity care.

COMMENT: The validity of the determinations should be extended to six months.

RESPONSE: Hospitals will be permitted to provide charity care on the basis of a determination that is not more than one year old. A patient may request a rescreening at any time/he or she feels that his or her income has changed sufficiently to justify a change within the sliding fee scale or from reduced charge charity care to charity care.

COMMENT: Eligibility determinations for inpatient and non-recurring outpatient services should be done at the time of each service. Determinations for recurring outpatient services should take place every six months.

RESPONSE: Hospitals will be permitted to provide charity care on the basis of determination that is not more than one year old. A patient may request a rescreening any time he or she feels that his or her income has changed sufficiently to justify a change within the sliding fee scale or from reduced charge charity care to charity care.

COMMENT: Costs for this program will be more than just additional documentation and cost of notices. If patients are to be re-evaluated every three months, additional personnel will be required to accommodate the outpatient volumes especially in those facilities with clinics.

RESPONSE: Hospitals will be permitted to provide charity care on the basis of a determination that is not more than one year old.

COMMENT: Three months is too short a period of time for a charity application to be valid. This is especially true for a clinic patient who is seen on a weekly or monthly basis or a maternity patient who is first seen in her second month of pregnancy. Processing new applications every three months would unnecessarily burden the patient and would force the hospital to hire more manpower to process the additional applications. The current unwritten one year period that is now being followed in most hospitals makes much more sense.

RESPONSE: Hospitals will be permitted to provide charity care on the basis of a determination that is not more than one year old.

COMMENT: How would the requirement to re-screen affect recurring patients (clinic, therapy, etc.), if services continue for more than three months from the determination date? Does a new determination need to be done? This could become a very unwieldy and time consuming practice for recurring patients.

RESPONSE: Hospitals will be permitted to provide charity care on the basis of a determination that is not more than one year old.

COMMENT: A patient entering the hospital on as many as four occasions in the same year may be subjected to the verification process four different times, if those admissions are three months apart. The hospital's workload might therefore unnecessarily quadruple because it is very unlikely that any material change will occur in the patient's financial position within the calendar year. The eligibility timeframe should be changed to the calendar year.

RESPONSE: Hospitals will be permitted to provide charity care on the basis of a determination that is not more than one year old.

COMMENT: "A patient or patient's guardian may request a facility to make a determination for charity care or reduced charity care at any time up to one year from the date of service." If the year is up and it is found that the patient or patient's family had a valid determination at the time of service, would the hospital still be able to provide charity care for the services based on the orginial determination?

RESPONSE: The Department does not understand this comment. If the patient had a valid charity care determination at the time of service, the hospital must provide the service based on that determination.

COMMENT: The term "resident of New Jersey" should be defined.

RESPONSE: A resident of New Jersey, for the purposes of this section, includes persons who enter the hospital from a New Jersey domicile and who intend to return to a New Jersey domicile after leaving the hospital. It also may include migrant workers and homeless persons living in New Jersey.

COMMENT: The hospital should have the flexibility to deny an application due to conflicting information from the patient (that is living expenses in excess of stated income). The hospital should be permitted to withhold a determination, pending a legitimate explanation of the variance.

RESPONSE: A hospital may withhold a determination of eligibility on the basis of contradictory information. A notice stating the reasons for withholding the determination with a request for an explanation of the variance must be sent to the patient within five days of the receipt of the completed application.

COMMENT: An ineligible applicant may reapply if his or her financial circumstances have changed. The rules should state whether an approval based on changed financial circumstances can be retroactive to cover services provided while the patient was ineligible.

RESPONSE: The rule states in N.J.A.C. 8:31B-4.37(d)4 that an applicant may reapply if the applicant believes his or her financial circumstances have changed so as to make him or her eligible for charity care for *future* services (emphasis added).

COMMENT: Clarification is needed as to what the specific requirements for a hospital are, in a situation where reapplication is made by the patient.

RESPONSE: The criteria for reapplication are the same as they are for any original application. The only thing that changes is the time period that is revelant to the investigation.

COMMENT: Patients who are currently deemed charity care, as evidenced by proper documentation, are in no financial position to pay past due bills. A current determination of charity care eligibility should apply both to current and past due bills.

RESPONSE: If the patient cannot document eligibility for charity care for the time period represented in a previous bill he or she will not be eligible for charity care for that period just because she or he can document it for a current period. To allow patients to avoid paying for past bills because they are currently eligible would discourage patients from making payments.

COMMENT: An exact date cannot always be given for maternity, clinic, or mental health services, for example.

RESPONSE: For those services where a date cannot be given, the facility's written determination may indicate a period of time during which the patient will be eligible for charity care.

COMMENT: Provide additional information on the hospital's requirement to copayments and deductibles of indigent participants in Title XVIII of the Social Security Act (Medicare).

RESPONSE: In states without a Medicare waiver, hospitals are paid for their bad debts attributable to Medicare. This includes deductibles and any co-payments. This section provides that any bad debts associated with Medicare patients cannot be written-off to Chapter 83 bad debts. However, Medicare does not recognize a charity care category. Charity care associated with Medicare Services can be reported to and paid as part of Chapter 83.

COMMENT: The one major underlying problem which has always existed has been to obtain an adequate degree of cooperation from the patient in the providing of information. Much of the inner-city medically indigent patient population who would qualify for charity care do not cooperate with the hospitals by providing the necessary documentation. Both historically and currently, the only alternative for the hospitals has been to categorize these patients as bad debt and follow the appropriate procedures. Because of this, a patient who would otherwise qualify under the charity care criteria does in fact become a bad debt write-off.

RESPONSE: The Department recognizes that this rule will not ameliorate this current problem of obtaining independent verification of income. However, the Department must balance this against the need to assure that only those actually eligible for charity care services receive them. Therefore, the Department will continue to make patients responsible for documenting their application for charity care.

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COMMENT: Clarification is needed regarding either the amount of time allowed for a patient to reapply, or an event which would create different circumstances for the patient.

RESPONSE: A patient may reapply at any time he or she feels that his or her circumstances have changed sufficiently to warrant a redetermination of eligibility for future services.

COMMENT: This statement should also include the fact that it does not apply for services denied at a previous time for eligibility reasons of income or assets.

RESPONSE: The hospital may include this notation in its statement; however, the Department will not require it.

COMMENT: If both asset and income criteria must be met, the Department would be working against its stated goal of reducing bad debt and increasing charity care. (See 20 N.J.R. 595(a)) Requiring charity care applicants to meet both asset and income criteria is more likely to reduce the number of persons eligible for charity care. Most of these indigents, who are unable to pay, will fall into the bad debt component of uncompensated care, thereby increasing bad debt.

RESPONSE: The Department has no evidence that a significant number of persons who are income-eligible for charity care would be unable to meet the asset criteria in these regulations. Moreover, the Department finds it appropriate that persons with significant liquid assets use those assets to pay for their medical care.

COMMENT: The following two statements are contradictory: This 10 percent threshold must be met once per family in a 12 month period; A hospital may not provide charity care on the basis of a determination of eligibility that is more than three months old.

RESPONSE: In a concurrently proposed amendment published elsewhere in this issue of the New Jersey Register, the 10 percent threshold would be raised to 30 percent. This rule has also been proposed for amendment to allow eligibility to be based on a screening that is not more than one year old. Therefore, the contradiction would be resolved.

COMMENT: In order to comply with paragraph (d)2, the hospital will be required to hire an individual to respond to the requests.

RESPONSE: Hospitals will be permitted to appeal for limited new costs associated with activities required under these rules. However, recognition will be given to the amount of collection activity that will be foregone because of better classification of charity care patients.

N.J.A.C. 8:31B-4.37(e)

COMMENT: Demand for payment or collection action must be instituted at point of service for nonrecurring patients. To eliminate a procedure based upon the statement of a patient that he or she may qualify for charity care without proof or documentation would be poor business policy. Patients who receive services at the hospital on a nonrecurring basis (E.R., private referred, same day surgery) do not normally offer the hospital a second opportunity for a direct face-to-face request for payment.

RESPONSE: The hospital may request payment for any patient who does not apply for charity care. However, if a patient requests charity care, he or she may not be asked for payment until they are screened.

COMMENT: There should be no hospital obligation to have a patient bill indicate that part of the bill will be reduced by charging charity care. The inclusion of the statement serves no purpose, since both patient and the hospital know that the patient is eligible for a reduced charge at that point in time. In addition, the inclusion of the statement increases what is an already complex data processing billing program and administrative procedure.

RESPONSE: Although both may know that the patient will be reduced charge charity care, neither will know at the time of the billing the amount of the reduction until the insurer pays. However, without the notice that part of the bill is not the patient's responsibility, the patient may become confused and concerned about the bill.

COMMENT: The rules state "If the portion of the bill that will be reduced charge charity care cannot be determined prior to billing because third party payments have not been made, **the statement shall indicate that part of the bill will be reduced charge charity care.**" This will be difficult to comply with on the outpatient accounts, some other methods should be determined.

RESPONSE: The comment does not indicate why this will be more difficult to comply with on outpatient accounts. Coding the hospital's computer billing service to indicate this message on certain accounts (that is, reduced charge charity care accounts with pending insurance claims) would enable the hospital to comply.

COMMENT: The structure of the proposed rules will require the addition of a significant administrative burden onto the hospital to ensure its ability to comply with the rules. This is particularly true since the proposed amendment states that "... if a patient who is eligible for charity care is subject to collection procedures, the hospital may not receive reimbursement from the Uncompensated Care Trust Fund or the Chapter 83 system for the cost of the services."

RESPONSE: N.J.A.C. 8:31B-4.39(a)10 has been changed upon adoption to clarify that a hospital will not be reimbursed if a patient, who has filed a completed application and is eligible for charity care, is subject to collection procedures. This change should ameliorate the administrative burden on the hospital.

COMMENT: The proposed rule states that hospitals are prohibited from denying medically necessary treatment if the hospital has the medical capacity to provide such treatment. There is no qualification based on residency with respect to this obligation. Consequently, the Department has no power to deprive health care facilities of that portion of the financial elements granted to them by statute representing non-resident charity care, particularly when, at the same time, the Department requires hospitals to provide care to all patients, regardless of inability to pay and regardless of residency. The lack of such power has been acknowledged historically in that non-resident patient charity care and non-resident bad debt are recognized as appropriate financial elements.

RESPONSE: Although hospitals may not deny medically necessary treatment, they are not barred from attempting to collect from those who do not meet charity care criteria. Hospitals will be paid for this element provided that appropriate collection procedures are followed.

COMMENT: Current Department guidelines require that deposits be requested in advance of services performed. This section of the rule forbids the practice of requiring a deposit. Given the need for the patient to submit an application for charity care, it would be impracticable to request deposits and remain in compliance.

RESPONSE: Hospitals are required to request a deposit, unless the patient requests a charity care screening. Often, a request for a deposit will trigger the request for a screening.

COMMENT: Proposed N.J.A.C. 8:31B-4.37(e)2 is confusing, because it precluded the billing of persons found eligible for charity care and makes no reference to place of residence. The proposed amendments to N.J.A.C. 8:31B-4.39 likewise preclude billing of charity patients without reference to residence.

RESPONSE: Since N.J.A.C. 8:31B-4.37(d) indicated that only New Jersey residents are eligible for charity care, this section is correct. Non-New Jersey residents may not be found eligible for charity care and therefore hospitals are not precluded from billing.

N.J.A.C. 8:31B-4.37(f)

COMMENT: The appeals process should not prevent the collection of payment. It should be the responsibility of the patient to support his or her claim for charity care. This lengthy process will negatively impact on hospitals' cash flow situation.

RESPONSE: The criteria for eligibility for charity care are clear and concise, which should minimize the number of appeals and the time it takes to handle them. Therefore, it is not expected that there will be a significant number of appeals or that they will negatively impact a hospital's cash flow situation. If a large number of non-meritorious appeals are filed, the Department will reassess this provision of the rules.

COMMENT: The extent of the penalties discussed in this section appear to be excessive in comparison to the offense. With an average inpatient cost of $2600, the denial of an equal amount could have a significant economic impact on hospitals found to lack "acceptable documentation".

RESPONSE: These penalties are appropriate, in light of the significant economic impact on patients who document that they are eligible for charity care, but who are denied it or who are billed.

COMMENT: The Department should make a determination and notify the applicant and the hospital within 30 days of its receipt of a request for appeal.

RESPONSE: The Department will retain the proposed 60 day time limit as an outside limit. Part of that time will be taken up gathering evidence from the hospital and the patient.

COMMENT: The time for an applicant to appeal should be reduced to seven days and the time for the Department to resolve an appeal should be reduced to 14 days so as to speed up the accounting, billing and cash flow process.

RESPONSE: The Department will retain the proposed 60 day time limit as an outside limit. Part of that time will be taken up gathering evidence from the hospital and the patient. A patient, particularly one who was in the hospital for part of that time, may need more time to

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make a proper appeal. The Department will have to collect information from the hospital and the patient in order to resolve an appeal. The Department does not expect a sufficient number of appeals to make this a significant cash flow issue.

COMMENT: The time for an applicant to appeal a denial should be reduced to 10 days and the time for the Department to resolve a denial should be reduced to 30 days. These charges are appropriate to secure the financial interest of the hospital and to respond to the patient in a timely and efficient manner.

RESPONSE: The Department will retain the proposed 60 days time limit as an outside limit. Part of that time will be taken up gathering evidence from the hospital and the patient. A patient, particularly one who was in the hospital for part of that time, may need more time to make a proper appeal. The Department will have to collect information from the hospital and the patient in order to resolve an appeal. The Department does not expect a sufficient number of appeals to make this a significant cash flow issue.

COMMENT: There must be a response from the Department within 60 days.

RESPONSE: No response necessary.

COMMENT: Patients should be required to appeal denials within 10 days from receipt of the hospital notice of denial. Hospitals are precluded from billing the patient during the appeal process. Please consider that this rule delays hospitals from taking any action on a hospital bill for 90 days. This can result in a significant cash flow problem in an industry where cash flow is already a major problem.

RESPONSE: The proposed 30 day time limit for patient appeals will be retained. A patient, particularly one who has been in the hospital for part of the period, needs time to make a proper appeal. The Department does not expect a sufficient number of appeals to make this a significant cash flow issue.

COMMENT: The appeals mechanism must be defined in detail. The system as proposed is cumbersome and lacks clarity (especially in regard to communications between the State and the hospital indicating that an appeal has been instituted). Please define turn-around time; how long will the State be given to render a determination?

RESPONSE: A patient must appeal a denial of charity care to the Department of Health within 30 days. If the hospital has an in-house appeals mechanism, the patient has 30 days from the final denial decision. The patient must provide copies of all documentation provided to the hospital. The Department will then notify the hospital and require it to submit its workpapers as well as any documentation provided to the hospital. Only documentation submitted to the hospital as part of the eligibility determination is relevant for the purpose of evaluating an appeal. The Department will review the documents; render a decision; and notify both parties within 60 days of the appeal. This decision may be appealed to an administrative law judge.

COMMENT: The appeals criteria are unserviceable.

RESPONSE: The Department is unable to respond to this comment, due to vagueness.

COMMENT: During the appeal process, if an equitable solution cannot be achieved, the account is referred to an administrative law judge. Who in the hospital is to attend to defend or explain the hospital's position?

RESPONSE: The hospital, as a corporation, must be represented by counsel under Office of Administrative Law rules.

COMMENT: If a person is denied in September, why can't they be reconsidered in October?

RESPONSE: The rule provides that if a person is denied eligibility for any reason other than lack of documentation, he or she may not receive charity care for those services. However, if a person feels his or her circumstances have changed, he or she may reapply at any time for current services.

COMMENT: The appeals process precludes the hospital from billing the person during the course of appeal. If the patient has supplied the information so that the hospital can make a determination, the hospital should bill based upon the screening and revise it if the appeal is decided in favor of the person. If the patient has not supplied sufficient information there should be no appeal permitted.

RESPONSE: To allow the hospital to bill the patient based on the screening places the burden of any hospital error on the patient. Also, a patient may appeal a hospital determination that sufficient information has not been provided.

COMMENT: The proposed rule states that the Commission may fine a hospital or reduce or eliminate a hospital's uncompensated care factor if it substantially fails to follow these rules. The rules should define the penalties and the term "substantially fails."

RESPONSE: N.J.S.A. 26:2H-13 gives the Commission the discretion to levy penalties. "Substantially fails" means that an error or omission must be material.

COMMENT: Requiring fines for substantially failing to follow procedure is punitive and arbitrary. An appeal mechanism through an unrelated third party should be provided so as to protect the hospital's right to due process.

RESPONSE: The appeal mechanism is provided through the Hospital Rate Setting Commission. Commission decisions may be appealed.

COMMENT: There should be no elimination of a hospital's uncompensated care factor, except for conditions of willful disregard of the charity care rules.

RESPONSE: The Department regards elimination of a hospital's uncompensated care factor as the most serious of the range of penalties. Therefore, it would be reserved for the most serious violations, including a pattern of willful disregard of the charity care rules.

COMMENT: The rule is silent on the mechanism to notify the hospital of an appeal in order that collection procedures be suspended. Note that the collectibility of all accounts denied on appeal is greatly reduced and will result in an increase in bad debts.

RESPONSE: The Department will set up procedures to implement the appeals mechanism before the implementation of the rules.

COMMENT: The rule defines the potential for fines if the institution does not comply with the proposed rules. The rules are silent on what will be accepted by the auditors as adequate evidence that there was compliance with the rules. This section should be expanded to define appropriate documentation. Additionally, the rules should be expanded to define audit guidelines and penalty calculations. This will avoid the application of audit criteria on a retroactive basis.

RESPONSE: The Department will provide revised audit criteria, including appropriate documentation rules to the hospitals prior to the implementation of the rules.

Note: Based on the comments received, certain substantive changes have been proposed concurrently for initial publication. They appear in this issue of the New Jersey Register.

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

8:31B-4.37 Charity care and reduced charge charity care for indigent patients

(a) Hospitals shall provide the following notice of availability of charity care, and shall post the notice, in addition to any notices required under Federal law, as follows:

1. The Department shall provide notices in English and Spanish about the availability of charity care and reduced charge charity care. The facility shall post these notices in appropriate areas of the facility, including but not limited to, the admissions area, the business office, outpatient clinic areas, and the emergency room. If the usual language of the households of 10 percent or more of the population in the service area of the facility, according to the most recent figures published by the Bureau of Census, is other than English or Spanish, the facility shall notify the Department who shall translate the notice into that language and supply the posted notice to the facility. The facility shall then also post the translated notice.

2. The facility shall provide individual written notice, in English and Spanish, of the availability of charity care and reduced charge charity care under these rules to each person who seeks services in the facility on behalf of himself or another, and to the legally responsible parent, spouse or guardian, if any, of the person seeking services. This notice shall:

i. State that the facility can request payment from the Uncompensated Care Trust Fund if it provides care without charge or below charges to people who meet the eligibility requirements of these rules.

ii. Set forth the criteria for determining eligibility for charity care and reduced charge charity care under these rules.

iii. State the location in the facility where anyone seeking a determination of eligibility for charity care and reduced charge charity care may make such a request.

iv. State that the facility will make a written determination of whether the person is eligible for charity care or reduced charge

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charity care as soon as possible, but no more than *[two]* ***five*** working days from the time of the *[request for such services]* ***submission of a completed application with all required documentation***. If the request does not include sufficient documentation to make such a determination, the request shall be denied. If the request is denied for lack of documentation, the applicant will be allowed to present additional documentation.

v. State that an applicant found ineligible may reapply at a future time when the applicant presents him or herself for services and believes his or her financial circumstances have changed, making him or her eligible for charity care or reduced charge charity care.

vi. State that charity care and reduced charge charity care is available only for medically necessary care.

3. The facility shall provide the individual ***with*** written notice of the availability of charity care or reduced charge charity care before providing services, except where the emergency nature of the services provided makes prior notice impractical. If this exception applies, the facility shall provide the written notice to the patient or responsible party as soon as practical, but no later than when first presenting a bill for services.

4. The facility shall make reasonable efforts to communicate the contents of the posted notice and the individual written notice to persons who it has reason to believe cannot read the notices.

(b) Income eligibility criteria for identifying charity care patients are as follows:

1. The provisions of 42 U.S.C. 9902(2), the poverty income guidelines revised annually by the United States Department of Health and Human Services, are hereby incorporated by reference. (For further information on the poverty income guidelines, contact Joan Turek-Brezina, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, D.C. 20201, telephone 202-245-6141.) A person is eligible for charity care or reduced charge charity care if he or she falls into one of the following categories:

i. A person whose individual or, if applicable, family income, as determined by reference to (b)2 below, is less than 150 percent of the HHS Income Poverty Guidelines as adopted by the Department shall be eligible for charity care for necessary health services without cost.

ii. A person whose individual or, if applicable, family income, as determined by reference to (b)2 below, is greater than 150 percent of the HHS Income Poverty Guidelines as adopted by the Department but not more than 250 percent of these guidelines shall be eligible for charity care for necessary health services at a reduced rate as prescribed by (b)3 below.

2. A person's income, for purposes of determining eligibility for charity care or reduced charge charity care, shall be the lesser of the following:

i. The actual ***gross*** income of the individual or, if applicable, the family, for the 12 months preceding the services.

ii. Four times the actual ***gross*** income of the individual or, if applicable, the family, for the three months preceding the services.

3. *[A person who is eligible for reduced charge health services shall be charged a percentage of the normal charge for health services after any applicable third party has paid; that percentage shall be calculated by the following:

i. Income as a Percentage of HHS Income Poverty Guideline as adopted by the Department		Percentage of Charges Paid by Patient
From	To	
151	170	10
171	180	20
181	190	30
191	200	40
201	210	50
211	220	60
221	230	70
231	240	80
241	250	90

ii. If the percentage of charges for individuals between 150 and 250 percent of the federal poverty guidelines which is unpaid by other parties and billed to the patient exceeds 10 percent of the person's, or family if applicable, annual income as calculated by reference to (b)2 above, this excess will be eligible for treatment as charity care. This 10 percent threshold must be met once per family in a 12 month period.]* ***(Reserved)***

4. Family income that must be considered for eligibility determination includes a spouse's income for an adult and parent's(s') income for a minor child. ***A patient may document that a spouse's income is not available and that spouse's income will not be considered.***

(c) Assets eligibility criteria for identifying charity care patients are as follows:

1. An individual is eligible for charity care or reduced charge charity care if:

i. His or her individual liquid assets do not exceed $1,000; and

ii. His or her family's liquid assets, if applicable, do not exceed $2,000.

2. Liquid assets are assets which consist of, or which can be readily converted into, cash. This includes, but is not limited to, cash, savings and checking accounts, certificates of deposit, treasury bills, negotiable paper and corporate stocks and bonds.

3. Family assets that shall be considered for eligibility determinations include a spouse's assets for an adult and parent's(s') assets for a minor child.

(d) Eligibility determination for charity care and reduced charge charity care shall be as follows:

1. Based on the criteria in (b) and (c) above, hospitals shall determine the eligibility for charity care or reduced charge charity care for all New Jersey residents who present characteristics indicating an inability to pay for services including, but not limited to: absence of third party insurance coverage; receipt of unemployment or welfare benefits; limited income; and expressions of difficulty with paying for care. A patient with third party insurance coverage may still be eligible for *[uncompensated]* ***charity care and reduced charge charity*** care and shall be screened for eligibility if he or she presents other characteristics indicating an inability to pay for services. A patient who is eligible for, but not enrolled in, Medicaid (Title XIX), for the services in question may not be determined to be eligible for charity care.

i. Hospitals shall make arrangements for reimbursement for services from private and federal, state and local governmental third party payers when a person is found to be eligible for such payment. Hospitals shall collect from any party liable to pay all or part of a person's bill, prior to attributing it to charity care. Subject to waiver provisions, the hospital shall, as part of this obligation, pursue reimbursement for the uncollectible copayments and deductibles of indigent participants in Title XVIII of the Social Security Act (Medicare).

2. A patient or *[patient guardian]* ***responsible party*** may request a facility to make a determination for charity care or reduced charge charity care at any time up to one year from the date of service. ***A hospital may, at its discretion, accept applications after one year from the date of service.*** Such a determination shall be made as soon as possible, but no later than *[two]* ***five*** working days from the day of the request. If the request does not include sufficient documentation to make such a determination, the request shall be denied. The hospital shall promptly provide the applicant with a written copy of the determination. If a denial of eligibility has been made because of inadequate documentation, the patient or responsible party shall be permitted to provide additional documentation.

3. A determination that an applicant is eligible shall indicate:

i. That the facility will provide charity care services at no charge or at a specified charge which is less than the allowable charge for the services;

ii. The date on which services were requested;

iii. The date on which the determination was made;

iv. The applicant's family size, income and eligibility computation;

v. The date on which the services were or will be provided to the applicant; and

vi. The length of time that the hospital will provide charity care based on this determination. A hospital shall not provide charity care on the basis of a determination of eligibility that is more than *[three months]* ***one year*** old.

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4. The facility shall provide each applicant who requests charity care and is denied it, in whole or in part, with a written and dated statement of the reasons for the denial when the denial is made, including the information required in (d)3 above. In addition, this notice shall state that the applicant may reapply if the applicant believes his or her financial circumstances have changed so as to make him or her eligible for charity care for future services. The notice must also inform the applicant about the availability of an appeals process pursuant to (f) below. ***Where a denial is based on a presumption that the patient is eligible for, but not enrolled in Medicaid, the information upon which the denial is based must be documented.***

5. A facility shall, as a condition of finding any applicant eligible for charity care or reduced charge charity care, require the applicant to furnish any information that is reasonably necessary to substantiate the applicant's income and is within the applicant's ability to supply. Such proofs may include proof of receipt of welfare benefits, unemployment compensation, or proof of wage level as well as bank statements and other proofs of assets. The hospital shall retain proof that this documentation was provided.

6. Whenever the medical condition of the prospective patient so dictates, all necessary hospital services shall be provided prior to the financial screening or verification required by these rules.

(e) Collection procedures and prohibited action requirements are as follows:

1. Persons determined to be eligible for charity care or reduced charge charity care pursuant to *[these rules]* ***this section*** shall not be subject to the collection procedures set forth in N.J.A.C. 8:31B-4.40. Persons determined to be eligible for reduced charge charity care pursuant to these rules shall not be subject to the collection procedures set forth in N.J.A.C. 8:31B-4.40 for the portion of the bill that is reduced charge charity care. If the portion of the bill that will be reduced charge charity care cannot be determined prior to billing because third party payments have not been made, *[the]* ***any*** statement***s*** shall indicate that part of the bill will be reduced charge charity care.

2. No demand for payment or collection action, including rendering a bill for services, shall be instituted against persons found eligible for charity care. No demand for payment, including the rendering of a bill for services, shall be instituted for the portion of the cost of services determined to be reduced charge charity care. A statement of charges may be sent as long as the statement clearly indicates that it is not a bill or demand for payment.

3. No demand for payment or collection action shall be instituted before a hospital screens a patient pursuant to N.J.A.C. 8:31B-4.37(d) and renders an eligibility determination.

4. Hospitals are prohibited from denying persons medically necessary treatment if the hospital has the medical capacity to provide such care.

(f) Appeals of denials of eligibility shall be conducted as follows:

1. Applicants who wish to appeal a decision regarding eligibility for charity care or reduced charge charity care must notify the Department in writing of their intention to appeal within 30 days of the applicant's receipt of the notice described in N.J.A.C. 8:31B-4.37(d)4.

2. The Department shall attempt to facilitate a mutually acceptable resolution of the dispute between the applicant and the hospital. The Department shall notify the applicant and the hospital of the results of such efforts within 60 days of its receipt of the applicant's notice of intent to appeal.

3. If no resolution of the dispute is obtained within this 60 day period, the Department shall transmit the matter to the Office of Administrative Law for resolution as a contested case pursuant to N.J.A.C. 1:1. In proceedings before the Office of Administrative Law, the Department shall be a non-adversarial party.

4. The hospital shall not pursue collection of payment from an applicant for charity care or reduced charge charity care until the completion of the administrative review process described in this section.

8:31B-4.39 Determination of uncompensated care factor

(a) In order to prospectively include a factor for *[U]* ***u***ncompensated *[C]****c***are, such care shall be measured for the Current Cost Base pursuant to N.J.A.C. 8:31B-4.131 as follows:

1.-6. (No change.)

7. The hospital shall not pursue payment according to specified billing procedures for those patients who meet the criteria described in N.J.A.C. 8:31B-4.37.

8. With respect to any historical data to be reported to the Department of Health, wherever historical records are unavailable, conservative, reasonable estimates shall be made. Nevertheless, Total Deductions from Gross Operating Revenue for the Current Cost Base year must agree with the hospital's financial statement for the same reporting period.

9. The Commission may levy a fine or reduce or eliminate a hospital's uncompensated care factor if the hospital substantially fails to follow the procedures set forth in N.J.A.C. 8:31B-4.37. In deciding to reduce or eliminate a hospital's uncompensated care factor, the Commission shall consider the extent to which the hospital has failed to follow the procedures including, but not limited to, its failure to provide notice of availability of charity care or reduced charge charity care or its failure to provide written determinations of eligibility. This reduction in the hospital's uncompensated care factor is not intended to diminish the hospital's continuing obligation to provide medically necessary care to all patients regardless of their ability to pay. Hospitals may not recover the amount of this penalty from either the Uncompensated Care Trust Fund or the Chapter 83 system.

10. If a patient who ***has documented that he or she*** is eligible for charity care pursuant to N.J.A.C. 8:31B-4.37 is subjected to collection procedures in violation of N.J.A.C. 8:31B-4.37(e), the cost of services to such patient shall not be included in the facility's uncompensated care factor, regardless of the outcome of the collection procedures, unless the denial is a result of the failing of the patient or responsible party to provide sufficient documentation for the hospital to make an eligibility determination.

(a)

DRUG UTILIZATION REVIEW COUNCIL

Notice of Correction
Interchangeable Drug Products
N.J.A.C. 8:71

Take notice that the adopted amendment to N.J.A.C. 8:71 published in the June 20, 1988 issue of the New Jersey Register at 20 N.J.R. 1461(a) erroneously listed four drug products and their manufacturers in the list of adopted products which should not have been included in the list. Those incorrectly listed products and their manufacturers are as follows:

Thioridazine conc. 30 mg/ml & 100 mg/ml	Copley
Thiothixene caps 1, 2, 5, 10 mg	Amer. Ther.
Thiothixene oral solution 5 mg/ml	Copley
Triamterene/HCTZ tabs 75/50	Cord

Full text of the correct list of adopted drug products and their manufacturers is as follows:

Cephalexin for susp 250/5 ml	Teva
Chlorzoxazone tabs 500 mg	Lemmon
Desipramine tabs 25, 50, 75, 100 mg	PharmBasics
Megestrol acetate tabs 20, 40 mg	PharmBasics
Meperidine tabs 50, 100 mg	Halsey
Methadone HCl tabs 5, 10 mg	Roxane
Oxazepam caps 10, 15, 30 mg	Purepac
Oxycodone 5 mg/APAP 325 mg tabs	Roxane
Oxycodone/APAP tabs 5/325	Halsey
Oxycodones 4.88 mg/Aspirin 325 mg	Roxane
Oxycodones/ASA tabs 4.88/325	Halsey
Sulfasalazine tabs 500 mg	Mutual
Triamterene/HCTZ tabs 75/50	Quantum
Trimipramine caps 25, 50, 100 mg	PharmBasics

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HUMAN SERVICES

DIVISION OF PUBLIC WELFARE

(a)

Public Assistance Manual Resources

Adopted New Rule: N.J.A.C. 10:81-3.42
Adopted Amendments: N.J.A.C. 10:81-3.38, 3.39, 3.40, 3.41 and 3.46

Proposed: May 16, 1988 at 20 N.J.R. 1056(a).
Adopted: August 4, 1988 by Drew Altman, Commissioner, Department of Human Services.
Filed: August 8, 1988 as R.1988 d.426, **with substantive 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; 45 CFR 233.20(a)(3)(i)(B)(5), 45 CFR 233.20(a)(3)(ii)(F), 45 CFR 206.10(a)(1)(vii)(A) and (B); Federal Omnibus Budget Reconciliation Act of 1981 (OBRA).
Effective Date: September 6, 1988.
Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Subsequent to Proposal:
The amendment at N.J.A.C. 10:81-3.38(a) clarifies current policy with respect to transfer or assignment of property. The deletion at N.J.A.C. 10:81-3.41 comports with N.J.A.C. 10:81-3.40(d)2, which states that an Agreement to Repay is no longer applicable in any case in which a pending entitlement to payment arises from a personal injury to a child. That provision rendered N.J.A.C. 10:81-3.41(a)2i obsolete.

Full text of the adoption follows (additions to proposal indicated in bold with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:81-3.38 Assignment or transfer of property *[prior to application]*

(a) Applicants for ***or recipients of*** AFDC shall disclose any assignment or transfer of property made within 24 months prior to the time of initial application ***or during the period the case is in active status***.

1. Whenever a person applying for ***or receiving*** assistance has transferred or assigned any property, whether real or personal, within 24 months prior to the initial application ***or during the period the case is in active status***, the circumstances surrounding such transfer or assignment shall be evaluated, and a determination made as to whether such transfer or assignment was made for adequate consideration.

2. If it is determined that the transfer or assignment of the property was a normal transaction for adequate consideration, any proceeds remaining shall be evaluated as resources.

3. If the transfer or assignment is found to have been made without receipt of adequate consideration, it shall be recognized that the person may have legal rights to secure the return of the property or the payment of adequate consideration. The CWA will assist in reclaiming or gaining adequate consideration for such property. Any proceeds resulting from such effort shall be evaluated as resources.

Renumber existing 6. as 4. (No change in text.)

10:81-3.39 Liquidation of all debts, claims, interests, settlements, and trust funds

(a) Members of the eligible family shall take all necessary and reasonable action to avail themselves of funds for support from others who owe or may owe money to them or who are holding funds for them. Any funds made available by such action (except funds from liquidation of a nonexempt resource) are to be considered as income to the eligible family.

1. Any failure or refusal by any person to take required action or to cooperate with the CWA in liquidation efforts renders the entire family ineligible for assistance for as long as the failure or refusal continues.

2. (No change.)

3. When a trust fund exists for a member of the eligible family, the CWA shall determine whether or not the funds are currently accessible. If accessible, the funds represent a source of funds for support and must be considered in determining eligibility.

i.-ii. (No change.)

10:81-3.40 Repayment

(a) (No change.)

(b) Properly granted assistance rules are:

1. (No change.)

2. Pending claims or interests: Repayment of assistance in the AFDC program (all segments) is required in certain cases in which assistance is granted while the recipient(s) awaits receipt of funds from some other source. See N.J.A.C. 10:81-3.42 for rules on liquidation of non-exempt real property. See N.J.A.C. 10:81-3.41 regarding repayment following liquidation of other pending claims.

3.-4. (No change.)

(c) Rules when Agreement to Repay (Form PA-10D) is required:

1. The receipt by the CWA of a completed and signed Agreement to Repay is required as a condition of eligibility whenever, and only whenever, there appears to be entitlement to a specifically identified payment other than public assistance to any persons for whom cash assistance in AFDC is being requested or granted, except as indicated in (d) below. For this purpose, a parent's potential entitlement is considered to include potential entitlement by that parent's spouse and minor children who live in the same home even though assistance for the parent may not be sought or granted. Applicable situations include but are not limited to:

i.-iv. (No change.)

v. Sale of nonexempt real property (see N.J.A.C. 10:81-3.42 for special rules applicable);

vi. Funds held in trust except funds from awards for personal injury to a child;

vii.-viii. (No change.)

ix. Equitable distribution in divorce.

2. The completed form must be signed by each person whose signature is required on the application for assistance even though assistance for that person may not be sought or granted. It must identify the source, the persons for whom the repayment is sought, the reason for the pending payment and the date(s) of signing. An agency employee will witness each signature.

3. Failure or refusal by any person to sign and deliver a completed Agreement to Repay when so required renders the family ineligible for cash assistance in AFDC.

(d) Rules when agreement to repay is not required:

1. Agreements to Repay are not to be used in any Medicaid program.

2.-3. (No change.)

(e) (No change.)

10:81-3.41 Action by CWA upon liquidation (except nonexempt real property)

(a) Valid agreement to repay exists: Upon liquidation of a claim or interest (other than liquidation of nonexempt real property) for which a valid Agreement to Repay exists (see N.J.A.C. 10:81-3.40(c)), regardless of whether or not the persons involved are receiving assistance at the time, the CWA will evaluate the situation. Upon a showing that, by release of the funds and only by release of the funds, the household can reasonably be expected to remain off the assistance rolls indefinitely, the CWA may, with approval of the State office, release the funds to the household. In all other instances the CWA will, subject to the special provisions below, pursue recovery of the lesser of the following amounts:

1. The amount of cash assistance granted ***to the eligible family*** in the AFDC program *[to]* or for the person(s) for whom the pending matter was applicable***, except as provided at N.J.A.C. 10:81-3.40(d)2,*** from the date of the accident or occurrence which

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gave rise to the settlement to the date of payment, regardless of the date of execution of the Agreement to Repay;

2. The amount of money actually received after making allowance for costs and fees of collection, medical payments made as a result of the accident or occurrence giving rise to the client's recovery, identifiable future medical expenses properly due from the proceeds and, deducting at the discretion of the CWA, up to $500.00 for verified related expenses incurred by client (see N.J.A.C. 10:82-3.2(b)9).

[i. The amount of assistance paid on behalf of an individual shall be the difference between the actual grant(s) received and the amount which would have been granted to the family if the child had not been included in the eligible unit.]

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

10:81-3.42 Liquidation of nonexempt real property

(a) When ownership of nonexempt real property is the only reason for the ineligibility of an otherwise eligible family, the family may receive AFDC during the period of ineligibility under the following terms and conditions:

1. Liquidation of the real property shall be undertaken and completed promptly. In no event may it take more than nine months. At the end of nine months, authorization for assistance grants under these provisions ends.

2. The signer(s) of the assistance application shall sign an Agreement to Repay (Form PA-10D) and shall sign a written agreement with the agency which describes a mutually acceptable plan of liquidation which includes a statement of market value of the property. The plan may be revised as necessary by mutual agreement, but the original nine month period may not be extended. If an appraisal is found necessary in order to reach agreement, the CWA may advance the cost of the appraisal from the administrative account. Any such advance is subject to repayment or recovery as described in (a)4 and 5 below.

3. The owner(s) of the real property shall, in accordance with the written plan, make continuous good faith efforts to liquidate the property at market value. Any breach in the good faith efforts, as determined by the agency, ends the authorization of assistance grants under these provisions. Authorization may be restored by restoration of good faith efforts, but the original nine month period may not be extended.

4. Upon liquidation of the real property, the former owner(s) of the real property shall repay to the agency either the amount of assistance granted during the period of ineligibility or the net amount received from the liquidation, whichever is less. Any funds remaining to the former owners after repayment constitute a resource for regular eligibility determination.

5. All assistance grants made under authority of these provisions are grants to ineligible persons and are, thereby, overpayments. When repayment is made in accordance with (a)4. above and repayment, based on net proceeds, is less than the aggregate assistance grants during the period, the unrepaid balance is no longer an overpayment with respect to these provisions. In all other situations including, but not limited to, expiration of the nine month period, lack of good faith efforts, liquidation for less than market value, or loss of eligibility for other reasons, the full amount of the overpayments is subject to collection as for other overpayments.

10:81-3.46 Repayments from retroactive SSI awards -N segment only

(a) When an applicant for or a recipient of AFDC-N has filed an application for SSI or an application has been filed on his or her behalf, the CWA will require as a condition of eligibility or continued eligibility that Forms PA-30 and PA-30A be signed and submitted to the CWA by the same person(s) who signed the SSI application(s). When an -N segment parent(s) is required to sign Forms PA-30 and PA-30A and fails or refuses to do so, the parent(s) is rendered ineligible. Eligibility of the children is not affected by the refusal.

1.-2. (No change.)

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

(a)

Public Assistance Manual
Child Support Guidelines
Adopted Amendment: N.J.A.C. 10:81-11.18

Proposed: May 16, 1988 at 20 N.J.R. 1058(a).

Adopted: August 4, 1988 by Drew Altman, Commissioner, Department of Human Services.

Filed: August 8, 1988 as R.1988 d.423, **without change.**

Authority: N.J.S.A. 30:1-12; 44:7-6 and 44:10-3; Child Support Amendments of 1984 (P.L. 98-378); New Jersey Supreme Court Rule 5:6A.

Effective Date: September 6, 1988.

Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:81-11.18 Child Support Guidelines (New Jersey Supreme Court Rule 5:6A)

(a) (No change.)

(b) (No change in text.)

(b)

Assistance Standards Handbook
Exempt Resources
Adopted Amendment: N.J.A.C. 10:82-3.2
Adopted Repeal: N.J.A.C. 10:82-3.6, 3.7

Proposed: May 16, 1988 at 20 N.J.R. 1059(a).

Adopted: August 4, 1988 by Drew Altman, Commissioner, Department of Human Services.

Filed: August 8, 1988 as R.1988 d.424, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 233.20(a)(3)(ii)(F) and 45 CFR 233.20(a)(3)(i)(B)(5); Federal Omnibus Budget Reconciliation Act of 1981 (OBRA).

Effective Date: September 6, 1988.

Expiration Date: October 29, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:82-3.2 Exempt resources

(a) (No change.)

(b) The exempt resources are as follows:

1.-8. (No change.)

9. Funds received in repayment of verified costs of collection of a pending claim when the costs were incurred during a period of receipt of AFDC (see N.J.A.C. 10:81-3.41(a)).

10.-11. (No change.)

10:82-3.6 (Reserved)

10:82-3.7 (Reserved)

(c)

General Assistance Manual
Travel Costs for Employment
Adopted Amendments: N.J.A.C. 10:85-3.2 and 3.3

Proposed: April 18, 1988 at 20 N.J.R. 879(a).

Adopted: August 4, 1988 by Drew Altman, Commissioner, Department of Human Services.

Filed: August 8, 1988 as R.1988 d.425, **without change.**

Authority: N.J.S.A. 44:8-111(d).

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Effective Date: September 6, 1988.
Expiration Date: January 30, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:85-3.2 Application process
(a)-(f) (No change.)
(g) Work requirement: Eligibility for public assistance in New Jersey is directly related to an individual's willingness to work when he or she is able to do so. It is, therefore, a part of the application process to explain the work requirement to the applicant and to record in the case file the reasons for any exemption from this requirement.
1.-8. (No change.)
9. Travel costs: For an individual who is eligible for maintenance payments in the General Assistance Program, the MWD shall authorize payment, not to exceed $40.00 per month, for costs of local travel by the least expensive feasible mode of transportation when the travel is for training for employment when such training has been approved by the MWD, for the seeking of employment at times and places approved by the MWD, or for participation in project activity in accordance with N.J.A.C. 10:85-10. Local travel shall be construed to mean travel within the area of normal commutation for employment from the home of the individual. No payment shall be authorized under this section to or for any person for whom disregards of earned income (N.J.A.C. 10:85-3.3(c)4) were applied in the calculation of the most recent grant of assistance. No payment shall be made under the authority of this section for travel which is available without charge to the recipient or for travel costs available from any other source.
(h)-(i) (No change.)

10:85-3.3 Financial eligibility
(a)-(e) (No change.)
(f) Assistance allowance standards are as follows:
1. An allowance standard is the total amount of need recognized for a particular eligible unit for a specific period of time, other than payment for medical needs, homemaker service, travel costs, or such emergency grants as may be deemed necessary under N.J.A.C. 10:85-4.6.
2. (No change.)
3. Recognized for State aid: State aid will be provided in accordance with the appropriate allowance standard when payments, as related to the periods of time described in N.J.A.C. 10:85-4.2, adhere to the standards and regulations in this manual.
i. A MWD providing additional amounts of assistance in any given month (other than for homemaker service, travel costs, emergency assistance, or medical care) will receive no State aid for the amount in excess of the applicable standard.
4.-5. (No change.)
(g) (No change.)

(a)

Home Energy Assistance Handbook Maximum Program Benefit; Payment Schedule Adopted Amendments: N.J.A.C. 10:89-3.5, 3.6 and 5.3

Proposed: May 16, 1988 at 20 N.J.R. 1060(a).
Adopted: August 4, 1988 by Drew Altman, Commissioner, Department of Human Services.
Filed: August 8, 1988 as R.1988 d.422, **without change.**
Authority: N.J.S.A. 30:4B-2.
Effective Date: September 6, 1988.
Expiration Date: September 11, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:89-3.5 Maximum program benefit
(a) An eligible household may receive a maximum of $900.00 in program benefits to include automatic or special payments plus any emergency assistance payments exclusive of emergency rehousing payments and emergency furnace repair payments. A household which receives more than the maximum program benefit is subject to recoupment procedures in accordance with N.J.A.C. 10:89-5.3.
(b) (No change.)

10:89-3.6 Payment schedule
(a)-(b) (No change.)
(c) Schedule C: All other fuel and renters:

HOUSEHOLD SIZE	1 or 2		3 to 5		6 or more	
Region Designation Monthly Income	Blue	Red	Blue	Red	Blue	Red
$ 0—$ 667.00	322	280	430	372	516	448
$ 668.00—$1084.00	268	234	358	312	430	374
$1085.00—$1501.00	216	188	286	250	344	298
$1502.00—$1918.00			214	186	258	224
$1919.00—$2335.00			144	124	172	150
Over $2335.00					86	74

"Blue" means Sussex and Warren counties.
"Red" means all other counties.

10:89-5.3 Recoupment of overpayments
(a) "Overpayments" shall include the following:
1. Households which received more than $750.00 in HEA benefits during any program year prior to October 1, 1982, $900.00 during the period between October 1, 1982 and October 1, 1987, or $900.00 exclusive of emergency rehousing payments and emergency furnace repair payments during any program year thereafter shall be considered to have been overpaid.
2.-3. (No change.)
(b) (No change.)

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CORRECTIONS

(a)

THE COMMISSIONER
Security and Control: Strip Search
Adopted Amendments: N.J.A.C. 10A:3-5.6 and 5.7

Proposed: June 20, 1988 at 20 N.J.R. 1331(a).
Adopted: July 29, 1988 by William H. Fauver, Commissioner, Department of Corrections.
Filed: July 29, 1988 as R.1988 d.406, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: September 6, 1988.
Expiration Date: October 6, 1991.

Summary of Public Comments and Agency Responses:
The Department of Corrections received one comment on this proposal. The comment, however, suggested a change which was not relevant to the proposed amendments. Since the comment did not address the specific content of the proposal, no response can be provided in this rulemaking.

Full text of the adoption follows.

10A:3-5.6 Pat search
(a) A pat search or pat-frisk shall be conducted while the inmate is fully clothed. A pat search or pat-frisk includes both the touching of the inmate's body through clothing, including hair, dentures, etc., and a thorough examination into pockets, cuffs, seams, etc., and all personal property in the inmate's possession.
(b) Pat searches of inmates may be conducted at any time in the following circumstances:
1.-3. (No change.)
(c) In addition to the foregoing routine searches, a pat search may be conducted at any time when there is a reasonably clear indication that the inmate is carrying contraband. This search may be conducted only with prior approval of a supervisory level officer or staff member. Factors which may form the basis for such search may include:
1.-2. (No change.)
(d) Pat searches may be conducted by either male or female officers regardless of the sex of the inmate.

10A:3-5.7 Strip searches
(a)-(d) (No change.)
(e) All pat searches, strip searches and body cavity searches shall be conducted in a professional and dignified manner, with maximum courtesy and respect for the inmate's person. The number of officers present shall be only that number reasonably necessary to provide security. No member of the opposite sex shall be present during strip searches and body cavity searches except medical staff persons as set forth in (d) above, and as set forth in (g) below.
(f) (No change.)
(g) Strip searches of inmates may be conducted by officers of the opposite sex under emergent conditions as ordered by the Superintendent. Under no circumstances shall invasive body cavity searches be conducted by anyone other than a medical doctor or registered nurse (R.N.).

(b)

Social Services
Religion
Adopted Amendments: N.J.A.C. 10A:17-5.3 and 5.8

Proposed: June 20, 1988 at 20 N.J.R. 1332(a).
Adopted: August 10, 1988 by William H. Fauver, Commissioner, Department of Corrections.
Filed: August 11, 1988 as R.1988 d.433, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: September 6, 1988.
Expiration Date: December 15, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10A:17-5.3 Inmate attendance of community religious activities
(a) Inmates within the Division of Adult Institutions, including satellite units, and adult inmate paraprofessionals assigned to juvenile correctional facilities shall not be permitted to attend worship services and/or religious activities in the community.
(b) At the discretion of the Superintendent, inmates residing in community residential centers may be permitted to attend religious services in the community.

10A:17-5.8 Control of religious ritualistic elements
(a) Religious ritualistic elements, including but not limited to sacramental wine, fragrance oil in institution approved containers and matzo, which are necessary as part of the religious service, may be brought into the correctional facility only by the Chaplain or a volunteer religious group leader from the community.
(b) The custody shift supervisor shall be responsible for the secure storage of religious ritualistic elements.
(c) When religious ritualistic elements are to be used, these elements shall be issued by the custody shift supervisor only to the Chaplain or a volunteer religious group leader from the community.
(d) The Chaplain or a volunteer religious group leader from the community shall be responsible for the use and return of any excess religious ritualistic elements to the custody staff supervisor for secure storage following the use of the elements at religious services.

(c)

Mail, Visits and Telephone
Bedside and Funeral Visits
Adopted Amendment: N.J.A.C. 10A:18-7

Proposed: June 20, 1988, at 20 N.J.R. 1332(b).
Adopted: August 10, 1988 by William H. Fauver, Commissioner, Department of Corrections.
Filed: August 11, 1988 as R.1988 d.432, **with technical changes** not requiring additional public notice and comments. (see N.J.A.C. 1:30-4.5).

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: September 6, 1988.
Expiration Date: July 6, 1992.

Summary of Public Comments and Agency Responses:
The Department of Corrections received one comment which is addressed below.
COMMENT: The commenter suggested that N.J.A.C. 10A:18-7.2(b) be added to N.J.A.C. 10A:18-7.3(a) in order to provide the complete definition of a relative whose bedside or funeral an inmate may be permitted to attend.
RESPONSE: The Department of Corrections agrees and N.J.A.C. 10A:18-7.3(a) will be modified to include N.J.A.C. 10A:18-7.2(b).

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

SUBCHAPTER 7. BEDSIDE AND FUNERAL VISITS

10A:18-7.1 (No change)

10A:18-7.2 Authority
(a) Pursuant to N.J.S.A. 30:4-8.1, the correctional facility Superintendent may, at his or her discretion, authorize and permit the attendance of an inmate at the bedside and/or funeral of a dying or deceased relative, as defined in N.J.A.C. 10A:18-1.3..
(b) The Superintendent may, at his or her discretion, authorize and permit the attendance of an inmate at the beside and/or funeral of a dying or deceased relative other than those listed in N.J.A.C. 10A:18-1.3 when it can be verified that the relative acted, for a period of time, as a parent or guardian of the inmate, such as a grandparent.

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10A:18-7.3 Verification

(a) The burden is on the inmate to prove that the ill or deceased person is his or her relative as defined in N.J.A.C. 10A:18-1.3 ***and this subchapter***.

(b) The fact of illness or death shall be verified by the Superintendent or his or her designee.

10A:18-7.4 Eligibility

(a) The correctional facility Superintendent shall determine whether an inmate is eligible to go on a bedside or funeral visit.

(b) If the Superintendent is in doubt as to the propriety of permitting a particular inmate to leave the correctional facility under the circumstances enumerated in this subchapter, the Superintendent shall consult with the Assistant Commissioner of his or her Division.

10A:18-7.5 Ineligibility

(a) The inmate shall not be permitted to go on a bedside or funeral visit that is outside the State of New Jersey.

(b) The inmate shall not be permitted to go on a bedside or funeral visit that is in a private residence.

(c) The correctional facility Superintendent is not required to permit bedside or funeral visits if:

1. The visit will interfere with the security or orderly operation of the correctional facility;
2. The inmate is an incorrigible criminal;
3. The inmate is a known escape risk;
4. The inmate has unusual disciplinary problems;
5. The inmate is recognized as untrustworthy;
6. The inmate is a highly publicized person whose reappearance in the community under any conditions other than strict compliance with the laws governing parole and release would cause unfavorable comment in the community; or
7. The location of the funeral or bedside visit could place either the escorting correction officer(s) or the inmate in jeopardy.

10A:18-7.6 Security

During the bedside and/or funeral visit, the inmate shall at all times be in the custody of one or more correction officers or employees of the correctional facility wherein the inmate is confined.

10A:18-7.7 Court ordered funeral visits

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

10A:18-7.8 Payment of visit expenses

(a) (No change.)

(b) No inmate shall be denied approval for a bedside or funeral visit solely because of the inability of the inmate and his or her family to pay travel and other expenses. In the event that an inmate is indigent and it can be verified that the inmate's family is unable to reimburse the correctional facility for the expenses of a deathbed or funeral visit, the correctional facility shall assume the expenses of the visit.

(c) The Business Office of the correctional facility shall predetermine the expenses claimed for reimbursement upon the approval by the Superintendent.

(d) A detailed written statement of expenses shall be prepared using the following criteria to determine the amount of reimbursement due:

1.-5. (No change in text.)

10A:18-7.9 Notification of Central Office

All bedside and funeral visits shall be noted in the Superintendent's monthly report.

INSURANCE

DIVISION OF THE REAL ESTATE COMMISSION

(a)

Inspection of Records
Adopted Amendment: N.J.A.C. 11:5-1.13

Proposed: April 18, 1988 at 20 N.J.R. 883(a).
Adopted: June 14, 1988 by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.
Filed: July 29, 1988 as R.1988 d.410, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:15-6.

Effective Date: September 6, 1988.
Expiration Date: November 7, 1988.

The New Jersey Real Estate Commission has adopted an amendment to N.J.A.C. 11:5-1.13. The unamended rule did not contain language which clearly expressed the right of real estate brokers to control their records. The adopted amendment will assure that brokers licensed as employing brokers or as the brokers of record of corporate or partnership brokers can maintain their office files on pending and closed transactions by prohibiting the removal of such files by salesperson or broker-salespersons whose employment relationship with such a broker has terminated.

Since the amendment was initially proposed and published, the Commission has deemed it appropriate to delete the proposed last sentence, which referred to the discretionary authority of terminating brokers to permit a departing salesperson or broker-salesperson to make copies of the contents of files. The deletion has been made to avoid any misinterpretation as to the intent of the rule. Terminating brokers may permit such copies to be made in the absence of such a reference in the rule. There were no comments which expressed opposition to the rule or recommended any substantive changes.

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

11:5-1.13 Inspection of records

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

(c) All files on pending and closed transactions shall be maintained or stored at the offices of brokers licensed as employing brokers or corporate or partnership brokers. Upon terminating their employment with such a broker, and/or transferring to the employ of another such broker, no salesperson or broker-salesperson shall remove or cause to be removed any of the contents of such files from the offices of the broker. *[Upon obtaining the written consent of the individual broker, or of the broker of record of the corporate or partnership broker with whom they were employed, the departing salesperson or broker-salesperson may obtain copies of the contents of such files.]*

NEW JERSEY REAL ESTATE COMMISSION

(b)

Licensee Obligations
Discrimination Prohibition
Adopted Amendment: N.J.A.C. 11:5-1.23

Proposed: April 4, 1988 at 20 N.J.R. 725(a).
Adopted: June 14, 1988 by New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.
Filed: July 29, 1988 as R.1988 d.412, **without change.**

Authority: N.J.S.A. 45:15-6 and 45:15-10.1.

Effective Date: September 6, 1988.
Expiration Date: November 7, 1988.

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Summary of Public Comments and Agency Responses:

The Real Estate Commission (Commission) received written comments from three parties in regard to the proposed amendment to N.J.A.C. 11:5-1.23(g). None of the comments received expressed opposition to the amendment. However, several of the comments stated specific concerns involving the amendment. Those concerns and Commission's responses are provided below.

COMMENT: One comment raised three specific issues. The first involves a situation where a person who is mentally disturbed requests the services of a real estate broker. Secondly, the commenter raised the concern that the prohibition of discrimination against individuals utilizing a guide dog might contradict a landlord's prohibition upon pets. Lastly, a concern was raised that landlords may wish to discriminate against individuals with epilepsy because of fear of potential injury and possible lawsuits as a result of the injury.

RESPONSE: In regard to the first concern, the Commission noted that the capacity to contract is a consideration which is not implicated by the prohibition upon discrimination against mentally handicapped persons. A person may be mentally "handicapped" as defined by the Law Against Discrimination, N.J.S.A. 10:5-4.1 and 10:5-12(h) and the Division of Civil Rights' applicable rule, N.J.A.C. 13:13-3.1, yet may be legally competent to enter into a contract. Furthermore, the proposed amendment addresses the rendering of services, which may not require the actual formation of a contract by the handicapped person, that is, where a guardian or other authorized representative can contract on behalf of a mentally handicapped person.

Secondly, with respect to discrimination against individuals utilizing a guide dog, N.J.S.A. 10:5-29.2 specifically states that "any provision in any lease or rental agreement prohibiting maintenance of a pet or pets on or in the premises shall not be applicable to a service or guide dog owned by a handicapped, blind or deaf tenant." Furthermore, pursuant to N.J.A.C. 13:13-3.4(c), it is unlawful to refuse to show any real property because of a service dog.

In response to the third inquiry concerning discrimination against persons with epilepsy based on a fear of injury and potential liability, the Legislature has specifically prohibited discrimination in real estate against persons with epilepsy, N.J.S.A. 10:5-4.1 and 10:5-12(h), and has also provided that landlords need not modify their premises in any way to provide a higher degree of care for such a handicapped person. Therefore, the proposed amendment does no more than confirm a broker's obligation not to discriminate against the handicapped individuals. It imposes no additional burdens upon licensees than those currently existing under the Law Against Discrimination. Further, the Supreme Court has instructed, in reference to handicap discrimination, that "undifferentiated fears and generalities will not suffice." (see *Andersen v. Exxon Co.*, 89 N.J. 483, 497 (1982)) Thus, a landlord's generalized fears of renting real estate to a person with epilepsy is not an acceptable basis for discriminating against those individuals.

COMMENT: Another comment inquired as to the fact that the proposed amendment fails to include "age" as a protected class.

RESPONSE: The language contained in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-4.6, from which the text of this amendment was taken verbatim, also makes no reference to "age". Therefore, the Commission has no statutory authority to promulgate a rule concerning this particular classification since the Legislature has not deemed age to be a prohibited basis upon which to discriminate in housing.

COMMENT: The final comment concerned whether the lack of ramp access to a real estate office for a person in a wheelchair would be considered a violation under the amendment.

RESPONSE: The proposed amendment and its companion statute, N.J.S.A. 10:5-4.1, only apply to the rendering of services to handicapped persons. The New Jersey Division of Civil Rights confirmed to the Commission that the physical design of business buildings falls within the purview of local and State building codes. Therefore, since the manner in which a licensee's building is constructed is not considered to be governed by the Law Against Discrimination, it would also not be within the ambit of this amendment.

Full text of the adoption follows.

11:5-1.23 Obligations of licensees to the public and to each other

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

(g) No licensee shall deny real estate brokerage services to any person for reasons of race, religion, sex, marital status, national origin or because a person is handicapped; and no licensee shall participate or otherwise be a party to any plan, scheme or agreement to discriminate against any person on the basis of race, religion, sex, marital status, national origin or because a person is handicapped. For the purposes of this subsection, the term "handicapped" means suffering from physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or from any mental, physiological or developmental disability resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques.

(a)

Educational Requirements for Salespersons and Brokers in Making Application for Licensure Examination

Adopted Amendment: N.J.A.C. 11:5-1.27

Proposed: April 4, 1988 at 20 N.J.R. 725(b).

Adopted: June 21, 1988 by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.

Filed: July 29, 1988 as R.1988 d.411, **with substantive and technical changes** not requiring additional public notice and comments. (see N.J.A.C. 1:30-4.3)

Authority: N.J.S.A. 45:15-6.

Effective Date: September 6, 1988.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

The New Jersey Real Estate Commission has adopted amendments N.J.A.C. 11:5-1.27(d) and (e). The change in subsection (d) provides clarification as to the time an approved real estate school must allot in each class session hour for actual classroom instruction and administrative functions, with the balance to be used for breaks. The change in subsection (e) amends the requirements for the issuance of education waivers to certain applicants for licensure as salespersons or brokers.

The Commission has revised the amendment as initially published to incorporate some of the suggestions provided by the comments and to clarify the language of the amendment. Specifically, the Commission has broadened the applicability of N.J.A.C. 11:5-1.27(e) to provide education waivers to applicants for licensure as a salesperson who have satisfactorily completed course work in real estate or related subjects as part of a post-graduate program at an accredited college or university. Such persons were deemed qualified for such a waiver under the text of the rule as it read prior to this amendment. However, as initially published, the proposed amendment did not provide for the issuance of a waiver to such persons. Since it was not the intent of the Commission to eliminate this class of persons from qualifying for a salesperson education waiver when the amendment was initally proposed, the Commission has clarified its determination that such persons are qualified for the receipt of such a waiver by adding an additional subsection to the amendment as adopted. As a result of this addition, the paragraphs in subsection (e) have been renumbered with paragraph (e)5 now containing the added text. Proposed paragraphs (e)5 and 6 have been renumbered as (e)6 and 7 in the adopted amendment.

The Commission received five written comments from interested persons who expressed their support for the amendment. Some of the comments included additional recommendations to further clarify the rule. A summary of the comments and the Commission's responses is provided below:

COMMENT: One commenter expressed a concern regarding the waiver requirements contained in proposed paragraphs (e)4 and 5, noting that there seemed to be some confusion between the requirements contained in them. Firstly, the commenter inquired as to whether paragraph (e)4 included real estate courses taken as part of a program of studies that resulted in the receipt of a degree from an accredited college or university located out-of-State. Secondly, questions as to whether applicants under paragraph (e)4 would be required to make an application

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for a waiver within one year of having satisfactorily completed 75 hours of real estate course work at an out-of-State college or university were raised. In addition, it was recommended that the Commission delete any time restrictions as to when an individual must apply for a salesperson education waiver based upon having completed a course of studies at an accredited college or university that included at least 75 hours of instruction in real estate and having earned an undergraduate degree from such college or university.

RESPONSE: Proposed paragraph (e)4 pertains to applicants who have satisfactorily completed at least 75 hours of education in real estate as part of a program of studies at an accredited institution of higher education, the successful completion of which resulted in the receipt by the applicant of an associates or bachelors degree. This includes applicants who have received degrees from colleges or universities in New Jersey or in another state. Proposed section (e)5 specifically refers to applicants who have satisfactorily completed a pre-licensure course of real estate education at a proprietary school, college or university in another state which was sanctioned by the real estate licensing authority of the state in which it was given. Under this paragraph, the real estate course taken by the applicant does not have to be part of a program of studies which has resulted in the issuance of a degree.

In regard to the time limitations on when an individual must apply for an educational waiver, the Commission deems such restrictions necessary to prevent waiving the education requirements for persons whose real estate education has become stale. However, recognizing that most elective courses in a four year degree program are taken in the last two years, the Commission determined to reduce the time period within which such persons must apply for the issuance of a waiver from five to three years after having taken their real estate related subjects, and to impose the same limitation upon persons who have taken post-graduate real estate courses. The amendment as adopted also allows a maximum of three years for non-degree holding waiver applicants to apply for the waiver if they have worked at least one full year as a salesperson after completing a pre-licensure course sanctioned in another state.

COMMENT: The second commenter inquired as to whether proposed subsection (e) requires all applicants to take and pass the real estate licensure examination. Further, she expressed a concern about whether paragraph (e)6 compels an applicant who had been previously licensed as a broker, but inactive for more than two but less than five years, to take a refresher course before taking the examination.

RESPONSE: The amended rule has no effect upon the statutory requirement that all applicants for licensure must take and pass the licensure examination. Paragraph (e)6 provides that former broker licensees who have been inactive from two to five years are not required to take a refresher course before taking the salesperson examination. Given their having previously qualified for and been issued a brokers license, the Commission determined that such persons would qualify for licensure as a salesperson if they could pass that examination without having again attended a salesperson pre-licensure course.

COMMENT: A third commenter made an inquiry in regard to the reason that proposed paragraphs (e)4 and 5 contain different time limitations on applying for education waivers. Paragraph (e)4 allowed applicants who have completed a 75 hour course in a college or university as part of a degree program to qualify for a waiver by applying within five years of having taken a course, while paragraph (e)5 required that those attending a sanctioned proprietary school or non-degree college real estate course can only qualify by applying within one year of completing such a course.

RESPONSE: As noted above, the Commission has revised the amendment to provide a three year time period for degree-holding applicants and for applicants who have completed post-graduate real estate courses to make an application for an educational waiver. The text of paragraph (e)6 as adopted imposes a one-year time limitation on non-degree holding applicants. However, as previously noted, it also provides that if such persons were actively engaged in the real estate business for at least one year after completing their real estate education at a sanctioned proprietary school or college or university program in another state, they too will be given up to three years to apply for the issuance of a New Jersey salesperson education waiver.

COMMENT: Another commenter suggested that the Commission further amend subsection (e) to eliminate the requirement that an attorney-at-law of the State of New Jersey must fulfill an apprenticeship of at least two years of full-time experience as a salesperson in order to obtain a broker's license. The suggested change would allow an attorney who holds a valid salesperson's license with sufficient time and experience as a real estate attorney, but without two years full-time employment as a salesperson, to qualify to challenge the broker's license examination.

RESPONSE: N.J.S.A. 45:15-9 prescribes the apprenticeship requirement for licensure as a broker. The only exceptions provided in the statute to this requirement are for licensed brokers from other states and disabled veterans. The Commission has no authority to waive the apprenticeship requirement by rule for any other class of persons.

COMMENT: The final commenter indicated her support for the proposed amendment without further comment.

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

11:5-1.27 Education requirements for salespersons and brokers making application for licensure examination

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

(d) The time allotted by any school for a final examination covering real estate subjects shall be applicable toward the minimum hours of course study. No more than five minutes of each course hour may be utilized for breaks in the actual classroom instruction being conducted at any given session of a pre-licensure course. During the time in which actual classroom instruction is conducted, in addition to covering the substantive material mandated by (f) and (g) below, instructors are to provide thorough instruction on the State license examination and license issuance procedures for salesperson and broker license candidates, as applicable, and to perform all reasonably required administrative functions such as taking attendance and making announcements of general interest.

(e) The educational provisions of this rule shall not apply to the following persons:

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

2. Applicants for licensure as a broker or salesperson who have held a real estate broker's license issued by another state and who were actively engaged in the real estate business for two years or more immediately preceding the date of application, provided, that the Commission shall determine that the applicant's experience is substantially equivalent to the current educational requirements for licensure (N.J.S.A. 45:15-9; N.J.S.A. 45:15-10.1B and N.J.A.C. 11:5-1.3);

3. Applicants for licensure as a broker or salesperson who are attorneys at law admitted to the practice in the State of New Jersey at the time of making application;

4. Applicants for licensure as a salesperson who have satisfactorily completed a course of education in real estate subjects in any accredited institution of higher education provided, however***,*** that the total number of classroom hours devoted to real estate and related subjects is 75 or more, that the real estate related courses were completed within *[five]* ***three*** years of making application, and that the courses were taken as part of a program of studies, the successful completion of which resulted in the receipt by the applicant of an associates or bachelors degree.

5. Applicants for licensure as a salesperson who have satisfactorily completed 75 or more classroom hours of course work in real estate or related subjects at an accredited college or university, at least 45 hours of which consisted of instruction on real estate conducted as part of a post-graduate program offered by such an accredited college or university, and provided that such post-graduate studies were completed within three years of making application.

*[5.]****6.*** Applicants for licensure as a salesperson who have satisfactorily completed a pre-licensure course of real estate education at a proprietary school, college or university in another state, provided however that the said course was, at the time of its being completed by the applicant, sanctioned by the real estate licensing authority of the state in which it was given, that the total number of classroom hours included in the course was 75 or more, and that the course was completed within one year of making application. Where such a course was not completed within one year of making application, the applicant shall be eligible for a waiver of the salesperson education requirements if he or she holds or held a real estate license issued by the state in which the course was taken and was actively engaged

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in the real estate business for at least one year within the three years immediately preceding application.

*[6.]**7.* Applicants for licensure as a salesperson who previously held a license as a New Jersey real estate broker and whose last such license expired more than two but less than five years prior to making application.

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

(a)

Approved Schools; Requirements

Adopted Amendment: N.J.A.C. 11:5-1.28

Proposed: June 6, 1988 at 20 N.J.R. 1161(a).

Adopted: July 26, 1988 by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.

Filed: July 29, 1988 as R.1988 d.409, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:15-6 and 45:15-10.1.

Effective Date: September 6, 1988.

Operative Date: December 1, 1988.

Expiration Date: November 7, 1988.

After considering the comments received on this proposed amendment, the New Jersey Real Estate Commission (Commission) determined to adopt the amendment with only a minor, clarifying change in text. The Commission further determined to make December 1, 1988 the operative date of the amendment. This was done so as to have the time period within which approved instructors must fulfill the seminar attendance requirement established in N.J.A.C.11:5-1.28(k)3 commence at that time. December 1, 1988 was chosen because it is one year prior to the operative date of the Commission's recently adopted amendment to N.J.A.C. 11:5-1.27(g), published elsewhere in this issue of the New Jersey Register. Pursuant to N.J.A.C. 11:5-1.27(g) as amended, all broker pre-licensure courses commenced after December 1, 1989 must be taught in accordance with the revised syllabus for such courses established by that rule.

The only change in the proposed text was made in N.J.A.C. 11:5-1.28(k), where the exception to the requirement for the submission of criminal History Record Information Forms was expanded to include all licensee applicants, rather than just brokers. This was done in recognition of the fact that like brokers, salespersons must also submit such forms when initially licensed and inquiries regarding the filing of criminal charges against them and their having been convicted of any offenses are made in the course of the annual renewal of their licenses.

The Commission's **Summary** of Public Comments and Agency Responses follows.

The Commission received a total of four written comments on this proposed amendment. One comment supported the adoption of the amendment with no change in text. One comment opposed the adoption of that portion of the amendment which would require persons designated as approved instructors on the effective date of the amendment to attend an instructional seminar within 12 months of that date, to be conducted under the auspices of the Commission, in order to maintain their status as approved instructors. The other two comments contained suggestions on how to improve certain portions of the amendment. The points raised in the three comments which made substantive suggestions and the Commission's responses to those comments are reflected below:

COMMENT: One commenter opposed the section of the amendment which requires the attendance at an instructional seminar of all currently approved instructors within 12 months of the effective date of the adoption of the amendment. That commenter noted that he had attended other "seminars" in the past conducted by various real estate organizations and had found them to be of little value. He indicated that only if some significant body of knowledge was to be conveyed to the persons attending the seminar, and only if insuring that approved instructors were provided with such information had a substantial value to the Real Estate Commission and to the instructors themselves, would such a requirement be acceptable.

RESPONSE: The portion of the proposed amendment which mandates attendance at an instructional seminar for all approved instructors beginning on the effective date of its adoption is a companion provision to the comprehensive revision to the brokers' pre-licensure education course syllabus which the Commission recently enacted by adopting an amendment to its rule N.J.A.C. 11:5-1.27(g) referred to in the first paragraph above. It is the intent of the Commission that information regarding the additional topics added to the brokers' course syllabus as a result of that rule amendment will be provided to approved instructors at the seminars which they will be required to attend by the terms of the instant amendment. Thus, there is an entire body of new material which it is essential for approved instructors to be familiar with in order to effectively teach the new syllabus to be used in all broker pre-licensure courses commenced subsequent to December 1, 1989. Therefore, as was alluded to in this comment, there is a substantial goal which attendance at these seminars is designed to accomplish, and the achievement of that goal is something which is of great value to the Real Estate Commission and to approved instructors.

COMMENT: The second comment on the proposed amendment raised several points. Initially, the writer noted an apparent conflict between the text of the proposed amendment and a statement in the Summary in the notice of proposed amendment to N.J.A.C. 11:5-1.27(g) published at 20 N.J.R. 1161(a). This person also raised a question as to whether the reference in the text of the proposal to holding one instructor in a course taught on a team-teaching basis primarily responsible for the conduct of that course could be read as relieving the director of the school where the course was taught of any accountability for the content of the course or the manner in which it was conducted. This commenter also raised a question as to the advisability of imposing a three year time limitation upon applications for approved instructor status from persons who sought to qualify as such on the basis of having obtained a bachelor of arts degree from an accredited college or university with a major in real estate. Finally, this commenter opposed the requirement found in proposed N.J.A.C. 11:5-1.28(l) that instructors must teach a minimum of 60 hours of instruction in pre-licensure courses during any two year period in order to maintain their status as approved instructors. This individual suggested that attendance at a seminar during every two year period would be sufficient assurance that an instructor had kept abreast of developments in the real estate field and of changes in the licensing law and/or the Commission's administrative rules, even if they had not taught 60 or more hours of pre-licensure course material during such a two year period.

RESPONSE: The Commission noted that the conflict between the reference in the Summary statement and the text of the proposed amendment was not so substantial as to require any further action. The text of the proposed amendment was clear and unambiguous in its language at N.J.A.C. 11:5-1.28(k)1i requiring any person seeking the designation of approved instructor based on their status as a member of the faculty or adjunct faculty of an accredited college or university to have previously taught at least one course, of at least 30 hours duration, in real estate or related subjects offered by such an accredited college or university. The failure of the statement in the Summary to include a reference to the requirement that the previously taught course had to have been in real estate or related subjects does not serve to detract from the clarity of the text of the proposed rule itself.

With regard to this individual's concern on a possible lack of accountability of a director of a school where a broker's pre-licensure course is taught on a team-teaching basis, the Commission noted that in all courses taught by individual instructors that person is deemed to be accountable for the content and conduct of the course. However, this does not preclude the Commission from imposing upon the director of the approved school where such courses are offered of oversight responsibility for the conducting of such courses. Similarly, the director of a school where a course was taught on a team-teaching basis would not be relieved oversight responsibility merely because one of the instructors on the team was designated as the instructor primarily responsible for the particular course.

In response to this person's objection to the three year time limitation placed upon applicants for approved instructor status who rely upon their having earned a bachelor's degree with a major in real estate, the Commission's concern was that persons not have the status of approved instructor conferred upon them at a time after which their real estate knowledge has become stale. If, as the commenter proposed, an individual had obtained a bachelor's degree in real estate and then worked in the industry as a licensee for more than three years before applying for approved instructor status, the Commission could consider such a person's qualifications under proposed N.J.A.C. 11:5-1.28(k)1vi and possibly determine that, based upon the totality of his or her qualification, that such person had demonstrated their ability to effectively teach real estate

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subjects. Thus, such an otherwise qualified person would not be rejected simply because they had delayed their application for approved instructor status for more than three years after receiving their degree in real estate.

Finally, in response to this person's comment regarding the 60 hour minimum teaching requirement in each two year period, the Commission notes that there is no language in the proposed amendment which requires approved instructors to attend instructional seminars on a periodic basis. The amended rule only imposes a one time mandatory seminar attendance requirement. The amendment does provide that the Commission may, in its discretion, direct that all approved instructors attend future seminars if, in the Commission's judgment, developments in the real estate field and/or changes in the Commission's rules or the Licensing Law make it advisable that they do so. Since there is no certainty that approved instructors will attend seminars within any given time period after they have attended the initial seminar to acquaint them with the new material in the revised syllabus for the brokers' pre-licensure course, the Commission concluded that a 60 hour minimum teaching requirement was a reasonable means to ensure that approved instructors remain abreast of developments in the field.

COMMENT: The final commenter suggested that the Commission provide for team-teaching in salesperson as well as broker pre-licensure courses; that the Commission impose a requirement that not less than 60 percent of any course taught on a team-teaching basis be taught by one individual; that it reduce its minimum teaching requirement to maintain the status of approved instructor from 60 to 45 class hours of teaching over a two year period; and that the Commission adopt another category of approved instructor, designated as a "certified specialist," so as to qualify persons with expertise in a limited field to conduct pre-licensure course sessions as guest lecturers without an approved instructor also being present at such sessions.

RESPONSE: The Commission determined to reject the suggestion that salesperson pre-licensure courses be allowed to be taught on a team-teaching basis. This decision was based upon the fact that the salespersons pre-licensure course is a general, introductory level course in real estate. It does not focus on a variety of specialized areas, as does the brokers course. Further, the Commission felt that the continuity in instruction afforded to persons taking a salespersons course taught by only one individual contributes to the effective teaching of the material covered in that course. Such continuity would be lost if such courses were taught on a team-teaching basis.

On the suggestion that the minimum of teaching hours during any two year period which is required to maintain the status of approved instructor be reduced from 60 to 45, the Commission determined that 60 was a reasonable number of hours, constituting less than one complete salespersons pre-licensure course. It was felt that any reduction below this number would not adequately assure that persons who did not teach more than the minimum were in fact keeping abreast of developments in the real estate field and changes in the regulatory scheme.

On the suggestion that the Commission adopt an entire new classification of approved instructors so as to permit guest lecturers who qualified as "certified specialists" to conduct course sessions in the absence of an approved instructor, the Commission noted that to do so would require the implementation of an entire new set of standards and qualifications for such a designation. Rather than delay action on the instant amendment, the Commission determined that this suggestion was worthy of further consideration at some point in the future.

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

11:5-1.28 Approved schools; requirements

(a)-(i) (No change.)

(j) The maximum teaching load per teacher or instructor shall not exceed the ratio of one teacher or instructor to 60 students per class. Each course of instruction herein provided shall be under the supervision of an instructor qualified as provided for herein. At least one approved instructor shall be present in the classroom at all sessions. Additional instructors or guest speakers may be utilized for instruction with respect to given subjects provided that not more than 25 percent of the prescribed respective instruction is done by persons other than approved instructors. At least 75 percent of the prescribed course of instruction in all salesperson pre-licensure courses conducted by a Commission-approved real estate school shall be taught by one approved instructor. In the broker pre-licensure course, team-teaching by up to three approved instructors is permitted, provided that the director of any school offering such a broker's course shall designate to the Commission prior to the commencement of the course one approved instructor on the team who shall have overall responsibility for the quality of instruction in that course.

(k) Each applicant for approval as a real estate instructor shall have a background of good moral character, including the absence of any conviction for the certain crimes or other like offenses referred to in N.J.S.A. 45:15-12.1, subject to the applicant's ability to affirmatively demonstrate his or her rehabilitation from such conviction. In order to confirm the absence of any such conviction, the Commission shall require all non-attorney and *[non-broker]* ***non-licensee*** applicants to submit with his or her application for instructor approval a New Jersey State Police Request for Criminal History Record Information Form and a certified check or money order in the amount established by the New Jersey State Police as the processing fee for such forms.

1. To qualify for approval by the Commission as a real estate instructor, an applicant must fulfill one or more of the following criteria:

i. Be a member of the faculty or adjunct faculty of an accredited college or university, and have previously taught at least one course of at least 30 hours in duration in real estate or related subjects offered by such an accredited college or university;

ii. Have actively practiced as a licensed attorney at law of the State of New Jersey for a minimum of three years immediately preceding his or her application for approval as a real estate instructor, with substantial experience in real estate;

iii. Hold a bachelor's degree issued within three years of application as evidence of having majored in real estate from an accredited college or university;

iv. Hold a bachelor's degree from an accredited college or university and possess a minimum of 225 classroom hours or 15 credit hours from an accredited college or university in real estate or related subjects, and hold a teaching certificate issued by this or any other state;

v. Have been licensed as a real estate broker in the State of New Jersey for at least two years immediately preceding application and possess a minimum of five years total experience as a New Jersey real estate licensee immediately preceding application; or

vi. Otherwise demonstrate the knowledge and ability, based upon any combination of the factors noted in (k)1i through v above, to effectively teach real estate subjects.

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

2. Prior to any individual being certified by the New Jersey Real Estate Commission as an approved real estate instructor, the applicant must attend an instructional seminar conducted under the auspices of the Commission. Such seminars shall be offered as frequently as the Commission shall deem necessary, but in no event less than twice each year.

3. All individuals certified as approved real estate instructors on *[(the effective date of this rule amendment)]* ***December 1, 1988*** must, within 12 months thereof attend an instructional seminar conducted under the auspices of the Commission. In the event that such persons do not attend such a seminar, their status as approved real estate instructors shall be revoked by the Commission and they shall be ineligible for reinstatement as such until they have attended such a seminar.

4. The Commission may require all approved real estate instructors to periodically attend informational seminars which the Commission in its discretion determines are necessary in order to familiarize such instructors with recent developments in the real estate field including but not limited to changes in licensing or examination procedures and statutory or rule amendments. The failure of an approved instructor to attend such informational seminars may subject that person to sanctions, including, but not limited to***,*** the suspension or revocation of their certification as an approved real estate instructor.

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(l) In the event that an approved instructor fails to teach a minimum of 60 hours of instruction in pre-licensure courses offered by Commission-approved real estate schools during any two year period, his or her approval shall automatically terminate and he or she shall be required to re-apply for approval.

Recodify existing (l) through (v) as (m) through (w) (No change in text.)

LABOR

(a)

OFFICE OF THE CONTROLLER

Contributory Option for Governmental Employers

Adopted New Rules: N.J.A.C. 12:16-7.1, 7.2, 7.5 and 7.8

Proposed: July 5, 1988 at 20 N.J.R. 1521(a).

Adopted: August 15, 1988 by Charles Serraino, Commissioner, Department of Labor.

Filed: August 15, 1988 as R.1988 d.437, **with technical changes** not requiring additional public notice and comment. (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 43:21-7.3, 43:21-11 and 43:21-16.

Effective Date: September 6, 1988.

Expiration Date: April 1, 1990.

Summary of Public Comments and Agency Responses:

No public comments received.

As a result of internal suggestions, the Department has decided to amend one definition and two sections of the rule to clarify the intent of the Department.

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

SUBCHAPTER 7. CONTRIBUTORY OPTION FOR GOVERNMENTAL EMPLOYERS

12:16-7.1 Purpose

The purpose of this subchapter is to outline the conditions under which an employer can choose the contributory option and under which a governmental entity or instrumentality using the contributory method of financing unemployment benefits may use the surplus amount remaining in an unemployment trust fund.

12:16-7.2 Definitions

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

"Contributory" means the method of payment by which a governmental entity or instrumentality pays unemployment contributions into an unemployment ***trust*** fund.

"Governmental entity or instrumentality" means the State of New Jersey, any instrumentality of New Jersey or any political subdivision thereof, or any instrumentality of the State and one or more other states or political subdivisions.

"Reimbursable" means the method of payment by which a governmental entity or instrumentality finances benefits by payments in lieu of contributions.

12:16-7.3 Application

(No change in text.)

12:16-7.4 Finance

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

(c) Any *[covered]* governmental entity or instrumentality electing to pay contributions shall appropriate each year, out of its general funds, monies to pay the projected costs of contributions at the rate determined under (b) above. These funds are to be held in a trust fund by the governmental entity or instrumentality strictly for this purpose. Any surplus in the fund may be retained in reserve for payment of benefits costs for subsequent years either by contributions or payments in lieu of contributions.

12:16-7.5 Use of surplus funds

(a) A governmental entity or instrumentality using the contributory method may use the surplus in its unemployment trust fund pursuant to the following conditions:

1. The governmental entity or instrumentality must request, in writing, permission to use a portion of the surplus funds. Upon written approval of the Commissioner, the governmental entity or instrumentality may proceed with its withdrawal of funds;

2. Worker contributions shall not be diverted from the fund;

3. In addition to worker contributions that remain in the fund, an amount equal to the highest ***one*** of the previous three years' contribution payments must remain in the fund to cover the next year's anticipated contributions.

(b) A governmental entity or instrumentality using the reimbursable method may not use the surplus in its unemployment fund for any purpose other than payment of benefits.

1. Governmental entities or instrumentalities which change from the reimbursable method to the contributory method pursuant to N.J.S.A. 43:21-7.3(b) may divert surplus trust funds subject to the provisions of this subchapter.

i. Surplus trust funds may be diverted only after the governmental entity or instrumentality has received written approval from the Commissioner.

12:16-7.6 Termination

(No change in text.)

12:16-7.7 Liability

(No change in text.)

12:16-7.8 Penalties

(a) A governmental entity or instrumentality which diverts funds in violation of the provisions of this subchapter shall be required to immediately restore the amount diverted to the fund.

(b) A governmental entity or instrumentality which fails to comply with the provisions of this subchapter, shall be liable for a fine not to exceed $50.00 per day for each day of violation.

DIVISION OF WORKPLACE STANDARDS

(b)

Safety and Health for Public Employees: Ethylene Oxide

Adopted Amendment: N.J.A.C. 12:100-4.2

Proposed: June 20, 1988 at 20 N.J.R. 1334(a).

Adopted: August 15, 1988 by Charles Serraino, Commissioner, Department of Labor.

Filed: August 15, 1988 as R.1988 d.436, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-25 et seq., specifically 34:6A-30, and 29 CFR Part 1910.

Effective Date: September 6, 1988.

Expiration Date: November 5, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR 1910, General Industry Standards with the amendments published in the Federal Register through April 6, 1988 with certain exceptions noted in (b) and (c) below, are adopted as occupational safety and health standards and shall include:

1.-19. (No change.)

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

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(a)

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Rules of Procedure

Adopted New Rules: N.J.A.C. 12:112

Proposed: June 6, 1988 at 20 N.J.R. 1165(a).
Adopted: August 15, 1988 by Charles Serraino, Commissioner, Department of Labor.
Filed: August 15, 1988 as R.1988 d.438, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-32 and 34:6A-42(c).
Effective Date: September 6, 1988.
Expiration Date: September 6, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: One comment was received on the proposed new rules. The commenter, Local 1032 of the Communications Workers of America (CWA), expressed concern that the rules deviate significantly from the Federal Occupational Safety and Health Review Commission rules of procedure. The CWA believes any deviation from the Federal rules should be fully explained.

RESPONSE: The summary statement to the proposed new rules set forth that the rules are modeled after the Federal Review Commission rules of procedure. However, because of substantial differences between the Federal Occupational Safety and Health Act (OSHA) and New Jersey's Public Employee Occupational Safety and Health Act (PEOSHA), the Federal Review Commission rules could not be mirrored. The Federal rules were merely utilized as an organizational point of reference in the drafting of the State Review Commission rules. In addition, the Review Commission used its discretion to deviate from the Federal rules in several areas where they felt that the Federal rules did not adequately serve the New Jersey PEOSHA program.

COMMENT: The CWA believes that the State rules should contain the provisions in the Federal rules concerning "Party Status" and "Simplified Proceedings".

RESPONSE: As previously stated, the Federal OSHA statute and New Jersey's PEOSHA law are substantially different. Thus, the State rules cannot mirror the Federal rules.

Furthermore, the State rules already contain provisions for an expedited proceeding (see N.J.A.C. 12:112-7.4). The Review Commission felt this provision was adequate for their purposes.

COMMENT: The CWA believes that the addition of the provisions concerning quorum and voting change the fundamental nature of the Review Commission as a three member body and will result in bias cases and tie votes.

RESPONSE: The CWA did not explain in their comments or in a subsequent telephone conversation how the proposed quorum and voting provisions would result in bias cases. It is, therefore, difficult to respond to that assertion.

It is conceivable that the quorum provision as proposed may result in tie votes. However, under the voting provision, a member who is absent with good cause may vote by letter ballot provided he or she certifies that he or she has read the transcript or is familiar with the issues of the case. Thus, a tie can be broken by letter ballot from the third member.

It is also conceivable that there will be cases where a tie vote is unavoidable. For example, if one member of the Review Commission disqualifies himself or herself from a case because of personal interest and the remaining two members differ in their voting, then a tie vote will result. In such a situation, no official Review Commission action can occur, and the order of the Commissioner will stand. The aggrieved party's recourse would be to appeal to the Appellate Division of the Superior Court. It should be pointed out that the possibility of a tie vote in a case is not unique to the Review Commission. A tie vote can occur even in the Supreme Court of the United States.

Finally, it is possible that CWA's comments on the voting and quorum provisions were due to the absence of a specific provision concerning when official action can be taken by the Review Commission. To clarify this point, a provision has added which sets forth that official action can be taken only on the affirmative or negative vote of at least two members, and that in the event of an unbreakable tie vote, the Commissioner's order shall stand.

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

CHAPTER 112
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION RULES OF PROCEDURES

SUBCHAPTER 1. GENERAL PROVISIONS

12:112-1.1 Purpose

The purpose of this chapter is to set forth the hearing procedures of the New Jersey Public Employees Occupational Safety and Health Review Commission.

12:112-1.2 Scope

This chapter shall govern all proceedings before the Review Commission.

12:112-1.3 Validity

Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decision shall not affect the remaining portions of this chapter.

12:112-1.4 Definitions

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

"Act" means the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

"Agency" means:

1. An executive department, or an employing unit or authority of the executive branch of the State, or any department, division bureau, board, council, employer or authority of the State; except any bi-state agency; or

2. Any county, municipality, or any department, division, bureau, board, council, employer or authority of any county or municipality, or any school district or special purpose district created pursuant to law.

"Commissioner" means the Commissioner of the New Jersey Department of Labor or his or her designee.

"Day" means a calendar day.

"Employee" means any public employee, any person holding a position by appointment or employment in the service of an "employer" as that term is used in the Act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this Act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., shall be excluded from the coverage of the Act.

"Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of:

1. The State, or any department, division, bureau, board, council, agency or authority of the State except any bi-state agency; or

2. Any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.

"Non-party" means a person or entity who participates in the Review Commission proceeding as a witness or in amicus curiae capacity.

"Order to comply" means a written directive issued by the Commissioner to an employer as set forth in N.J.S.A. 34:6A-41.

"Party" means either the complainant who is the Commissioner or the respondent who is the employer in the Review Commission proceeding.

"Proceeding" means any proceeding before the Review Commission.

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"Review Commission" means the Occupational Safety and Health Review Commission created by N.J.S.A. 34:6A-42.

"Secretary" means the Executive Secretary of the Review Commission.

"Working day" means any Monday through Friday but shall not include Saturday, Sunday, any Federal holiday or any State holiday. In computing 15 working days, the day of receipt of any notice shall not be included.

"Workplace" means a place where public employees are assigned to work or customarily suffered or permitted to work.

12:112-1.5 Quorum

(a) No official business of the Review Commission shall be conducted without a quorum.

(b) A quorum shall consist of at least two of the three members of the Review Commission.

12:112-1.6 Voting

(a) Members of the Review Commission shall be present in order to vote except as provided in (b) below.

(b) A member who has been absent with good cause may vote by letter ballot provided he or she certifies that he or she has read the transcript, in the case of a hearing, or is otherwise familiar with the issue over which the vote was cast.

(c) Official action of the Review Commission shall be taken only when at least two members vote in a similar fashion. In the event that at least two members do not vote in a similar fashion, the order of the Commissioner shall stand.

12:112-1.7 Computation of time

(a) In computing any period of time prescribed or allowed in this chapter, the day from which the designated period begins to run shall not be included.

(b) The last day of the period so computed shall be included unless it is a Saturday, Sunday, Federal holiday, or State holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal holiday, or State holiday.

(c) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, Federal holidays and State holidays shall be excluded in the computation.

12:112-1.8 Extension of time

Requests for extensions of time for the filing of any document shall be in writing, addressed to the Secretary of the Review Commission and received in advance of the date on which the document is due to be filed. Extensions of time shall be honored for good cause.

12:112-1.9 Address of record

(a) The initial document filed by any party or non-party shall contain his or her name, address, and telephone number. Any change in such information shall be communicated promptly in writing to the Review Commission, and to all other parties and non-parties.

(b) A party or non-party who fails to furnish such information shall be deemed to have waived his or her right to notice and service under this chapter.

12:112-1.10 Service and notice

(a) At the time of filing documents, a copy shall be served by the filing party on every other party or non-party.

(b) Service upon a party or non-party who has appeared through a representative shall be made only upon such representative.

(c) Unless otherwise ordered, service may be accomplished by postage pre-paid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(d) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the document.

(e) The employer shall, immediately upon receipt of notice of the docketing of the notice of contest, post, where the written order to comply is required to be posted, a copy of the notice of contest. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

This employer has been cited by the Commissioner of Labor for violation of the Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq. The written order to comply has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(f) A copy of the notice of the hearing to be held before the Review Commission shall be posted by the employer at or near the place where the written order to comply is required to be posted.

(g) Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

12:112-1.11 Filing

(a) Prior to the assignment of a case to the Review Commission, all papers shall be filed with the Secretary of the Review Commission at CN 110, Trenton, New Jersey 08625-0110. Subsequent to the assignment of the case to the Review Commission, and before the issuance of its decision, all papers shall be filed with the Review Commission at the address given in the notice informing of such assignment. Subsequent to the issuance of the decision of the Review Commission, all papers shall be filed with the Secretary.

(b) Unless otherwise ordered, all filing shall be accomplished by first class mail.

(c) Filing is deemed effected at the time of mailing.

12:112-1.12 Consolidation

Cases may be consolidated on the motion of any party or on the Review Commission's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

12:112-1.13 Severance

Upon its own motion, or upon motion of any party, the Review Commission may, for good cause, order any proceeding severed with respect to some or all issues or parties.

SUBCHAPTER 2. PARTICIPATION

12:112-2.1 Non-party participation

(a) A petition for a non-party to participate as a witness or in an amicus curiae capacity shall be filed at least 10 days before the commencement of the hearing before the Review Commission, except as provided in (c) below.

(b) The petition shall set forth the interest of the non-party in the proceeding and show that the participation of the non-party will assist in the determination of the issues in question, and that the participation of the non-party will not unnecessarily delay the proceeding.

(c) The Review Commission may grant a petition for participation of a non-party to such an extent and upon such terms as the Review Commission determines.

12:112-2.2 Party and non-party representatives

(a) Any party or non-party may appear in person or through a representative.

(b) A representative of a party or non-party shall be deemed to control all matters respecting the interest of such party or non-party in the proceeding.

(c) Nothing contained herein shall be construed to require any representative to be an attorney at law.

12:112-2.3 Appearances of parties and non-parties

(a) A representative of a party or non-party shall enter an appearance by signing the first document filed on behalf of the party or non-party in accordance with (b) below, or thereafter by filing an entry of appearance in accordance with (c) below.

(b) If the first document filed on behalf of a party or non-party is signed by a representative, the representative shall be recognized as representing that party or non-party. No separate entry of appearance is necessary.

(c) Where a representative has not previously appeared on behalf of a party or non-party, he or she shall file an entry of appearance with the Secretary. The entry of appearance shall be signed by the representative.

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12:112-2.4 Withdrawals of parties and non-parties

(a) Any counsel or representative of record desiring to withdraw his or her appearance shall file a motion with the Review Commission requesting leave therefor, and showing that prior notice of the motion has been given by him or her to his or her client or counsel or representative, as the case may be.

(b) The motion of counsel to withdraw may, in the discretion of the Review Commission, be denied where it is necessary to avoid undue delay or prejudice to the rights of a party.

SUBCHAPTER 3. NOTICES AND MOTIONS

12:112-3.1 Title of cases

(a) Cases initiated by a notice of contest shall be titled:

Commissioner of Labor, Complainant versus

(Name of Contestant), Respondent.

(b) The titles listed in (a) above shall appear at the left upper portion of the initial page of any document filed.

(c) The initial page of any document shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Review Commission.

12:112-3.2 Signing of motions

(a) Motions shall be signed by the filing party or by the party's representative. The signature of a representative constitutes a representation by him or her that he or she is authorized to represent the party on whose behalf the action is filed.

(b) The signature of a representative or party also constitutes a certificate by him or her that he or she has read the motion, or other paper, that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is arranged by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

12:112-3.3 Notices of contest

Within 15 working days after receipt of notification that the employer intends to contest the written order to comply issued under the Act, the Commissioner shall notify the Review Commission of the receipt in writing and shall promptly furnish to the Secretary of the Review Commission the original of any documents or records filed by the employer and copies of all other documents or records relevant to the contest.

12:112-3.4 Employer contest

(a) The Commissioner shall file with the Review Commission a complaint conforming to N.J.A.C. 12:112-3.5 no later than 30 days after the filing of the Commissioner's notice to the Review Commission pursuant to N.J.A.C. 12:112-3.3.

(b) Upon a showing by the employer that it cannot frame a responsive answer to the allegations of the complaint, the employer may move for a more definite statement of the Commissioner's allegations before filing an answer. The motion shall be filed with the Review Commission within 20 days after service of the complaint and shall point out the defects complained of and the details desired. The prompt filing of an amended complaint meeting the objections of the moving party may obviate the necessity for the Review Commission to rule on the motion.

(c) In response to a motion for a more definite statement, the Commissioner may be ordered to file an amended complaint. The order will require the Commissioner to supply such additional information or further particularization of the complaint's allegations as the Review Commission deems necessary.

(d) Except as provided in (d)1 below, the employer shall file with the Review Commission an answer conforming to N.J.A.C. 12:112-3.6 within 30 days after service of the complaint.

1. If a motion to dismiss or a motion for a more definite statement has been filed, the answer shall be filed within 15 days after the motion is denied. If a motion to amend the complaint or a motion for a more definite statement has been granted, or if an amended complaint has been filed voluntarily under N.J.A.C. 12:112-3.5(f) before an answer is served, the answer shall be filed within 30 days after service of the amended complaint.

12:112-3.5 Complaints

(a) The purpose of this section is to insure the early ascertainment of the issues to be litigated. Attachment of the order to comply to the complaint and incorporation of its terms by reference does not comply with this section. The complaint shall contain the following allegations in separately designated paragraphs:

1. The employer is engaged in an activity within the scope of the Act;

2. The employer's name, address of record and type of service performed on the date of the alleged violation; and

3. The time and place of each alleged violation.

(b) Each alleged violation shall be set out in a separate numbered paragraph, which shall contain the paragraphs described below. All allegations that relate to the same alleged violation shall be placed in one paragraph. A paragraph alleging a violation shall in separate subparagraphs clearly and concisely state the following:

1. What provision of the Act, standard, rule or order was violated and the item and order number in which the alleged violation is set forth;

2. The factual basis for each allegation necessary to establish that the standard or rule applies, and what scope or application provision governs its applicability;

3. The factual basis for each allegation necessary to establish that the cited circumstances, conditions, practices or operations violated the cited provision of the Act, standard, rule or order;

4. Where pertinent, the factual basis for the allegation that employees had access to or were exposed to the cited circumstances, conditions, practices or operations;

5. That the employer knew or could have known with the exercise of reasonable diligence of the cited circumstances, conditions, practices or operations;

6. Any allegation that the alleged violation is serious, or that the employer willfully committed the alleged violation;

7. Any allegation that the employer repeatedly committed the alleged violation, each prior written order to comply and item number that serves as the basis for the classification, and the date that each became a final order of the commission; and

8. That the proposed penalty is appropriate, specifying the amount.

(c) With respect to each alleged violation of the general duty clause of the Act, the complaint shall also identify the alleged hazard and specify the feasible means by which the employer could have eliminated or materially reduced the alleged hazard.

(d) With respect to each alleged violation of any standard or rule under which the obligation of the employer is contingent upon the existence of a hazard, the complaint shall also identify the particular hazard created by the circumstances, conditions, practices or operations that are the basis for the alleged violation. With respect to each alleged violation of any standard or rule that does not specify a means of abatement and does not provide a specific performance criterion, the complaint shall also identify the feasible means by which the employer could have abated the allegedly violative condition.

(e) The complaint shall state the penalty proposed, and allege that the penalty is "appropriate" under the Act. The complaint shall also identify the written order to comply and item number in which the violation was previously cited and the date on which this prior order became a final order of the Review Commission.

(f) A contested written order to comply may be amended once as a matter of course in the complaint before an answer is served if:

1. The amended allegation arises out of the same conduct, occurrence or hazard described in the order;

2. The amendment does not result in incurable harm to the employer in the preparation or presentation of its case; and

3. The complaint clearly identifies the change that is being made in the allegation.

12:112-3.6 Content of the answer

(a) General denials of the Commissioner's allegations shall not be accepted. The answer shall contain in short and plain terms a response to each allegation of the complaint. It shall specifically admit or deny each allegation or, if the employer is without knowl-

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edge of the facts, the answer shall so state. A statement of lack of knowledge has the effect of a denial. A failure to respond to an allegation shall be treated as an admission that the allegation is true. Amendment of the answer to correct a failure to respond may be permitted when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the Review Commission that the amendment will prejudice him or her in presenting his or her case or defense on the merits.

(b) The employer shall state in its answer in separate numbered paragraphs any matter that may constitute avoidance or an affirmative defense to the extent they are known or with reasonable diligence could have been known, including but not limited to the following:

1. Creation of a greater hazard by complying with a cited standard;
2. Exemption of the Act;
3. Failure to issue a written order to comply with reasonable promptness;
4. Infeasibility of compliance;
5. Invalidity of the cited standard;
6. Preemption of the Act, by a specific standard;
7. Preemption of a standard by a more specifically applicable standard; or
8. Unpreventable employee conduct.

(c) By pleading avoidance or an affirmative defense, the employer does not waive its right to argue that the Commissioner has the burden of persuasion concerning the matter.

12:112-3.7 Statement of position

(a) Any any time prior to the commencement of the hearing before the Review Commission, any party or non-party entitled to appear may file a statement of position with respect to any or all issues to be heard.

(b) The Review Commission may order the filing of a statement of position.

12:112-3.8 Motions without conference consideration

A motion shall not be viewed favorably if the subject of the motion has not been first discussed among the parties prior to the conference.

12:112-3.9 Motions and request

(a) A request for an order by the Review Commission shall be made by motion. Motions shall be in writing or, unless the Review Commission directs otherwise, may be made orally during a hearing on the record and shall be included in the transcript. In exigent circumstances in cases pending before the Review Commission, a motion may be made telephonically if it is reduced to writing and filed within three days of the telephone call. A motion shall state with particularity the grounds on which it is based and shall set forth the relief or order sought. A motion shall not be included in another document, such as a brief or a petition for discretionary review, but shall be made in a separate document. Unless a motion is made by all participants, the moving participant shall state in the motion any opposition or lack of opposition of which he or she is aware.

(b) A motion filed in lieu of an answer pursuant to N.J.A.C. 12:112-3.4 shall be filed no later than 20 days after the service of the complaint. Any other motion shall be made as soon as the grounds therefor are known.

(c) Any party upon whom a motion is served shall have 10 days from service of the motion to file a response. A procedural motion may be ruled upon prior to the expiration of the time for response. A party adversely affected by the ruling may within five days of service of the ruling seek reconsideration.

(d) The filing of a motion, including a motion for a postponement, does not automatically postpone a hearing.

12:112-3.10 Failure to obey rules

(a) When any party or non-party has failed to proceed as provided by these rules or as required by the Review Commission, he or she may be declared to be in default either:

1. On the initiative of the Review Commission, after having been afforded an opportunity to show cause whey he or she should not be declared to be in default; or
2. On the motion of a party.

(b) After a finding of default, the Review Commission, in its discretion, may enter a decision against the defaulting party or non-party or strike any document not filed in accordance with these rules.

(c) For reasons deemed sufficient by the Review Commission and upon motion expeditiously made, the Review Commission may set aside a sanction imposed under (b) above.

SUBCHAPTER 4. PRE-HEARING CONFERENCE

12:112-4.1 Discussion among the parties

(a) At least two weeks before the hearing, the parties shall meet, or confer by telephone, and discuss the following:

1. Settlement of the case;
2. The narrowing of issues;
3. An agreed statement of issues and facts;
4. Defenses;
5. Witnesses and exhibits; and
6. Any other pertinent matter.

12:112-4.2 Pre-hearing conference

(a) The Review Commission shall schedule and preside over a pre-hearing conference.

(b) At the beginning of the pre-hearing conference, the Review Commission shall enter into the record all agreements reached by the parties as well as defenses raised during discussions.

(c) The parties and the Review Commission then shall attempt to resolve or narrow the remaining issues.

(d) At the conclusion of the pre-hearing conference, the Review Commission shall enter into the record any further agreements reached by the parties.

SUBCHAPTER 5. HEARINGS

12:112-5.1 Notice of hearing

The Review Commission may schedule a hearing to occur one or more days after the conference if, in its discretion, it determines that such a schedule would result in a more practical or efficient case disposition.

12:112-5.2 Issues in dispute

The Review Commission shall hold a hearing on any issue that remains in dispute at the conclusion of the conference.

12:112-5.3 Postponement of hearing

(a) Postponement of a hearing at the request of a party may be granted by the Review Commission for good cause.

(b) Except in the case of an extreme emergency or in unusual circumstances, no such request shall be considered unless received in writing at least three days in advance of the time set for the hearing.

12:112-5.4 Failure to appear

(a) Subject to the provisions of (b) below, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the right to be served with a copy of the decision of the Review Commission.

(b) The Review Commission, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing shall be rescheduled.

12:112-5.5 Transcript of testimony

A hearing shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the Review Commission.

12:112-5.6 Duties and powers of Review Commission

(a) It shall be the duty of the Review Commission to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay.

(b) The Review Commission shall have authority to:

1. Administer oaths and affirmations;
2. Issue authorized subpoenas;
3. Rule upon petitions to revoke subpoenas;
4. Rule upon offers of proof and receive relevant evidence;
5. Take or cause depositions to be taken whenever the needs of justice would be served;

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6. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

7. Hold conferences for the settlement or simplification of the issue;

8. Dispose of procedural requests or similar matters, including motions referred to the Review Commission and motions to amend; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of their decision;

9. Make decisions;

10. Call and examine witnesses and to introduce into the record documentary or other evidence;

11. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

12. Adjourn the hearing as the needs of justice and good administration require; and

13. Take any other action necessary under the foregoing and authorized by this chapter.

12:112-5.7 Disqualification of member of Review Commission

(a) A member of the Review Commission shall withdraw from a proceeding whenever he or she deems him or herself disqualified.

(b) Any party may request a member of the Review Commission, at a time following his or her designation and before the filing of his or her decision, to withdraw on grounds of personal bias, or conflict of interest, or disqualification, by filing with the Review Commission promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) If, in the opinion of the Review Commission, the affidavit referred to in (b) above is filed with due diligence and is sufficient on its face, the other members of the Review Commission shall rule upon the adequacy of the member in question to serve.

(d) If the remaining members of the Review Commission determine that a member is disqualified, they shall remove the member from the proceeding. The other members of the Review Commission shall so rule upon the record stating the grounds for their ruling and shall proceed with the hearing, or if the hearing has closed, the remaining members of the Review Commission shall proceed with the issuance of their decision.

12:112-5.8 Examination of witnesses

Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

12:112-5.9 Objections

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Review Commission, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(b) Whenever evidence is excluded from the record, the participant offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

12:112-5.10 Filing of briefs

(a) A party is entitled to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party or non-party shall be entitled, upon request made before the close of hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the Review Commission. In lieu of briefs, the Review Commission may permit or direct the parties or non-parties to file memoranda or statements of authority.

(b) Briefs shall be filed simultaneously on a date established by the Review Commission. A motion for extension of time for filing any brief shall be made at least three days prior to the due date and shall recite that the moving party or non-party has advised the other parties and non-parties of the motion. Reply briefs shall not be allowed except by order of the Review Commission.

(c) Untimely briefs shall not be accepted unless accompanied by a motion setting forth good cause for the delay.

SUBCHAPTER 6. POST HEARING PROCEDURES

12:112-6.1 Decision of the Review Commission

(a) The Review Commission shall hear and make a decision upon any proceeding instituted before it.

(b) The proceeding shall be deemed completed when all post hearing submissions that have been authorized are submitted within the time limit established by the Review Commission.

(c) If post hearing submissions are not received within the time limit established by the Review Commission, the proceeding shall be deemed closed on the date established by the Review Commission as the closing date for submissions.

(d) The Review Commission shall render a decision in writing within 45 calendar days of the closing date of the proceeding and the decision shall be distributed to all parties and non-parties to the hearing.

(e) A party shall have 14 calendar days after the decision in (d) above to file an exception.

(f) The decision shall become the final order of the Review Commission within 30 calendar days of the issuance of the decision.

(g) Copies of the final order shall be mailed to all parties and non-parties of the hearing.

12:112-6.2 Stay of final order

(a) Any party aggrieved by a final order of the Review Commission may, while the matter is within the jurisdiction of the Review Commission, file a motion for a stay.

(b) Such motion shall set forth the reasons a stay is sought and the length of the stay requested.

(c) The Review Commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

SUBCHAPTER 7. MISCELLANEOUS ISSUES

12:112-7.1 Settlement policy

(a) Settlement is permitted and encouraged by the Review Commission at any stage of the proceedings.

(b) The Review Commission does not require that the parties in the hearing include any particular language in a settlement agreement, but does require that the agreement specify the terms of settlement for each contested item and specify any contested item or issue that remains to be decided. Unless the settlement agreement states otherwise, the withdrawal of a notice of contest or an order to comply shall be with prejudice.

12:112-7.2 Filing of settlement

(a) A settlement submitted for approval shall be filed with the Secretary. When a settlement agreement is filed with the Secretary, proof of service shall be filed with the settlement agreement, showing service upon all parties in the manner prescribed by N.J.A.C. 12:112-1.10. The parties in the hearing shall file a final consent order for adoption by the Review Commission.

(b) A settlement document shall be typewritten.

12:112-7.3 Withdrawal

(a) A party may withdraw its notice of contest or written order to comply at any stage of a proceeding.

(b) The notice of withdrawal shall be served in accordance with N.J.A.C. 12:112-1.10(c) upon all parties. It shall also be posted in the manner prescribed in N.J.A.C. 12:112-1.10(g).

(c) Proof of service shall accompany the notice of withdrawal.

12:112-7.4 Expedited proceeding

(a) Upon application of any party in the hearing or upon its own motion, the Review Commission may order an expedited proceeding. When an expedited proceeding is ordered by the Review Commission, the Secretary shall notify all parties and nonparties.

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(b) When an expedited proceeding is ordered by the Review Commission, it shall take precedence on the docket of the Review Commission over all other classes of cases, and shall be set for hearing or for the submission of briefs at the earliest practicable date.

(c) The Review Commission shall make rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, and shall do all other things appropriate to complete the proceeding in the minimum time consistent with fairness.

12:112-7.5 Standards of conduct

(a) All representatives appearing before the Review Commission shall comply with the letter and spirit of ethical conduct.

(b) If an attorney or other representative practicing before the Review Commission engages in unethical or unprofessional conduct or fails to comply with any rule or order of the Review Commission, the Review Commission may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action, including suspension or disbarment from practice before the Review Commission.

12:112-7.6 Ex parte communication

(a) There shall be no ex parte communication with respect to the merits of any case not concluded, between any member, employee, or agent of the Review Commission who is employed in the decisional process and any of the parties, non-parties, representatives or other interested persons in the hearing.

(b) In the event an ex parte communication occurs, the Review Commission may make such orders or take such actions as fairness requires. Any disciplinary action by the Review Commission, including suspension or disbarment, shall be governed by N.J.A.C. 12:112-7.5(b).

(c) All ex parte communications in violation of this section shall be placed on the public record of the proceeding.

(a)

Apparel Industry Registration System
Adopted New Rules: N.J.A.C. 12:210

Proposed: June 20, 1988 at 20 N.J.R. 1334(b).

Adopted: August 15, 1988 by Charles Serraino, Commissioner, Department of Labor.

Filed: August 15, 1988 as R.1988 d.439, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and P.L. 1987, c.458.

Effective Date: September 6, 1988.

Expiration Date: September 6, 1993.

Summary of Public Comments and Agency Responses:

The Department of Labor received one public comment during the comment period on proposed new rules N.J.A.C. 12:210-1 concerning apparel industry registration.

The commenter, the Federation of Apparel Manufacturers (FAM), is an umbrella organization for trade associations which represent unionized manufacturers of women's and children's fashion outerwear.

COMMENT: The registration system established by the Department uses forms which require a registrant to list the current names and addresses of all firms engaged in garment manufacturing with whom the registrant does business. The commenter states that this exceeds the authority granted to the Department by the legislature, which allows the Department to ask, "... if the registrant is a contractor, whether that contractor subcontracts the cutting or sewing of apparel or sections or components thereof." The commenter states that this information is confidential and constitutes a trade secret, and that disclo e of such will have a chilling effect on the flow of work into New Jersey. Additionally, the commenter states that the proposed rules fail to justify the statutory basis for requesting the applicant to list on the registration form the name, title and home address of owners, partners and corporate officers.

RESPONSE: The Department believes that one intent of the legislature was to stop illegal homework with regard to apparel manufacturers. It was with this goal in mind that the Department drafted its registration form. The Act itself provides that registrants will be liable for knowingly dealing with unregistered employers. By having a list of subcontractors with whom registrants deal, the Department can register that many more manufacturers and contractors, thus eliminating unregistered persons from the apparel industry. This, in turn, will make it easier for the Department to locate persons who violate the Act, and eventually fulfill the legislative aim of bringing the apparel industry in New Jersey into compliance with the Apparel Registration Act.

COMMENT: The rules proposed by the Department substantially alter the language and intent of the statute with respect to the burden upon the Department to show knowledge by a manufacturer or contractor that a firm with which it deals is not registered.

Specifically, FAM states that the rules, as written, "appear to diminish the Department's burden of proof for establishing a violation of the statute." FAM believes that the rules must be rewritten to reflect the precise language of the statute.

RESPONSE: The Department believes that the language, as written, adequately reflects the legislative intent of requiring actual knowledge by the manufacturer or contractor. The Department is not required to copy the statute verbatim, and believes that, as written, the rules are more understandable than the statutory language. The Department does not intend to weaken the burden of proof necessary to establish a statutory violation and does not believe that the rules, as written, allow such an interpretation.

COMMENT: The commenter believes that the rules should clarify an "except at retail" exclusion found in the definition of "manufacturer," and that the Department should clarify to whom the registration requirement applies; specifically, whether the rules apply to manufacturers who engage in warehouse operations and to those who produce samples. Finally, FAM believes that the Department should state in the rules its policy, set forth in a correspondence letter, concerning firms which do not have a business address in New Jersey and their obligation to register with the Department.

RESPONSE: The Department has incorporated the exact definitions provided by the legislature into the rules. Any attempt by the Department to correct inconsistencies or inadequacies in the statutory definitions would constitute an abuse of authority on the part of the Department. The Department is not required to expand upon the definitions supplied by the legislature, and is not permitted to clarify them.

Finally, the Department is not required to codify all Departmental correspondence in a rule.

COMMENT: The commenter stated that the rules are burdensome, and will subject New Jersey apparel workers to increased economic pressure from out-of-State non-unionized workers and overseas garment workers.

RESPONSE: The legislature has decided that the apparel industry in New Jersey needs stricter rules, and has, by statute, required the Department to promulgate these rules. The Department has no control over out-of-State or international supplies, and thus cannot alleviate the impact these producers have on New Jersey workers.

Full text of the adoption follows.

CHAPTER 210
APPAREL INDUSTRY REGISTRATION SYSTEM

SUBCHAPTER 1. GENERAL REQUIREMENTS

12:210-1.1 Purpose and scope

(a) The purpose of this subchapter is to establish a registration system which requires apparel industry manufacturers and contractors to register with the Department as a condition of doing business in the State.

(b) This subchapter is applicable to all New Jersey apparel industry manufacturers and contractors.

12:210-1.2 Definitions

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

"Apparel industry" means the making, cutting, sewing, finishing, assembling, pressing or otherwise producing of apparel, designed or intended to be worn by any individual and sold or offered for sale for that purpose, but does not include cleaning, pressing, or tailoring services performed upon apparel sold or offered for sale at retail.

"Commissioner" means the Commissioner of Labor.

"Contractor" means any person who contracts to perform in this

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State the cutting, sewing, finishing, assembling, pressing or otherwise producing of any apparel, or a section or component of apparel, designed or intended to be worn by any individual and sold or offered for sale, except at retail, for that purpose. The definition of contractor is for the purpose of this subchapter only, and shall not affect the classification of an individual as an independent contractor pursuant to the Unemployment Compensation Law.

"Department" means the New Jersey Department of Labor.

"Manufacturer" means any person who contracts with a contractor to perform in this State the cutting, sewing, finishing, assembling, pressing or producing of any apparel, or a section or component of apparel, designed or intended to be worn by any individual and sold or offered for sale, except at retail, for that purpose, or who cuts, sews, finishes, assembles, presses or otherwise produces in this State any apparel, or a section or component of apparel, designed or intended to be worn by any individual and sold or offered for sale, except at retail, for that purpose.

"Production employee" means any person who directly performs the cutting, sewing, finishing, assembling, pressing or otherwise producing of any apparel, or a section or component of apparel, designed or intended to be worn by any individual and sold or offered for sale, except at retail, for that purpose.

12:210-1.3 Registration; issuance of certificate

(a) Prior to engaging in the apparel industry business in this State, a manufacturer or contractor shall register with the Department by completing a form prescribed by the Commissioner.

(b) The registration form shall contain, but not be limited to, the following information for all manufacturers and contractors:

1. The structure of the business, that is, sole proprietorship, partnership or corporation;

2. The name and principal business address in the State;

3. The tax identification number; and

4. If the registrant is a contractor, whether the registrant subcontracts the cutting or sewing of apparel or its sections or components.

(c) Divisions, subsidiary corporations or related companies may be named and included under one omnibus registration.

(d) The Commissioner shall issue a certificate of registration upon receipt of the following:

1. The registrant's completed registration form;

2. Documentation that the registrant has workers' compensation coverage for his or her production employees working in the State; and

3. Payment of one of the following to the Division of Workplace Standards:

i. The initial registration fee of $100.00; or

ii. The annual renewal registration fee of $50.00.

(e) Manufacturers or contractors in existence prior to or on July 1, 1988 shall file the initial registration by July 1, 1988. The registration shall be valid until January 15, 1989.

(f) New manufacturers or contractors shall file the initial registration upon the commencement of business in the apparel industry in this State. The registration shall be valid until January 15 of the following year.

(g) The certificate of registration shall be renewed by January 15 of each year.

12:210-1.4 Special task force

(a) The Commissioner shall establish a special task force, comprised of Departmental personnel, to enforce all State labor laws which affect the apparel industry.

(b) The task force shall have the power to:

1. Inspect manufacturers and contractors, with respect to their production employees, for compliance with:

i. The registration requirements of N.J.A.C. 12:210-1.3;

ii. State wage and hour, unemployment compensation, temporary disability, workers' compensation, child labor and industrial homework laws; and

iii. All orders and assessments of civil penalties by the Commissioner;

2. Investigate and conduct inspections of a manufacturers' or contractors' locations, books, records and premises to ensure compliance with this subchapter; and

3. Take any action necessary to implement the provisions of this subchapter.

(c) The task force members shall receive special training with regard to the State labor laws to enable them to enforce the provisions of this subchapter.

(d) The task force shall issue a report on its activities to the labor and appropriation committees of the legislature.

12:210-1.5 Violations; penalties

(a) The following acts constitute violations of this subchapter:

1. Failure to comply with the registration requirements pursuant to N.J.A.C. 12:210-1.3;

2. Performing services or representing oneself as being registered to perform apparel industry services without holding a valid registration;

3. Contracting for the performance of an apparel industry service with a manufacturer or contractor who is known to have failed to register, renew its registration, or whose registration has been revoked; and

4. Failure to comply, for the second time in three years, with an order of the Commissioner concerning registration compliance.

(b) The following civil penalties may be imposed by the Commissioner for committing the violations in (a)1 through 4 above:

1. A fine of up to $1,000 for an initial violation;

2. A fine of up to $2,000 for each subsequent violation.

i. Penalties shall be payable to the Division of Workplace Standards.

3. An intentional failure to comply with the registration requirements shall be a crime of the fourth degree.

(c) If a manufacturer or contractor fails to comply with an order by the Commissioner to register or renew registration, the Commissioner may obtain an injunction prohibiting the manufacturer or contractor from conducting business.

(d) If a manufacturer or contractor is found guilty, after a hearing held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, of two violations of the same provision of this subchapter in three years, the Commissioner may suspend the registration of any such manufacturer or contractor for a period ranging from 30 days to one year.

(e) Any manufacturer or contractor who contracts, for the second time in three years, with a manufacturer or contractor who is known to have failed to comply with the registration requirements in N.J.A.C. 12:210-1.3, shall be liable to pay any civil penalty assessed against the known violator, if such violator has not paid the penalty.

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

URBAN ENTERPRISE ZONE AUTHORITY

Urban Enterprise Zone Program

Adopted New Rules: N.J.A.C. 12A:120-1

Proposed: June 20, 1988 at 20 N.J.R. 1336(a).

Adopted: August 9, 1988 by the Urban Enterprise Zone Authority, Borden R. Putnam, Chairman.

Filed: August 11, 1988 as R.1988 d.431 **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.5).

Authority: N.J.S.A. 52:27H-60 et seq., specifically 52:27H-65.

Effective Date: September 6, 1988.

Expiration Date: September 6, 1993.

Summary of Public Comments and Agency Responses:

A public hearing on the proposed rules was held on July 18, 1988 at 10:00 A.M. in the State Commerce Building, 20 West State Street, Trenton, New Jersey at which seven individuals gave comments. Additionally, two letters of comment were received.

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COMMENT: William Fennimore on behalf of Public Service Electric and Gas (PSE&G) provided a comment which addressed these rules overall, that a relaxation of the 25 percent rule from its current requirement of total of workforce to new hires for new enterprise zone businesses "will have a significant impact to open up the enterprise zones. In particular, to relax that rule will enable more to consider moving, and we are (PSE&G) supporting it one hundred percent."

RESPONSE: It is the position and experience of the Urban Enterprise Zone Authority that this proposed rule change is necessary to keep the Urban Enterprise Zone program competitive with other similar programs. Additionally, it was experienced that the 25 percent rule of total of workforce was a disincentive for businesses when considering locating in an Enterprise Zone.

COMMENT: Marsilia Boyle of the Lefrak Organization provided a comment which addressed these rules overall based on her company's experience as one of the developers of Newport in Jersey City, that this proposed change is important so as to keep New Jersey's Urban Enterprise Zone program competitive with the incentives offered by the City of New York to businesses considering relocation. Additionally, the proposed changes that include training requirements for companies (see N.J.A.C. 12A:120-1.6) make the Urban Enterprise program more competitive and realistic.

RESPONSE: As previously stated, a major reason for this change in policy is to allow the Urban Enterprise program to remain competitive with efforts of other localities to attract new businesses. As to the training requirement, the Authority believes that requirement that may be placed on a business is a fair and appropriate method of insuring the overall goals of the Urban Enterprise program.

COMMENT: Andrew Davidoff of Harborside Financial Center provided a comment which addressed these rules overall based on his company's experience as a developer in Jersey City, that without the proposed change, Jersey City would lose its "economic attractiveness and competitiveness as a business location."

RESPONSE: The agency response to this comment is the same as the prior responses.

The Authority proposed the new rules to deal with what was seen as an unrealistic requirement placed on businesses who were considering locating in an Urban Enterprise Zone. To require an existing business to remove part of its existing workforce proved to be a hindrance in attracting businesses.

COMMENT: Carmen Valiante, on behalf of Mayor Thomas Dunn of the City of Elizabeth, provided a comment which dealt with these rules overall, that the City of Elizabeth supports the new proposed rules because the policy modifications "will significantly expand opportunities for future growth."

RESPONSE: The agency response is the same as the prior responses.

Two letters of comment were received and are addressed as follows.

COMMENT: Senator Thomas Cowan submitted a letter of comment which addressed these rules overall, that he supports these new rules because they are "important to the success of economic development programs within New Jersey's urban enterprise zones, in general, but it is a crucial component to the success of the Jersey City Zone." Additionally, "it will enhance the success of all of New Jersey's zones by making it easier to attract out-of-state businesses to our urban centers in need of such redevelopment."

RESPONSE: These are some of the very reasons the Authority has proposed these new rules. A prime means of redeveloping New Jersey's urban centers is through stabilizing already existing businesses and attracting new businesses to those areas. The proposed new rules pursue that course.

COMMENT: Assemblyman Wayne Bryant submitted a letter of comment which addressed two concerns of these rules, that "this proposed new rule basically guts that portion of the bill and basically reduces the Urban Enterprise Zone Act to a bill that gives economic incentives to business from a taxing standpoint without their having to provide the economic where-for-all for the indigenous population"; and that N.J.A.C. 12A:120-1.6, which provides for educational training, job training, and summer internships, should be a minimum requirement, not an option.

RESPONSE: It is the unanimous position of the Authority after lengthy consideration and discussion that the policy changes incorporated in these proposed new rules would enhance the Urban Enterprise program. Additionally, there will be a benefit to the local residents in the zones because of the anticipated increase in businesses locating within the zones, thus providing greater employment opportunities.

The options set forth in N.J.A.C. 12A:120-1.6 are not strict requirements because of the need for flexibility in the Urban Enterprise program. These options will allow the Authority to specifically tailor the in lieu provisions of the 25 percent requirement to meet the specific needs of a local zone and the business wishing to locate in that zone.

COMMENT: James Slaughter on behalf of Mayor Richard Taylor of the City of Plainfield provided a comment which addressed these rules overall, that the City of Plainfield supports the proposed change because it would enhance the ability of the city to attract new businesses and would help small businesses comply with realistic requirements for location within the zone.

RESPONSE: The agency response to this comment is the same as the prior responses.

COMMENT: Richard Cohen of the Jersey City Department of Housing and Economic Development, on behalf of Mayor Gucci of Jersey City, provided a comment which addressed these rules overall, that Jersey City supports the proposed change because the change would enhance the city's ability to compete with the incentive programs offered to businesses by the City of New York which are considering relocation. Also, if the needed jobs are to be created in Jersey City it is necessary to attract businesses there that will create them. The prior 25 percent requirement was too restrictive.

RESPONSE: The agency response to this comment is the same as the prior responses.

COMMENT: Raphael Zabala of the Newark Economic Development Corporation, on behalf of Mayor Sharpe James of the City of Newark, provided a comment which addressed these rules overall, that the City of Newark supports the proposed change because the proposed change would enhance the ability to compete for relocating businesses in the greater New York Metropolitan area.

RESPONSE: The agency response to this comment is the same as the prior responses.

COMMENT: Henry Blekicki of the Office of Economic Development of the New Jersey Institute of Technology based on his former position as Assistant Commissioner of the Department of Commerce and Economic Development and who oversaw the Urban Enterprise program, provided a comment which addressed these rules overall, that as a matter of job creation, the Urban Enterprise program has been very successful. "However, when analyzing that success, we see that for certain types of businesses the program was quite an inducement, and yet for other types of businesses it was an impediment." That zone businesses could be categorized into three types: (1) businesses already existing in the zone, that would receive zone benefits if they committed to expanding their operations within the zone; (2) new start-up businesses that could meet the 25 percent requirement because they start with a small base of employment; and (3) those already existing companies that wish to move into the zone. Those companies already existing and wishing to move into the zone will be the beneficiaries of these proposed new rules. Under the old policy, a company would in some cases have to remove a portion of their existing workforce to comply with the 25 percent requirement.

RESPONSE: The Authority has revised the definition of "qualified business" in N.J.A.C. 12A:120-1.2 to include a business or trade which becomes active in the zone during the designation period. This change was made to conform this definition to the definition of "qualified business" in N.J.S.A. 52:27H-62.

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

CHAPTER 120
URBAN ENTERPRISE ZONE AUTHORITY

SUBCHAPTER 1. URBAN ENTERPRISE ZONE PROGRAM

12A:120-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Urban Enterprise Zone Authority (UEZA) to implement N.J.S.A. 52:27H-60 (P.L. 1983, ch. 303), the New Jersey Urban Enterprise Zones Act.

(b) The Act provides for the establishment of an UEZA which is to designate certain areas of the State as Urban Enterprise Zones (UEZ). The Act also provides that the UEZA provide continuing review of the implementation of the Act and report annually to the Governor and the Legislature on the effectiveness of UEZ's in addressing the conditions cited in the Act, including any recommendations for legislation to improve the effectiveness of operation of the UEZ's.

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(c) Applications and questions concerning UEZ's should be directed to:

Urban Enterprise Program
New Jersey Department of Commerce, Energy, and Economic Development
20 West State Street
Trenton, New Jersey 08625

12A:120-1.2 Definitions

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

"Act" means the New Jersey Urban Enterprise Zones Act, P.L. 1983, ch. 303 (N.J.S.A. 52:27H-60).

"Administrator" means the administrator of the Urban Enterprise Program in the Department of Commerce, Energy, and Economic Development.

"Authority" or "UEZA" means the New Jersey Urban Enterprise Zone Authority.

"Enterprise Zone" or "Zone" means an urban enterprise zone designated by the New Jersey Urban Enterprise Zone Authority pursuant to the Act.

"Qualified business" means any entity authorized to do business in the State of New Jersey which**,** at the time of designation as an enterprise zone**,** is engaged in the active conduct of a trade or business ***in that zone or an entity which, after that designation but during the designation period, becomes newly engaged in the active conduct of a trade or business*** in that zone, and for which at least 25*[%]* ***percent*** of its full-time employees, newly hired during the two years after issuance of the business' certificate of occupancy to work at a business location in the zone, meet one or more of the following criteria:

1. Resident within the zone or within the municipality which the zone is located; or

2. Unemployed for at least a year prior to being hired and residing in New Jersey, or recipients of New Jersey public assistance programs for at least one year prior to being hired; or

3. Determined to be economically disadvantaged pursuant to the Jobs Training Partnership Act, Pub. L. 97-300 (29 U.S.C. ***§§*** 1501 et seq.).

"Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which application for enterprise zone designation is submitted pursuant to section 14 of the Act, an annual average of at least 2,000 unemployed persons, and in which the average annual unemployment rate for that year exceeded the State average annual unemployment rate; except that a municipality which qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) shall qualify if its municipal average unemployment rate for that year exceeds the State average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Statistics, Division of Planning and Research of the State Department of Labor.

"Zone development corporation" means a nonprofit corporation or association created by the governing body of a qualifying municipality to formulate and propose a preliminary zone development plan pursuant to section 9 of the Act.

"Zone development plan" means a plan adopted by the governing body of a qualifying municipality for the development of an enterprise zone therein, and for the direction and coordination of activities of the municipality, zone businesses and community organizations within the enterprise zone toward the economic betterment of the residents of the zone and the municipality.

"Zone neighborhood association" means a corporation or association of persons who either are residents of, or have their principal place of employment in, a municipality in which an enterprise zone has been designated pursuant to the Act; which is organized under the provisions of Title 15 of the Revised Statues; and which has for its principal purpose the encouragement and support of community activities within, or on behalf of, the zone so as to:

1. Stimulate economic activity;

2. Increase or preserve residential amenities;

3. Otherwise encourage community cooperation in achieving the goals of the zone development plan.

12A:120-1.3 Application for zone business benefits

Any business which desires to receive zone business benefits shall forward to the administrator a letter specifying the benefits which it wants to receive, a letter of endorsement from the municipality for the business to receive the benefits, a certification that the business is located in the zone, and any other additional information requested by the administrator.

12A:120-1.4 Time for application for zone business benefits

A business may apply for zone business benefits at any time after the business to be located in the zone agrees with the administrator or his or her designee to provide an increase in permanent full-time employment in the zone.

12A:120-1.5 Zone business benefits eligibility

(a) Qualified businesses within a zone shall be eligible to receive all benefits provided for under the Act as approved by the UEZA for the specific zone.

(b) The UEZA in determining whether a business *[is to have a status]* ***shall be approved*** as a qualified business shall:

1. Review data compiled by the United States and New Jersey Department***s*** of Labor and private industry councils created under the Federal Job Training Partnership Act, and any other relevant sources, which bears on the availability to the business, in the area in which it is or will be located, of potential employees who meet ***the*** criteria set forth in N.J.S.A. 52:27H-62 (c)(1), (2), or (3); and

2. At the time the business applies for qualified business designation under N.J.S.A. 52:27H-62(c), review the business' employee turnover experience for the two years preceding its application and estimate the number of new positions to be created by the business during the two years after the date of its zone certificate of occupancy.

12A:120-1.6 Good faith waiver

(a) If the UEZA determines that an applicant for qualified business status or a previously qualified business *[in]* ***is*** unable in good faith to meet the definition of qualified business (see N.J.A.C. 12A:120-1.2) because *[of]* an insufficient number of persons satisfying the criteria of N.J.S.A. 52:27H-62 (c) (1), (2), and (3), and the workforce requirements of the business are available within the business's geographical area, the UEZA**,** in its discretion may reduce the requirement below 25 percent for that business conditioned upon the agreement of the business to implement any one or more of the following actions:

1. Sponsor and fund development and training programs in high schools, vocational or technical schools, or continuing education facilities which serve the zone city and which primarily develop basic or entry level job skills;

2. Provide summer or part-time jobs for zone city high school students or graduates;

3. Provide summer internships for zone city students attending post-secondary, vocational, or technical educational institutions;

4. Design and implement skills training programs in zone cities. These programs shall include**,** but are not limited to:

i. Secretarial skills;

ii. Computer skills;

iii. Financial administration and analysis skills;

iv. Management skills; and

v. Other vocational skills;

5. Participate in and fund State and federally sponsored job training programs in zone cities. These programs shall include but are not limited to:

i. The New Jersey Department of Labor's Customized Training Program;

ii. The Job*[s]* Training Partnership Act, Pub.L. 97-300 (29 U.S.C. *[&]* ***§§*** 1501 et seq.); or

iii. Any other job training program recognized by the UEZA;

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6. Sponsor and fund any *[such]* ***other*** programs as may be designated by the UEZA.

(b) In determining the extent that a zone business shall be required to implement, sponsor, or fund any of the activities set forth under (a) above, the UEZA shall take into account the business's size as reflected in the number of employees normally, seasonally and currently employed by the business.

(c) A business which is required by the UEZA to implement one or more of the actions enumerated in (a) above*[,]* in lieu of some portion of the 25 percent requirement of N.J.A.C. 12A:120-1.2 shall:

i. Remain subject to those specified requirements for a period of not less than five years, or such other period of time as may be established by the UEZA in order to fulfill the goals of the Act; and

ii. Consistent with *[f]****F***ederal and *[s]****S***tate law, agree to grant a preference in hiring ***to*** persons participating in the activities *[as]* specified in this section.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Route N.J. 57 in Warren County

Adoption of Concurrent Proposal: N.J.A.C. 16:28A-1.36

Proposed: June 20, 1988 at 20 N.J.R. 1484(b).

Adopted: August 2, 1988 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid, Department of Transportation.

Filed: August 2, 1988 as R.1988 d.418, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 52:14B-1 et seq.

Effective Date: September 6, 1988.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.36 Route 57

(a) The certain parts of State highway Route 57 described in this subsection are designated and established as "no stopping or standing" zones.

1.-5. (No change.)

6. No stopping or standing in Washington Township, Warren County:

i. Along both sides:

(1) From Little Philadelphia Road (County Road 648) to the Washington Township-Franklin Township Corporate line.

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

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Administration

Minimum Adjustments

Adopted Amendment: N.J.A.C. 17:1-1.10

Proposed: June 6, 1988 at 20 N.J.R. 1181(a).

Adopted: August 4, 1988 by Douglas R. Forrester, Director, Division of Pensions.

Filed: August 8, 1988 as R.1988 d.427, **without change.**

Authority: N.J.S.A. 52:18A-96 et seq.

Effective Date: September 6, 1988.

Expiration Date: May 6, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

17:1-1.10 Minimum adjustments

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

(c) A bad balance of $50.01 to $100.00 which is owed to a withdrawn member shall be paid without any further analysis of the member's account. Payment will be made to the employee and forwarded to the last employer of record.

Recodify existing (c)-(e) as (d)-(f) (No change in text.)

TREASURY-TAXATION

DIVISION OF TAXATION

(c)

Post Tax Amnesty Rules

Adopted Amendments: N.J.A.C. 18:2-2; 18:5-12.2; 18:7-3.15, 11.12, 13.7, 13.10, 13.12, 13.13, 14.3, 14.7, 14.17, 14.20; 18:8-4.5, 8.1, 8.2, 8.3, 8.4; 18:22-2.4, 8.4; 18:26-8.4; 18:35-1.9, 1.18; 18:37-2

Adopted New Rules: N.J.A.C. 18:2-2.10, 2.11; 18:35-1.19, 1.20

Adopted Repeals and New Rules: N.J.A.C. 18:2-2.2, 2.5 and 2.8; 18:7-14.1

Adopted Repeals: N.J.A.C. 18:2-2.9; 18:7-14.13, 14.14, 14.15 and 14.16; 18:8-8; 18:9-8.5, 8.6 and 8.7; 18:18-8.11, 12.5 and 12.7; 18:26-9.8; 18:37-3 and 4

Proposed: December 7, 1987 at 19 N.J.R. 2255(b).

Adopted: July 28, 1988 by John R. Baldwin, Director, Division of Taxation.

Filed: July 29, 1988 as R.1988 d.407, **with substantive changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3) **and with a portion not adopted.**

Authority: N.J.S.A. 54:50-1, P.L. 1986, c.143 and P.L. 1987, c.76.

Effective Date: September 6, 1988.

Expiration Dates: 18:2—September 6, 1993; 18:5—April 16, 1989; 18:7—April 2, 1989; 18:8—April 2, 1989; 18:9—June 7, 1993; 18:18—April 2, 1989; 18:22—April 2, 1989; 18:26—June 7, 1993; 18:35—June 7, 1993; 18:37—August 5, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: A comment from the New Jersey Tax Practice and Procedure and Agency Liaison Committee of the Taxation Section of the New Jersey State Bar Association suggested that the rules as proposed seem to provide that any interest on penalties will be charged from the date the underlying tax is due.

RESPONSE: The rules were intended to indicate that interest on penalties shall be computed from the date the penalty is assessed until the date of payment.

COMMENT: The Committee also suggested that, notwithstanding the amendment to N.J.S.A. 54:49-3 permitting the imposition of compounded interest on interest and penalty, the Division does not have the authority to compound interest on interest and penalty which was assessed prior to December 9, 1987.

RESPONSE: The intent of Tax Amnesty was to discharge pre-existing obligations of those taxpayers who chose to take advantage of the opportunity offered to them. It seems, therefore, contrary to legislative intent to benefit those taxpayers who failed to take advantage of Tax Amnesty by exempting them from the compounding of interest on pre-amnesty interest and penalty.

The Division has always had the authority to charge interest on interest and penalty by virtue of N.J.S.A. 54:49-10 which provides that all penalties and interest imposed by the Division are payable and recoverable as if they were part of the tax. Although the Division had not previously exercised its authority to do so, the amendment to N.J.S.A. 54:49-3 (P.L.

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1987, c.76, §2) simply makes it clear that the Division must utilize the option previously available to it in order to further the legislative purpose of amnesty. Thus, the proposed amendment to N.J.A.C. 18:2-2.4(a)1 provides, in pertinent part, that on and after December 9, 1987, interest on the unpaid tax shall be charged at the new rate of prime plus five percentage points, compounded daily. Unpaid tax is defined in N.J.A.C. 18:2-2.4(e) as the total of the actual unpaid tax liability; all penalties accrued to that date; and interest accrued to that date.

COMMENT: A third comment to the Division was received from a law firm representing the Atlantic City Casino Association which suggested that the proposed new rules and amendments, by purporting to limit the Federal slot machine withholding exemption to winnings physically falling out of the machine, contradicts 26 U.S.C. §3402(g), which is incorporated into the New Jersey withholding statute, N.J.S.A. 54A:7-1(c), by reference.

RESPONSE: 26 U.S.C. §3402(g)(5) provides an exemption from the withholding tax for certain gambling winnings. This exemption applies to "winnings from a slot machine, keno or bingo." The language of the Federal statute is ambiguous and lends itself to more than one interpretation. The Division interpreted this exemption language to cover slot machine winnings which were paid directly from the machine itself and not those winnings paid by the cashier where those winnings exceeded $1,000. The Division has, however, decided to accept the current Federal interpretation to exempt all winnings resulting from a slot machine play.

Summary of Changes:

N.J.A.C. 18:2-2.4 has been clarified by the inclusion of a statement that "interest on penalties which are assessed on and after December 9, 1987, shall be charged at same rate from the date the penalty is assessed until the date of payment," referring to the interest rate on unpaid tax of five percentage points above the prime rate, compounded daily. This statement is added in order to eliminate any ambiguity which may exist in the rules regarding the imposition of interest on penalties. In addition, the example which appears under N.J.A.C. 18:2-2.4, as well as the example under N.J.A.C. 18:35-1.18, has been amended to indicate that interest on penalty is calculated only from the date such penalty is assessed. This amending language merely reflects the original intent of the Division and does not enlarge the scope of the rules, as accrued penalties are included within the definition of unpaid tax upon which interest can be charged under N.J.A.C. 18:2-2.4(e).

The definition of "cost of collection" at N.J.A.C. 18:2-2.5 has been amended at subsection (b) to clarify that the Division has the discretion to impose the actual cost of collection, a percentage of the tax to be imposed or a fixed fee and to include the factors to be considered in determining when the actual cost of collection shall be imposed. This additional language does not significantly enlarge the scope of the proposed rule but merely clarifies its application.

The definition of "cost of collection" at N.J.A.C. 18:2-2.5 has also been amended at subsection (f) to include a definition of "unpaid tax." Where the Director elects to impose a percentage of the tax as the cost of collection, tax shall mean unpaid tax, penalties and interest. This change merely clarifies an existing position.

The example under N.J.A.C. 18:7-3.15 has been changed to reflect the correct years to be used in calculating the interest due. The years were inadvertently left unchanged when the proposal was drafted. This amendment merely updates an already existing example.

N.J.A.C. 18:7-13.10, which was included in the original proposal, is deleted from the adoption. The amendment offered in the proposal was not authorized by statute and the regulation therefore remains unchanged.

Upon reconsideration, the Division has decided to retain the present $5.00 fee requirement for release of a lien, as opposed to a collection cost amount, set forth at N.J.A.C. 18:7-13.12(a).

N.J.A.C. 18:7-14.17(e) is changed to include language indicating that a Tax Clearance Certificate which is issued by the Director is evidence that the "corporation business taxes have" been paid or provided for during the 45-day period following issuance of the certificate. This amending language does not enlarge the scope of the rule but only reflects the Division's original intent.

The Federal slot machine exemption provided by N.J.A.C. 18:35-1.20(b)(2) has been expanded to cover not only those winnings actually paid by the machine, but all winnings from a slot machine play whether paid by the machine or cashier. This change is not considered a change so substantial as to require reproposal because it merely clarifies the authorizing statute and is consistent therewith.

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

18:2-2.1 Application

This subchapter is applicable to penalty and interest impositions made on and after October 1, 1975, pursuant to P.L. 1975, c.177, approved August 4, 1975 and the State Tax Uniform Procedure Law, as amended to and including P.L. 1987, c.76.

18:2-2.2 Tax laws affected

The provisions of the State Tax Uniform Procedure Law and this subchapter shall apply to any tax which is payable to or collectible by the Director of the Division of Taxation, unless the law imposing such tax specifically provides that the State Tax Uniform Procedure Law and this subchapter shall not apply, or unless the specific provisions of the law imposing such tax provide for penalty and interest which is different from the provisions of the State Tax Uniform Procedure Law and this subchapter.

18:2-2.3 Failure to file return on time

(a) On or before December 8, 1987, any taxpayer failing to file a return within the time prescribed by the act imposing a particular tax shall be liable for the following:

1. A late filing penalty of $2.00 for each day that the return is delinquent; plus

2. A penalty of five percent per month or fraction thereof of the total tax liability not to exceed 25 percent of such tax liability.

(b) On and after December 9, 1987, any taxpayer failing to file a return within the time prescribed by the act imposing a particular tax shall be liable for the following:

1. A late filing penalty of $100.00 per month or any part of a month that the return is delinquent; plus

2. A penalty of five percent per month or any part of a month of the total tax liability not to exceed 25 percent of such tax liability.

(c) Both penalties set forth in (a) and (b) above shall be imposed on the first day following the original due date of the return and on the same calendar day of each succeeding month thereafter. The following are examples of penalty computations.

1. A corporate taxpayer filed its 1987 corporation business tax return with a due date of April 15, 1988 on June 1, 1988. The return is 47 days late. The taxpayer had a total tax liability for 1987 of $10,000.00. In addition to the unpaid tax the taxpayer owes the following amounts:

Delinquency penalty: $100.00 per month for two months	$ 200.00
Late filing penalty: five percent per month of the tax liability 5% x 2 months = 10 percent of $10,000.00	$ 1,000.00
Tax liability	$10,000.00
Total	$11,200.00*

*In addition, the taxpayer will be liable for interest (see N.J.A.C. 18:2-2.4) and may be liable for other penalties (see, for example, N.J.A.C. 18:2-2.4 and N.J.S.A. 54A:9-6).

2. An individual taxpayer filed the 1987 NJ-1040 due on or before April 15, 1988 on October 16, 1988. The return is six months and one day late. In addition to a $1,200.00 outstanding tax liability on April 15, 1988, the taxpayer owes the following amounts:

Delinquency penalty: $100.00 per month for seven months	$ 700.00
Late filing penalty: five percent per month of the tax liability not to exceed 25 percent	$ 300.00
Tax Liability	$1,200.00
Total	$2,200.00*

*In addition, the taxpayer will be liable for interest (see N.J.A.C. 18:2-2.4) and may be liable for other penalties (see, for example, N.J.A.C. 18:2-2.4 and N.J.S.A. 54A:9-6).

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18:2-2.4 Failure to pay on time; extensions of time to pay

(a) Any taxpayer failing to pay a tax within the time prescribed by the act imposing a particular tax shall pay, in addition to the unpaid tax, the following:

1. Interest on said tax at the rate of one percent for each month or fraction thereof that the same remains unpaid, to be calculated from the date the tax was originally due until October 1, 1975, and at the rate of one and one-half percent per month or fraction thereof from October 1, 1975 to the date of actual payment or until December 8, 1987, whichever is earlier. On and after December 9, 1987, interest on the unpaid tax shall be charged at an annual rate of five percentage points above the prime rate, compounded daily upon the amount that remains unpaid, calculated from the date the tax was originally due until the date of payment. ***Interest on penalties which are assessed on and after December 9, 1987 shall be charged at the same rate from the date the penalty is assessed until the date of payment.***

2. A sum equivalent to five percent of the tax shall be added to the amount of the tax as a penalty.

(b) The following examples apply only to tax liabilities paid prior to December 9, 1987:

1.-3. (No change.)

(c) The following example applies only to tax liabilities paid on or after December 9, 1987:

1. Corporation X's Corporation Business Tax return was due and filed on April 15, 1988. A deficiency of $50,000.00 is assessed by the Division. Payment is due on July 31, 1988.

The taxpayer must submit the following amounts on or before July 31, 1988:

Late payment penalty: five percent of the balance of tax due	$ 2,500.00
Deficiency assessed:	$50,000.00
	$52,500.00
Interest on tax *[and penalty]*, calculated at an annual rate of the prime rate plus five percentage points compounded daily from the original due date (April 15, 1988) until the date of payment (assume July 31, 1988)***, plus interest on penalty, calculated at the same rate from the date the penalty is assessed until the date of payment***. The applicable prime rate shall be the rates effective on January 1, 1988 and April 1, 1988, which are assumed to be nine percent and nine and one-half percent, respectively, for the purposes of this example.	$ 2,222.30
Total	$54,722.30

(d) Where the director is authorized by law and grants an extension of time in which a tax shall be paid, the taxpayer shall be liable for the payment of interest on the unpaid tax at the rate of three percentage points above the prime rate, to be compounded daily from the date such tax was originally due to the date of actual payment. If any or all of such tax is not paid within the time fixed under the extension, the interest on the amount of such unpaid tax shall be computed at the annual rate of five percentage points above the prime rate, to be compounded daily from the date the tax was originally due to the date of actual payment.

(e) On and after December 9, 1987, which is the first day immediately following the 90 day tax amnesty period authorized by P.L. 1987, c.76, for purposes of calculating interest unpaid tax shall mean the total of the following:

1. The actual unpaid tax liability;
2. All penalties accrued to that date; and
3. Interest accrued to that date.

18:2-2.5 Cost of collection defined

(a) Cost of collection means the amount of expense incurred by the State with respect to the issuance of a certificate of debt for, and the collection of, any State tax not paid within the time prescribed by law. These expenses include, but are not limited to the following:

1. Cost of postage;
2. Cost of telephone;
3. Cost of photocopying;
4. State payroll hours used, including all associated overhead;
5. Cost of filing and prosecuting suit;
6. The cost of agents, contractors, subcontractors or others employed or otherwise engaged by the State of New Jersey for the efficient and expeditious collection of unpaid tax; and
7. Any other expense deemed by the Director to be reasonably related and necessary for the collection of any unpaid tax.

(b) ***[In]****The Director may, in his discretion, impose the actual cost of collection, or, in*** lieu of ascertaining and imposing the actual cost of collection, *[the Director]* may impose a fee as follows:

1. In the event that any State tax is not paid within the time prescribed by law and the Director issues a certificate of debt pursuant to N.J.S.A. 54:49-12, the greater of five percent of the tax or $100.00;

2. In the event that any State tax remains unpaid following the issuance of the certificate of debt and the Director takes any further collection action, including but not limited to, referral of the matter to the Attorney General, the greater of 10 percent of the tax or $200.00;

3. In the event that any State tax remains unpaid and suit is instituted against the taxpayer for collection of the tax, the greater of 20 percent of the tax or $500.00.

(c) In determining whether the Director shall impose the actual cost of collection or a fee in lieu thereof, the following factors shall be among those considered:

1. Whether the taxpayer fails to properly maintain books and records as required;

2. Whether the taxpayer fails to make books and records available for examination;

3. Whether the taxpayer fails to secure proper license or fails to register with the Division of Taxation as required;

4. Whether the taxpayer operates under a voided corporate charter or after the revocation of authority to do business in New Jersey;

5. Whether the taxpayer remits payment which subsequently became dishonored or defaults on a bond or other security posted with the Division or on a Deferred Payment Plan;

6. Whether the Director finds that a taxpayer intends to leave this State, or to remove therefrom possessions, or any property subject to any State tax; or that taxpayer does any other act tending to prejudice, delay or negate proceedings to assess, collect, or pay any State tax;

7. Whether the taxpayer fails to collect, or truthfully account for, or file a return or file any other information as required;

8. Whether the taxpayer's non-compliance induces the Division of Taxation to issue a Warrant for Execution.*

*[(c)]****(d)*** Any fees imposed as cost of collection or in lieu thereof shall be in addition to any interest or penalties, or both, otherwise provided by law, and shall be payable to and recoverable by the Director, along with all penalties and interest as if they were part of the tax imposed.

*[(d)]****(e)*** Interest or penalties shall not be assessed against any fees imposed as cost of collection or in lieu thereof; however, the cost of collection may reflect the passage of time between the date the costs were incurred and the date they are paid.

(f) For the purposes of calculating the percentage of the tax to be imposed in lieu of a fixed fee or the actual cost of collection, the tax shall mean: unpaid tax, penalties and interest.*

18:2-2.6 Additional assessment of tax

(a) Upon audit or investigation of a return that has been filed, where it is determined that there is a deficiency with respect to the payment of any tax due, the additional taxes shall be assessed together with penalties of five percent of the additional tax and interest at the rate in effect immediately prior to October 1, 1975, and at the rate of 1½ percent per month or fraction thereof from October 1, 1975, to the date of payment or until December 8, 1987, whichever is earlier. On and after December 9, 1987 interest shall be charged at the annual rate of five percentage points above the prime rate, compounded daily from the later of the date the tax was originally due or December 9, 1987, to the date of payment. The

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taxpayer shall be given notice of such assessment and a demand made upon him for payment. The following are examples of interest and penalty liability:

1. On June 15, 1974, a taxpayer filed a return. On February 15, 1976, the taxpayer was notified of an additional assessment and a demand was made upon him for payment. The additional tax bears interest at the rate of one percent per month or fraction thereof from the date the tax was originally due to October 1, 1975, and at the rate of 1½ percent per month or fraction thereof from October 1, 1975, to the date of payment. In addition, taxpayer is subject to penalties of five percent of the additional tax. This example applies only to tax liabilities incurred prior to January 1, 1987 and paid prior to December 8, 1987, the final day of the 90 day tax amnesty period authorized by P.L. 1987, c.76.

2. Corporation X was a fiscal year taxpayer whose year ended July 31, 1984. The final return was due and filed on November 15, 1984. Upon audit in July, 1987, it was determined that there was a $1,000 deficiency with respect to tax due. If Corporation X pays the deficiency on the final day of the 90 day tax amnesty period authorized by P.L. 1987, c.76, which ends December 8, 1987, the following amounts would be due:

Deficiency assessed:	$1,000.00
Simple interest calculated at nine percent per annum* from November 16, 1984 through December 8, 1987	$ 275.75
Total due	$1,275.75

*Through statutory interest to December 8, 1987 was 18 percent, P.L. 1987, c.76 mandates a nine percent rate for debts paid during the 90 day amnesty period.

3. Corporation X fails to pay the deficiency assessed within the amnesty period. When payment is made on May 6, 1988 the taxpayer remits $1,746.63 which represents the following amounts:

Deficiency assessed:	$1,000.00
Late payment penalty: five percent of the balance of tax due	$ 50.00
Simple interest calculated at the rate of one and one-half percent per month from November 16, 1984 through December 8, 1987	$ 555.00
	$1,655.00 PLUS
Interest on $1,655.00, calculated at an annual rate of the prime rate plus five percentage points compounded daily from December 8, 1987 until the date of payment (May 6, 1988). The applicable prime rate shall be the rates effective on July 1, 1987, October 1, 1987 and January 1, 1988. For the purposes of this example the prime rate is assumed to be:	
July 1, 1987 8.25 percent	
October 1, 1987 8.75 percent	
January 1, 1988 9.00 percent	$ 91.63
Total	$1,746.63

18:2-2.7 Abatement of penalty and interest

If the failure to pay any tax when due or the failure to file any return is explained to the satisfaction of the Director, he may abate the payment of the whole or any part of any penalty, and may abate the payment of any interest charge in excess of the rate of one-half of one percent per month from the due date to October 1, 1975, and three-quarters of one percent per month from October 1, 1975, to the date of payment (N.J.S.A. 54:49-11) or December 8, 1987, whichever is earlier. On and after December 9, 1987 the Director may abate the payment of any interest charge in excess of the rate of three percentage points above the prime rate compounded daily to the date of payment. The Director will take no action under this section unless the taxpayer submits, in writing, a full and complete satisfactory explanation as to the reason why the tax was not paid when due.

18:2-2.8 Criminal penalties

(a) The State Tax Uniform Procedure Law contains criminal penalties for persons who violate the State tax laws administered by the Division of Taxation. Criminal provisions are prescribed by law for the following acts or omissions:

1. Any of the following constitute a disorderly persons offense:

i. Failure to file any return or report required by any State tax law;

ii. Failure to pay over any tax required by any State tax law;

iii. Filing or causing to be filed, or made any return, certificate, affidavit, representation, information, testimony or statement, required or authorized by any State tax law, which is false;

iv. Failure to file a bond required to be filed by any State tax law;

v. Failure to file an application for registration, certification, or such data in connection therewith as the director by regulation or otherwise may require under any State tax law;

vi. Failure to display or surrender any certificate of authority as may be required by any State tax law;

vii. Assigning or transferring any certificate of authority in violation of any State tax law;

viii. Failure to charge any state tax as required by any State tax law;

ix. Failure to separately state or account for any State tax as required by any State tax law;

x. Failure to withhold any State tax as required by any State tax law; or

xi. Failure to keep any records required by any State tax law or rule of the Director issued thereunder.

2. The offenses provided in (a)1 above shall be in addition to any other penalties prescribed in P.L. 1987, c.76 or otherwise prescribed by law.

3. Any of the following constitute a fourth degree crime:

i. Intentionally providing false information to hinder an official investigation, inquiry examination or audit by the Division of Taxation (N.J.S.A. 54:52-7);

ii. Failure to license or register with the Division of Taxation and/or engaging in conduct which would require registration with the intention to evade tax (N.J.S.A. 54:52-13);

iii. Knowingly operating under a voided corporate charter (N.J.S.A. 54:52-16);

iv. Knowingly dealing with unlicensed persons and assisting such person in avoiding or evading any State tax (N.J.S.A. 54:52-17); or

v. Knowingly swearing to any false or fraudulent statement with an intention to evade or avoid any tax penalty or interest (N.J.S.A. 54:52-19).

4. Any of the following constitutes a third degree crime:

i. Failure to file a return or report with intention to evade or avoid tax, fee, penalty or interest pursuant to State Tax Uniform Procedure Law (N.J.S.A. 54:52-7);

ii. Failure to remit any sums collected for the benefit of the State with intent to evade or avoid tax, fee, penalty and interest (N.J.S.A. 54:52-9);

iii. Preparation of false or fraudulent return report or statement with intent to evade or avoid any tax, fee, penalty or interest (N.J.S.A. 54:52-10);

iv. Preparation or maintenance of fraudulent or false books or records with intention to evade or avoid tax, fee, penalty or interest (N.J.S.A. 54:52-11);

v. Failure to maintain books or records as required by State tax law with intent to evade or avoid tax, fee, penalty or interest (N.J.S.A. 54:52-12); or

vi. Failure to collect or withhold any State tax with intention not to make timely payment of tax, fee, penalty or interest (N.J.S.A. 54:52-13).

5. The intentional failure to remit taxes collected or withheld of $75,000.00 or more shall be considered a second degree crime.

18:2-2.9 (Reserved)

18:2-2.10 Credit for erroneous payments and collections

(a) Where it is determined as a result of the audit of any taxpayer that a State tax has been erroneously or illegally collected from such taxpayer, or has been paid by such taxpayer under a mistake of law

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or fact, and where no questions of law or fact are involved, the Director may credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of a deficiency assessment. Such offsets will be made with the following limitations:

1. Credit for the erroneous payment must be made within the time in which a deficiency assessment must be made for such tax as provided by law; and

2. Credit shall only be applied in order to offset a liability for a period which is covered by the applicable assessment period; and

3. Credit for erroneous overpayments shall only be made to offset a deficiency assessment made by the Director under the same state tax law.

(b) An audit of a taxpayer can only be initiated by the Division and not at the request of a taxpayer.

18:2-2.11 Prime rate defined

For the purposes of determining the interest charge to be assessed against a taxpayer, prime rate shall mean the average predominant prime rate, as determined by the Board of Governors of the Federal Reserve System, quoted by commercial banks to large businesses as of the first business day of the calendar quarter immediately preceding the quarter within which the tax or payment became due. The applicable rate shall be adjusted on the first business day of each quarter thereafter over the life of the debt.

18:5-12.2 Third degree crimes

(a) The following crimes are considered third degree crimes for purposes of the Act:

1.-2. (No change.)

18:7-3.15 Interest on underpayment of installment payments

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

(c) The rate to be used in (b) above is an annual rate of five percent above the prime rate, compounded daily from the date the tax was originally due and payable until the date of actual payment. Each such underpayment shall bear interest at the rate prescribed above. The following is an example of underpayment interest computation:

1. Assume the average predominant prime rate for January 1, 1988 is nine percent. Therefore, the applicable interest on underpayment pursuant to this subsection is nine percent plus five percent or 14 percent on the amount of any underpayment of estimated tax due on or after April 1, 1988 but before July 1, 1988. The method prescribed for computing the addition to the tax may be illustrated by the following example:

i. A corporation reporting on a calendar year basis estimated on its Statement of Estimated Tax for 1988, estimated tax in the amount of $50,000.00. It made payments of $12,500.00 each on April 15, 1988, June 15, 1988, September 15, 1988 and December 15, 1988. On April 15, 1989, it filed its tax return, CBT-100, showing a total tax of $200,000.00. Since the amount of each of the four installments paid by the last date prescribed for payment thereof was less than 90 percent of the tax shown on the return, the addition to the tax under this rule is applicable and is computed as follows, assuming that no exception applies:

Item (1)	Tax on return for 1988	$200,000
Item (2)	Ninety percent of item (1)	180,000
Item (3)	Amount of estimated tax required to be paid on each installment date (25 percent of $180,000)	45,000
Item (4)	Deduct amount paid on each installment date	12,500
Item (5)	Amount of underpayment for each installment date (item (3) minus item (4))	$ 32,500
Item (6)	Interest shall be charged on each underpayment at the rate as prescribed in this subsection.	

First installment: Interest period April 15, *[1985]* **1988* to April 15, *[1986]* **1989***

Second installment: Interest period June 15, *[1985]* **1988* to April 15, *[1986]* **1989***

Third installment: Interest period September 15, *[1985]* **1988* to April 15, *[1986]* **1989***

Fourth installment: Interest period December 15, *[1985]* **1988* to April 15, *[1986]* **1989***

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

18:7-11.12 Extension of time to file return; interest and penalty

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

(f) Interest and a penalty are chargeable as follows:

1. (No change.)

2. Any unpaid portion of the tax on the final return which is in excess of the amounts paid shall bear interest at the rate of one and one half percent per month, or fraction thereof from the original due date of the return to the earlier of the date of actual payment or December 8, 1987. On and after December 9, 1987 the unpaid portion of the tax shall bear interest at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due or December 9, 1987, whichever is later, to the date of actual payment.

3. (No change.)

(g) (No change.)

18:7-13.1 Assessment and reassessment

(a) On its return, the taxpayer must compute the amount of tax payable under the law and must remit the amount of the indicated tax.

1.-2. (No change.)

3. There shall be added to the amount of any deficiency assessment or reassessment, interest at the rate of one and one-half percent per month or fraction thereof to be calculated from the date the tax was originally due and payable until December 8, 1987. On and after December 9, 1987, interest shall be calculated at the annual rate of five percentage points above the prime rate, compounded daily until the date of actual payment.

4. If the Director is satisfied that the deficiency was not due to fraud or evasion, he may abate the payment of any interest charge in excess of the annual rate of three percentage points above the prime rate, compounded daily.

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

18:7-13.7 Additional tax; change in Federal tax; interest to be charged

(a) If the taxpayer is notified by the Director that an additional tax is payable as a result of an amended Federal return or a change or correction in taxable income by the Commissioner of Internal Revenue or other office of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States or a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, within 15 days after the date of the Division's assessment letter to the taxpayer, the taxpayer must remit that additional tax together with interest thereon at the rate of three quarters of one percent per month or fraction thereof from the original due date of the New Jersey Corporation Business Tax Return for the accounting period involved to the date of payment or December 8, 1987, whichever is earlier, and on or after December 9, 1987 at the annual rate of five percentage points above the prime rate to be compounded daily from the date such tax was originally due to date of actual payment.

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

18:7-13.10 Refund for erroneous payments

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

[(c) See N.J.A.C. 18:2-2.10(b) for provisions relating to the credit for the erroneous overpayment of tax to the account of the taxpayer.]

18:7-13.12 Release of property from lien

(a) The Director may release any property from the lien of any tax, interest or penalty imposed upon any corporation in accordance with the provisions of the Act, or of any certificate, judgment or levy procured by him, upon written application made to him and upon payment of *[an amount equal to the cost of collection]* ***a $5.00 fee***, provided:

1. (No change.)

2. Deposit be made of whatever security or bond the Director shall deem proper to secure payment of any debt evidenced by any tax,

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interest, penalty, cost of collection, certificate, judgment or levy, the lien of which is sought to be released; or

3. (No change.)

(b) (No change.)

18:7-13.13 Certificate as to lien for unpaid corporation franchise taxes

(a) (No change.)

(b) The fee for a tax lien status certificate shall be $25.00 for each corporation listed in the application for which a certificate is requested.

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

18:7-14.1 Penalties

(a) Any taxpayer which shall fail to file its return when due or fail to pay any tax when due shall be subject to penalties and interest as provided for in the State Tax Uniform Procedure Law (N.J.S. 54:48-1, et seq.) and N.J.A.C. 18:2-2.1 et seq.

18:7-14.3 Arbitrary assessment where taxpayer withholds return

(a) (No change.)

(b) According to the estimate so made by him, the Director shall:

1. Assess the taxes, fees, penalties, cost of collection and interest due the State from the taxpayer;

2.-3. (No change.)

18:7-14.7 Acting under voided charter a crime of the fourth degree

A person who knowingly exercises or attempts to exercise any powers under the charter of any corporation after that charter has been forfeited by the Governor's proclamation or proclamation of the Secretary of State shall be guilty of a crime of the fourth degree.

18:7-14.13 (Reserved)

18:7-14.14 (Reserved)

18:7-14.15 (Reserved)

18:7-14.16 (Reserved)

18:7-14.17 Tax Clearance Certificate

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

(e) The Tax Clearance Certificate is issued by the Director upon application in good form which is accompanied by a statutory fee of $25.00. The Certificate is dated and it voids and becomes a nullity 46 days after that date. The Certificate is evidence that the corporation business *[tax has]* ***taxes have*** been paid or provided for only during the 45-day period succeeding its issue.

(f)-(g) (No change.)

18:7-14.20 Forms and instructions regarding procedure to obtain a Tax Clearance Certificate

(a) Application forms and instructions relating to Tax Clearance Certificates may be obtained by writing to:

New Jersey Division of Taxation
Tax Clearance Section
Document Control Center
420 East State Street
Trenton, NJ 08638

or by making a telephone call to Taxpayer Information Service at (609) 292-6400.

(b) (No change.)

18:8-4.5 Extension of time; interest extensions

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

(c) Where an extension of time to file a return has been granted and payment is made within the time fixed under the extension, any portion of the tax in excess of the amount paid by the original due date shall bear interest at the rate of nine percent per annum from the date the tax was originally due until the date of payment or December 8, 1987, whichever is earlier, and on and after December 9, 1987, at the annual rate of three percentage points above the prime rate, compounded daily from the date the tax was originally due until the date of payment.

(d) Where payment of the tax is made after the time fixed under the extension of time to file a return, any portion of the tax remaining unpaid shall bear interest at the rate of one and one-half percent per month or fraction thereof from the date the tax was originally due until the date of payment or December 8, 1987, whichever is earlier, and on and after December 9, 1987 at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due until the date of payment.

(e) Where the estimated tax remitted with the tentative return is less than 75 percent of the tax liability shown on the final return and less than the amount of tax paid for the preceding year, the unpaid portion of the tax in excess of the amount estimated and remitted shall bear interest at the rate of one and one-half percent per month or fraction thereof from the date the tax was originally due until the date of payment or December 8, 1987, whichever is earlier, and on and after December 9, 1987, at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due until the date of payment.

SUBCHAPTER 8. (RESERVED)

18:8-8.1 (Reserved)

18:8-8.2 (Reserved)

18:8-8.3 (Reserved)

18:8-8.4 (Reserved)

18:9-8.5 (Reserved)

18:9-8.6 (Reserved)

18:9-8.7 (Reserved)

18:18-8.11 (Reserved)

18:18-12.5 (Reserved)

18:18-12.7 (Reserved)

18:22-2.4 Failure to make returns; penalties; perjury

(a) Any taxpayer refusing or neglecting to make the statements provided for in N.J.A.C. 18:22-2.1 shall forfeit and pay to the State of New Jersey the sum of $100.00 per day for each day of such refusal or neglect, to be recovered in an action at law in the name of the State and which, when recovered, will be paid into the State Treasury and in addition thereto may be liable for the penalties provided for in the State Tax Uniform Procedure Law.

(b) (No change.)

18:22-8.4 Failure to make returns; penalties and perjury

(a) Any taxpayer refusing or neglecting to make the statements provided for in N.J.A.C. 18:22-8.1 shall forfeit and pay to the State of New Jersey the sum of $100.00 per day for each day of refusal or neglect, to be recovered in an action at law in the name of the State and which, when recovered, will be paid into the State treasury and in addition thereto may be liable for the penalties provided for in the State Tax Uniform Procedure Law.

(b) (No change.)

18:26-8.4 Failure to testify before appraiser; false statements

(a) (No change.)

18:26-9.8 (Reserved)

18:35-1.9 Taxable status of State and Federal securities

(a) Gross income shall not include interest on obligations:

1. Issued by or on behalf of New Jersey or any county, municipality, school or other district, agency, authority, commission, instrumentality, public corporation (including one created or existing pursuant to agreement or compact with this or any other state), body corporate and *[polite]* ***politic*** or political subdivision of New Jersey.

i. Specifically included within this subsection is interest received with respect to Certificates of Participation issued in connection with lease-purchase agreements, provided that the liability for payments of principal and interest is solely that of a New Jersey governmental entity;

2. (No change.)

(b) (No change.)

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(c) Gross income shall include interest and gains from obligations issued by or on behalf of other states of the United States, and foreign governments.

18:35-1.18 Extension of time to file New Jersey gross income tax return

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

(f) A taxpayer who has not paid the required 80 percent of the final tax liability at the time the request for extension is filed will become liable for the following late filing penalties (see N.J.S.A. 54:49-4).

1. $100.00 per month or any fraction of a month that the return is delinquent; and

2. Five percent per month or any fraction of a month that the return is delinquent, up to a maximum of 25 percent of the balance of any tax due with the return.

3. Both penalties set forth in (f)1 and 2 above shall be imposed on the first day following the original due date of the return and on the same calendar day of each succeeding month thereafter.

(g) All taxpayers making a late payment of tax, whether or not they have obtained an extension of time to file, are subject to the following late payment penalty and interest payments:

1. A five percent penalty for late payment of any tax balance (see N.J.S.A. 54:49-4);

2. Interest on the unpaid tax at the rate of nine percent per annum up to and including December 8, 1987 and on and after December 9, 1987 at the annual rate of three percentage points above the prime rate effective on the first business day of the calendar quarter immediately preceding the quarter in which the liability became due, compounded daily on the amount that remains unpaid from the original due date of the return to the date of payment where the amount thereof is $1.00 or more (see N.J.S.A. 54A:9-5(a)), provided that payment is made on or before the extended due date; and

3. Interest on the unpaid tax at the annual rate of five percentage points above the prime rate effective on the first business day of the calendar quarter immediately following the quarter in which the liability became due, compounded daily on the amount that remains unpaid from the original due date of the return to the date of payment where the amount thereof is $1.00 or more and remains unpaid beyond the extended due date.

4. The following is an example of the computation of late payment penalty and interest payments:

i. A New Jersey resident files for an extension of time to file his NJ-1040 which is originally due on April 15, 1988 but would be due on August 15, 1988 if a four month extension is granted. With the request for extension the taxpayer submits payment of what amounts to 70 percent of his final tax liability. The NJ-1040 is filed on July 27, 1988. As a result of the taxpayer's failure to pay at least 80 percent of his final tax liability at the time he filed for the extension, the extension is denied. The taxpayer had a final tax liability of $10,000 for the year of which $7,000 was paid at the time he filed for the extension. The taxpayer owes the following amounts in addition to the balance of unpaid tax:

Delinquency penalty: $100.00 per month x four months	$ 400.00
Late filing penalty: five percent per month of the tax due x four months = 20 percent of $3,000.00 ($10,000.00 tax less $7,000 payment)	600.00
Late payment penalty: five percent of balance of the tax due	150.00
Balance of tax liability	3,000.00
Interest on tax *[and penalties]* calculated at an annual rate of the prime rate plus five percentage points compounded daily from the original due date (April 15, 1988) until the date of payment (July 27, 1988)***, plus interest on penalty at the same rate from the date the penalty is assessed until the date of payment***. The applicable prime rates shall be the rates effective on January 1, 1988 and April 1, 1988 which are assumed to be nine percent and nine and one-half percent, respectively, for the purposes of this example.	150.85
Total due	$4,300.85

18:35-1.19 Negligence and fraud penalties

(a) If any part of a deficiency is due to the taxpayer's negligence or an intentional disregard of any provision of the Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) or the rules applicable thereto, there shall be added to the tax, penalties and interest as provided for in State Tax Uniform Procedure Law plus an amount equal to 10 percent of the deficiency, provided however that there was no intent to defraud.

(b) If a deficiency is assessed against a taxpayer and it is determined that any part of such assessment is due to civil fraud, there shall be added to the tax an amount equal to 50 percent of the assessment. This addition to the tax shall be in lieu of any other additions to the tax imposed for late filing and nonpayment of special assessment as provided for in N.J.S.A. 54:49-9.

18:35-1.20 Gambling winnings defined

(a) Every payor of New Jersey gambling winnings which are subject to withholding, as defined in (d) below, shall deduct and withhold New Jersey gross income tax thereon in an amount equal to three percent of payments made to both New Jersey residents and nonresidents as defined in N.J.S.A. 54A:1-2(m) and (n). Such withholding shall be required in all instances wherein the payor of such winnings is required to withhold for Federal income tax purposes under subsection (q) of section 3402 of the Federal Internal Revenue Code of 1986 (26 U.S.C. §3402), as amended.

(b) The tax imposed under N.J.S.A. 54A:7-1(c) and this section shall not apply:

1. With respect to the payment of winnings from the New Jersey Lottery; and

2. With respect to a payment of winnings from a slot machine *[play, but only to the extent that such winnings are paid by the machine being played]*, or a keno or bingo game.

(c) Any person receiving a payment of New Jersey gambling winnings subject to withholding must furnish the payor a statement made under the penalties of perjury containing:

1. The name, address, and taxpayer identification (social security) number of the winner accompanied by a declaration that no other person is entitled to any portion of such payment; or

2. The name, address, and taxpayer identification (social security) number of the recipient and of every person entitled to any portion of such payment.

3. The requirement set forth in (c)1 and 2 above may be satisfied by providing the payor with a copy of Federal Form W-2G or 5754, whichever is applicable.

(d) New Jersey gambling winnings subject to withholding means any payment from:

1. A wager placed in a sweepstakes, wagering pool or lottery, other than the New Jersey Lottery, but only if the proceeds from the wager exceed $1,000.00; or

2. Any other wagering transaction, including but not limited to, a wagering transaction in a parimutuel pool with respect to horse races, but only if the proceeds from the wager:

i. Exceed $1,000.00; and

ii. Are at least 300 times as large as the amount of the wager.

3. If proceeds from a wager as set forth in (d)1 and 2 above qualify as winnings subject to withholding, then the total proceeds from the wager, and not merely amounts in excess of $1,000.00, are subject to withholding.

(e) Proceeds from a wager is the amount paid with respect to a wager, less the amount of the wager. Amounts paid with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount of proceeds from a wager.

1. In determining the amount paid with respect to a wager, proceeds which are not money shall be taken into account at the fair market value.

2. Periodic payments, including installment payments or payments which are to be made periodically for the life of a person, are

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aggregated for purposes of determining the proceeds from a wager. The aggregate amount of period payments to be made for a person's life shall be based on the person's life expectancy. For purposes of determining the amount subject to withholding, the first periodic payment shall be reduced by the amount of the wager.

(f) Payments to any person of winnings subject to withholding under this section shall be treated as if they are wages paid by an employer to an employee under the provisions of N.J.S.A. 54A:7-2 through N.J.S.A. 54A:7-7; provided, however, that such payments shall be considered gambling winnings for all other purposes under the Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.).

18:37-2.1 Tax rates on the transfer of petroleum or petroleum products

(a) The tax on transfers of petroleum or petroleum products shall be at the following rates:

1. On transfers occurring prior to February 1, 1987, $0.01 per barrel, except as provided in (b) below.

2. On transfers occurring on or after February 1, 1987, $0.0125 per barrel, except as provided in (b) below.

(b) In the event of a major discharge or series of discharges of petroleum or petroleum products resulting in claims against the Spill Compensation Fund which exceeded the existing balance of the fund, a tax rate of $0.04 per barrel on transfers of petroleum or petroleum products shall be levied until the revenue produced by such increased rate equals 150 percent of the total dollar amount of all pending reasonable claims resulting from the discharge of petroleum or petroleum products. The tax rate as herein set forth may be less than $0.04 per barrel transferred if, as provided by the Spill Compensation Law, the revenue produced by such lower rate shall be sufficient to pay outstanding claims against the fund within year of such levy. Under no circumstances shall this rate be levied prior to February 1, 1988.

18:37-2.2 Tax rates on the transfer of hazardous substances other than petroleum or petroleum products

(a) The tax on transfers of hazardous substances other than petroleum or petroleum products shall be at the rate of:

1.-4. (No change.)

5. On transfers occurring on or after June 1, 1985, but prior to February 1, 1987, the greater of $0.04 per barrel or 0.8 percent of the fair market value of the hazardous substances, provided, however, that with respect to transfers of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined, or rerefined in this State, or which are transferred into this State subsequent to being recycled, refined, or rerefined, the tax shall be $0.04 per barrel of the hazardous substance. The tax rates specified herein were adopted pursuant to the determination of the Administrator of the Spill Compensation Fund that the condition stated for a tax increase in (c) below existed as of May 1, 1985; or

6. On transfers occurring on or after February 1, 1987, the greater of $0.0125 per barrel or 1.0 percent of the fair market value of the hazardous substance, provided, however, that with respect to transfers of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined or rerefined in this State, or which are transferred into this State subsequent to being recycled, refined or rerefined, the tax shall be $0.0125 per barrel of the hazardous substance.

(b) (No change.)

(c) In the event of a major discharge or series of discharges of hazardous substances other than petroleum or petroleum products resulting in claims against the Spill Compensation Fund which exceed the existing balance of the fund for taxable periods occurring from April 1980 through January 1987, a tax rate of the greater of $0.04 per barrel transferred, or 0.8 percent of the fair market value of such hazardous substance shall be levied until the revenue produced by such increased rate equals 150 percent of the total dollar amount of all pending reasonable claims resulting from the discharge of hazardous substances other than petroleum or petroleum products; provided, however, that with respect to transfers of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined, or rerefined in this State, or which are transferred into this State subsequent to being recycled, refined, or rerefined, the tax shall be $0.04 per barrel of the hazardous substances. The tax rate as herein set forth may be less than $0.04 per barrel transferred or 0.8 percent of the fair market value of such hazardous substance if, as provided by the Spill Compensation Law, the revenue produced by such lower rate shall be sufficient to pay outstanding claims against the fund within one year of such levy. This subsection is inapplicable to tax periods occurring on and after February 1, 1987.

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. (RESERVED)

(a)

DIVISION OF TAXATION

Cigarette Tax
Tobacco Sales to Minors
Adopted Amendments: N.J.A.C. 18:5-1.1, 6.2, 12.5

Proposed: May 2, 1988 at 20 N.J.R. 970(a).

Adopted: August 12, 1988 as R.1988 d.434, **with substantive changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:40A-1, et seq., specifically 54:40A-20.

Effective Date: September 6, 1988.

Expiration Date: April 16, 1989.

Summary of Public Comments and Agency Responses:

COMMENT: N.J.A.C. 18:5-1.1 should be supplemented with a definition for "point of display."

RESPONSE: It was agreed that a definition was necessary. The rule is changed upon adoption with a definition for "point of display" as follows: " 'Point of display' means any place where tobacco products are either stored or held ready for sale in public view."

COMMENT: Proposed subsection N.J.A.C. 18:5-6.2(g) should read "Notwithstanding any other provisions of law to the contrary, a person to whom a license is issued shall, as a condition of the license, post a sign at the point of display of the tobacco products [and] **or** at the point of sale. . . ."

RESPONSE: The Division explained that the intent of P.L. 1987, c.423 is to give notice that persons under 18 years of age should not smoke or otherwise use tobacco products as well as provide the seller with visible evidence of the prohibition on sales to minors pursuant to N.J.S.A. 2A:170-51. The words "or" and "and" in a statute are interchangeable and one may be substituted for the other if the subsection is consistent with legislative intent.

COMMENT: This legislation will unduly burden any seller of tobacco products with multiple and redundant sign postings.

RESPONSE: The Division indicated that it did not believe that the legislation intended to unduly burden any seller of tobacco products with multiple and redundant sign postings in the same general area. It certainly would be an unintended consequence of P.L. 1987, c.423 if the Division were to require a seller, such as the typical supermarket operator, to post a sign at each of several points of display and then again at each of many register locations.

COMMENT: N.J.A.C. 18:5-6.2(g) should require the sign to read: "A person under age 18 who purchases a tobacco product is in violation of the law."

RESPONSE: The Division answered that the statute under which it is authorized to propose the rule provides that "The sign shall be at least two inches by two inches square and shall read as follows: A person who sells or offers to sell a tobacco product to a person under 18 years of age shall be fined $250.00." The basic rule of statutory construction is that the general language of the statute controls. If a provision is clear and unambiguous on its face and admits to only one interpretation, the statute must be enforced according to its literal terms.

COMMENT: The rules should also provide for the arrest and fine of the purchaser of cigarettes or other tobacco products who is a minor.

RESPONSE: The statute under which the Division is authorized to propose the rules provides that a person who sells or offers to sell a tobacco product to a person under 18 years of age shall be fined $250.00.

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The Division believes that any user penalty can only be authorized by amendatory legislation. At the present time, the use of tobacco by minors is not an offense in the State of New Jersey.

Summary of Changes Made Between Proposal and Adoption:

N.J.A.C. 18:5-1.1 is amended to add a definition that "point of display" means any place where tobacco products are either stored or held ready for sale in public view. This supplement is not so substantive as to require reproposal because it does not enlarge the scope of the rule. It merely provides a necessary definition in the interest of clarification.

N.J.A.C. 18:5-6.2(g) is changed to provide that a warning sign can be placed at the point of display or the point of sale of tobacco products, but is not required at both. Thus, the rule will not place undue burden on the seller of tobacco products with multiple and redundant sign posting in the same general area, while still giving notice that persons under 18 years of age should not smoke. This change is not so substantive as to require reproposal because the law allows the substitution of "or" for "and" when consistent with the purposes of the underlying legislation.

N.J.A.C. 18:5-12.5 is amended to read simply that penalties other than those specified may be assessed and, thus, "and other" is added to the heading. This change is not so substantive as to require reproposal because it does not alter in any way who or what is affected by the rule beyond what that law already provides in various statutory provisions that may apply to the same circumstances.

N.J.A.C. 18:5-12.5(d) should recite the source of the fine and hence "pursuant to N.J.S.A. 2A:170-51" is added to indicate the authority for the offense and punishment. This change is not so substantive as to require reproposal because it merely provides a citation to the statute which applies.

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

18:5-1.1 Words and phrases defined

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

"Point of display" means any place where tobacco products are either stored or held ready for sale in public view.

"Point of sale" means any place where monies are collected upon the sale of tobacco products, such as at a cash register or vending machine.

. . .

18:5-6.2 Issuance of license; Director's powers

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

(g) Notwithstanding any other provisions of law to the contrary, a person to whom a license is issued shall, as a condition of the license, post a sign at the point of display of the tobacco products *[and]* ***or*** at the point of sale. The sign shall be at least two inches by two inches square and shall read as follows:

"A person who sells or offers to sell a tobacco product to a person under 18 years of age shall be fined $250.00."

Recodify (g) to (h) (No change in text.)

18:5-12.5 Civil ***and other*** penalties

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

(d) The sale, giving or furnishing, either directly or indirectly, as agent or otherwise, to a minor under the age of 18 years, of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco, is punishable by a fine of $250.00 ***pursuant to N.J.S.A. 2A:170-51***

DIVISION OF TAXATION

(a)

Corporation Business Tax
Recycling Tax Credit
Adopted New Rule: N.J.A.C. 18:7-3.18

Proposed: January 4, 1988 at 20 N.J.R. 48(b).

Adopted: July 28, 1988 by John R. Baldwin, Director, Division of Taxation.

Filed: August 1, 1988 as R.1988 d.413, **with substantive changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:10A-27.

Effective Date: September 6, 1988.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

One letter from a CPA society was received containing substantial comments relating to matters within the jurisdiction of the Department of Environmental Protection, and that society was so advised. The issue relating to loans from the recycling fund was proper, but loan guarantees would not reduce the "total credit allowable," since the loan guarantee program does not cause a taxpayer to "receive" any specific amount from the fund. The issue of what basis was to be used in determining the tax credit was resolved when the Division agreed to revise N.J.A.C. 18:7-3.18(d) with "cost" as the basis, to give effect to the language of the statute. An explanation of the computation of the credit at this point in time was related to the commenter. In the case of proration of the credit for short periods and withdrawal of the property from service, the credit would be lost only if the property was disposed of. The credit is prorated on a monthly basis. An example was added to the rule, in response to the comment. Regarding any carryforward, purchase and use in New Jersey are conditions precedent to receiving the credit. The credit would not survive in a merger where the corporate identity of the claimant ceased to exist.

Another letter, from a taxpayer, made three recommendations, one of which asked for a credit prior to receiving certification from the Department of Environmental Protection (DEP). The Division responded that the statute made prequalification a condition precedent to receiving the credit. Its second recommendation was that "cost" of the equipment was to be used to compute the basis and the Division agreed and has changed the rule in that regard. The third comment concerned proration of the credit. The Division agreed to the change, provided that a 12 month basis existed. The final comment related to disposition of the equipment. If the property was disposed of, there would be no credit, nor would the Division allow a credit transfer to an affiliate corporation. The Division did respond that a credit between divisions of taxpayer **only** was proper since there was no change in corporate identity.

Summary of Changes

In N.J.A.C. 18:7-3.18(a), in defining "qualified recycling equipment," a phrase was added, "and which recycling equipment is used in New Jersey," in accordance with N.J.S.A. 54:10A-53, as amended by P.L. 1987, c.102, §42.

At N.J.A.C. 18:7-3.18(d), the basis for computation of the tax credit amount was changed to "cost," exclusive of any loans received by the taxpayer pursuant to section 36, P.L. 1987, c.102 (N.J.S.A. 13:1E-96).

At N.J.A.C. 18:7-3.18(g), the words "in New Jersey" were added in accordance with N.J.S.A. 54:10A-53, so that (g) reads: "The equipment must be used in New Jersey during the year to be eligible for the tax credit." In the example in (g), the date was changed to January "2, 1990."

N.J.A.C. 18:7-3.18(h) was added, as follows:

"(h) The Commissioner of the Department of Environmental Protection's certificate and an affidavit from the taxpayer representing use in New Jersey must be a part of the return claiming any credit."

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

18:7-3.18 Recycling tax credit

(a) As used in this section:

"Maximum yearly credit" means the maximum amount of the tax credit allowable in a tax year.

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"Qualified recycling equipment" means that recycling equipment ***used in New Jersey*** which is certified in writing by the *[Director]* ***Commissioner of the Department*** of Environmental Protection as qualified for the corporation business tax credit.

"Total credit allowable" means the total corporate tax credit that a taxpayer can take on equipment certified by the Department of Environmental Protection.

(b) A corporate taxpayer which purchases qualified recycling equipment is entitled to a corporation business tax credit equal to 50 percent of the cost of the certified equipment, subject to the following limitations:

1. The taxpayer must receive certification from the Commissioner of the Department of Environmental Protection prior to claiming the credit.

2. The maximum yearly credit shall not be more than 20 percent of the total credit allowable in any one given full tax year.

3. The credit shall be based on amounts paid for the equipment less the amount of any loan made pursuant to section 36 of P.L. 1987, c.102 (N.J.S.A. 13:1E-96).

4. The credit allowable in a given tax year cannot exceed 50 percent of the tax liability otherwise due on that return. The tax liability otherwise due is computed after credit is taken pursuant to N.J.S.A. 52:27H-78 (urban enterprise zone employee tax credit).

5. The amount of the tax credit shall not reduce the tax liability below the statutory minimum tax provided at N.J.S.A. 54:10A-5(e).

(c) No tax credit may be taken by a taxpayer in the year that the equipment is disposed of.

(d) The basis for computation of the tax credit amount is *[the same basis as used for Federal tax purposes]* ***cost*** exclusive of any loans received by the taxpayer pursuant to section 36, P.L. 1987, c.102 (N.J.S.A. 13:1E-96).

(e) The tax credit shall be prorated based on months or the fraction thereof that the equipment is used in the state. The base period for this proration is 12 months.

(f) Taxpayers who purchase qualified recycling equipment and have unused credits on December 31, 1996 can carry forward the tax credit to subsequent periods subject to the limitations contained in (b)2, 3, 4 and 5 above.

(g) The equipment must be used ***in New Jersey*** during the year to be eligible for the tax credit.

Example: XYZ Corporation begins to use qualified recycling equipment in this State on January *[1, 1988]* ***2, 1990***. The Federal cost basis of this equipment is $100,000 and the taxpayer did not receive any loans from the recycling fund to help with the purchase of the equipment. The taxpayer receives an enterprise zone employee tax credit of $5,000 and their corporate tax liability after this credit is $30,000. The credit for the taxpayer is the lesser of $10,000 ($100,000 cost x 50 percent (total credit allowable) x 20 percent maximum yearly credit), or $15,000 (50 percent of the tax liability after the enterprise zone tax credits). In this case the allowable credit for XYZ Corporation is $10,000, the lesser of the two amounts.

(h) The Commissioner of the Department of Environmental Protection's certificate and an affidavit from the taxpayer representing use in New Jersey must be a part of the return claiming any credit.

(a)

Local Property Tax
Readoption: N.J.A.C. 18:12-1.1 through 18:17-4.1

Proposed: May 16, 1988 at 20 N.J.R. 1066(a).

Adopted: July 28, 1988 by John R. Baldwin, Director, Division of Taxation.

Filed: July 29, 1988 as R.1988 d.408, **without change.**

Authority: N.J.S.A. 54:1-35 et seq.; 54:4-26; 54:4-23.21; 54:4-8.19; 54:4-8.47; 54:3-21.5; 54:50-1 et seq.; 54:4-3.80; 54:4-1 et seq.; 54:3-14; 54:4-8.40 et seq.; 54:4-23.1 et seq.; and P.L. 1968, c.49, sec.7.

Effective Date: July 29, 1988.

Expiration Date: July 29, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 18:12-1.1 through 18:17-4.1.

(b)

Local Property Tax
Farmland Assessment Act: Woodlands
Adopted New Rule: N.J.A.C. 18:15-2.15

Proposed: June 20, 1988 at 20 N.J.R. 1337(a).

Adopted: July 28, 1988 by John R. Baldwin, Director, Division of Taxation.

Filed: August 1, 1988 as R.1988 d.414, **without change.**

Authority: N.J.S.A. 54:4-23.1 and 54:4-23.21

Effective Date: September 6, 1988.

Expiration Date: July 29, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

18:15-2.15 Transition rule initiating filing time for beginning of application or new conditions on woodland owners

An owner of woodland filing an application for farmland assessment (Form FA-1) in 1988 for valuation, assessment and taxation of land in accordance with the provisions of the Farmland Assessment Act of 1964 during the 1989 tax year, but not fulfilling the additional conditions imposed on affected woodland owners as set forth in N.J.A.C. 18:15-2.7, shall be granted an extension of time to fulfill such conditions by filing the required additional information with the tax assessor and the Commissioner of the Department of Environmental Protection no later than March 1, 1989. The extension of time shall not relieve an applicant seeking farmland assessment qualification of his land in 1989 from submitting an application for farmland assessment (Form FA-1) in a timely manner during the 1988 pretax year.

(c)

Gross Income Tax
Requirement of Employee Withholding
Adopted New Rules: 18:35-1.21, 1.22 and 1.23

Proposed: March 7, 1988 at 20 N.J.R. 515(a).

Adopted: August 3, 1988 by John R. Baldwin, Director, Division of Taxation.

Filed: August 4, 1988 as R.1988 d.419, **with substantive changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54A:7-1, 54A:9-1.

Effective Date: September 6, 1988.

Expiration Date: June 7, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: A comment from the New Jersey Society of Certified Public Accountants (Society) suggested that N.J.A.C. 18:35-1.21(b)13. is too broad in that the term "other governmental agency" could include remote agencies which define employee in a manner totally unrelated to generally accepted business practices.

RESPONSE: Although the factor is broad, it must be stressed that no single factor set forth in the rule is conclusive. However, N.J.A.C. 18:35-1.21(b)13 has been changed on adoption to narrow the scope of this factor from considering the basis for and determination of any governmental agency that an individual is an employee to considering only such a similar determination of the Internal Revenue Service. This

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change does not alter or enlarge the Division's original position encompassed by the proposed rule.

COMMENT: The Society also suggested that an individual who is a self-employed contractor, but, at the same time, is also an employee, should be given a specific exemption from withholding requirements.

RESPONSE: The withholding of gross income tax is only required in employment situations and there is nothing which precludes an individual from being both self-employed and an employee at the same time. Only where the circumstances of a particular situation indicate that the individual is an employee will it be necessary for the payor to withhold gross income tax from his or her wages.

Summary of Changes:

A fourteenth factor is added to the other factors of N.J.A.C. 18:35-1.21(b) which are to be considered when determining whether an individual is in an employer-employee relationship. This additional factor is a catch-all which allows the Division to take into account any information deemed to be relevant which is not specifically included in the 13 other factors. This is not an alteration of the Division's original position and does not impose additional burdens not encompassed in the proposed rule.

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

18:35-1.21 Employee defined

(a) For the purposes of N.J.A.C. 18:35-1.22, the term "employee" means every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term also includes officers and employees, whether elected or appointed, of the United States, a state, territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) When determining whether an individual is in an employer-employee relationship, relevant factors shall be considered, including the following:

1. The relationship which the parties believe they have created;

2. The extent of control exercisable by the person receiving the benefit of the services over the manner and method of performance. It is not necessary that the employer actually direct or control the manner of performance, but it is sufficient if he has the right to do so;

3. Whether the person rendering the service undertook substantial costs to perform the service;

4. Whether the service required special training or skill, and whether the person receiving the benefit of the services provided such special training;

5. The duration of the relationship between the parties;

6. Whether the person rendering the service had a risk of loss;

7. Whether the person who received the benefit of the services could discharge without cause the person who performed the services;

8. The method of payment, such as by time or by job;

9. Whether the person rendering services regularly performs the same services for other persons and is not protected to any degree from competition;

10. Whether the person for whom services are performed furnishes tools, equipment, support staff and a place to work to the individual rendering the services;

11. Whether the individual rendering the services is eligible for employer provided benefits such as pension, bonuses, paid vacation days and sick pay;

12. Whether the person receiving the benefits of the services rendered carries workmen's compensation insurance on the individual performing the services; *[and]*

13. *[Whether any other governmental agency has determined that the individual performing services is an employee, and the basis for such determination.]* ***Whether the Internal Revenue Service determines that an individual performing services is an employee; and***

14. Any other information deemed to be relevant by the Division.*

(c) No single factor in (b) above shall necessarily be conclusive in determining whether an individual is an employee or self-employed. The final determination as to whether an individual is either an employee or self-employed shall be based upon the review of the circumstances of the entire relationship and the evaluation of any special facts in a particular case.

(d) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee shall be immaterial, including designation as a partner, co-adventurer, agent, independent contractor, or similar designations or descriptions.

(e) All classes or grades of employees shall be included within the relationship of employer and employee, including Superintendents, managers, and other supervisory personnel:

1. An officer of a corporation shall be considered an employee of the corporation, except that an officer of a corporation who as such does not perform any services, or performs only minor services, and who neither receives nor is entitled to receive, directly or indirectly, any remuneration shall not be considered an employee of the corporation.

2. A director of a corporation in his capacity as such shall not be considered an employee of the corporation.

18:35-1.22 Requirement of withholding from employees

(a) Any employer that maintains an office or transacts business within this State, and that makes payment of any wages subject to New Jersey gross income tax to a resident or nonresident individual, shall deduct and withhold tax from such wages paid to each employee (as defined in N.J.A.C. 18:35-1.21) for each payroll period.

(b) The withholding of tax from the employee's wages must be in accordance with the instructions and methods prescribed by the current employer instruction booklet (Form NJ-WT).

18:35-1.23 Employee business expenses not deductible

(a) If an individual is an employee as defined in N.J.A.C. 18:35-1.21, such person shall not deduct from gross income any costs and expenses incurred in connection with such employment.

(b) If an individual is an employee as defined in N.J.A.C. 18:35-1.21, all earnings in connection with employment are deemed to be and shall be reported by the taxpayer as wages, salaries, commissions, bonuses and other remuneration received for services rendered, pursuant to N.J.S.A. 54A:5-1(a). In no case shall an employee report his or her earnings as net profits from business as defined by N.J.S.A. 54A:5-1(b).

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EMERGENCY ADOPTIONS

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Special Medical Waste

Adopted Emergency Rules and Concurrent Proposed New Rules: N.J.A.C. 7:26-3A

Emergency New Rules Adopted: August 10, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): August 10, 1988.

Emergency Rule Filed: August 10, 1988 as R.1988 d.429.

Authority: N.J.S.A. 13:1B-3, 13:1E-1 et seq., particularly 13:1E-6, 58:10A-1 et seq., particularly 58:10A-4.

Concurrent Proposal Number: PRN 1988-464.

DEP Docket Number: 036-88-08.

Emergency Adoption Effective Date: August 10, 1988.

Emergency Adoption Expiration Date: October 9, 1988.

A **public hearing** concerning this concurrent proposal will be held on:
Monday, September 26, 1988 at 10:00 A.M.
War Memorial Auditorium
West Lafayette Street (Entrance)
Trenton, New Jersey 08608

Submit written comments on the concurrent proposal by October 6, 1988 to:
Mary L. Gillespie, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

These new rules were adopted on an emergency basis and became effective upon filing with the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency rules are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A 52:14B-1 et seq.

The agency emergency adoption and concurrent proposal follows:

Summary

These new rules at N.J.A.C. 7:26-3A are promulgated pursuant to the authority of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

These rules are adopted on an emergency basis due to the on-going and increasing problems this State faces from the illegal disposal of medical waste. These problems pose an imminent peril to the public health, safety, welfare and the environment. The Department of Environmental Protection developed these rules with the assistance of the Department of Health. These rules regulate special medical waste, which is defined in N.J.A.C. 7:26-3A.4 and includes among other things: cultures and stocks of infectious agents; pathological waste; bulk blood; carcasses of pathogen-exposed animals; needles and syringes. The threat to public health, safety and welfare demands immediate discovery of the sources and causes of the illegal disposal of special medical waste.

Commencing August 22, 1988, all generators of special medical waste, who are required to manifest pursuant to these new rules, shall maintain a continuous daily log of the special medical waste generated. Commencing October 1, 1988, all licensed health care facilities, clinical laboratories and blood banks who are not required to manifest pursuant to these new rules shall maintain a continuous daily log of the special medical waste generated. Commencing November 15, 1988, all other generators of special medical waste shall maintain a continuous daily log.

The Department is also requiring all generators of special medical waste to submit a one-time-only Summary Report of Special Medical Waste Generation, Transportation and Disposal Practices. All licensed health care facilities, clinical laboratories and blood banks are to submit Summary Reports by December 1, 1988, covering the period from October 1, 1988 through November 1, 1988. All other generators of special medical waste shall submit Summary Reports to the Department by January 16, 1989, covering the period from November 15, 1988 through December 15, 1988. The daily log requirement will assure that special medical waste is tabulated correctly for use in preparation of the summary report. The reporting requirement will enable the Department to identify the generators of special medical waste, the amount generated, as well as those who transport and dispose of the waste and the means they employ so that more comprehensive rules regarding special medical waste can be promulgated for the protection of public health, safety, welfare and the environment.

In addition, these new rules institute a Special Medical Waste Manifest System applicable to any generator who generates in a calendar month more than 100 kilograms (220 pounds) of certain special medical waste. Generally, the generator is required to manifest special medical waste that has not been decontaminated, sterilized or otherwise rendered noninfectious for that calendar month. However, if in the next calendar month, the same generator generates 100 kilograms or less of special medical waste, he or she is not required to manifest for that calendar month because he or she is a small quantity generator as defined in N.J.A.C. 7:26-3A.8. The continuous daily logging requirement will serve as a check for the Department to assure that those required to manifest do manifest. Commencing August 22, 1988, this special medical waste shall be manifested from the point of generation to the point of disposal. Portions of the manifest form will be completed by the generator, transporter, and disposal facility. The generator shall inform the Department if he or she fails to receive a copy of the manifest from the disposal facility or if there are any discrepancies. The Special Medical Waste Manifest will help ensure that this special medical waste reaches the disposal facility.

Social Impact

The overall social impact of these new rules will be positive. The one-time-only report, covering the period from October 1, 1988 through November 1, 1988, will affect licensed health care facilities, clinical laboratories and blood banks. The one-time-only report, covering the period from November 15, 1988 through December 15, 1988, will affect all other generators of special medical waste. The daily log and reporting requirements will place a burden on generators of special medical waste. The manifest requirements may also inconvenience generators, transporters and owner/operators of disposal facilities. However, the persistent and growing problem posed by the illegal disposal of special medical waste to the public health, safety, welfare and the environment outweighs the burden placed on the regulated community.

Economic Impact

The overall economic impact to this State will be positive. Although hospitals, research facilities and other generators of special medical waste may incur some increased administrative costs in complying with these rules, the costs will be minimal because the requirements are not unduly burdensome. However, the continuous and on-going problems of illegal disposal of special medical waste have adversely impacted the State's travel economy, as well as the lives of the citizens of this State. These steps, taken to stop the illegal disposal of special medical waste, will have an overall positive economic impact.

Environmental Impact

The environmental impact of these new rules will be positive. This is an important first step in attacking the problem of the illegal disposal of special medical waste. Identifying the sources, the amounts, the transporters and the disposal facilities of special medical waste will enable the Department to promulgate effective and comprehensive rules concerning the handling, transportation and disposal of special medical waste. This will lead to a safer and more aesthetically pleasing environment.

The manifesting requirement assures that certain special medical waste is tracked from the point of origin to the point of disposal.

Regulatory Flexibility Statement

The logging and reporting requirements will apply to all generators of special medical waste. It is estimated that of the total number of special medical waste generators impacted by these proposed new rules, 54,500 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.) and will be impacted. In order to comply with these rules, the small businesses will have to keep a daily log regard-

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ing special medical waste and submit a one-time Summary Report of Special Medical Waste Generating, Treatment and Disposal Practices to the Department.

In addition, the requirements of the special medical waste manifest system will be applicable to generators who generate in any calendar month a total of more than 100 kilograms (220 pounds) of special medical waste and who transport any amount of certain special medical waste off-site. In so doing, it is likely that small businesses may incur increased administrative costs from complying with these rules.

It is expected that the costs to small businesses will be minimal. In developing these 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 would endanger the environment, public health, safety and welfare. However, for those small businesses which generate 100 kilograms (220 pounds) or less, the exemption for the small quantity generator, pursuant to N.J.A.C. 7:26-3A.8, will decrease the overall cost of compliance.

Full text of the emergency adoption and concurrent proposal follows:

SUBCHAPTER 3A. SPECIAL MEDICAL WASTE

7:26-3A.1 Scope and applicability

(a) This subchapter shall constitute the rules of the Department governing the logging, reporting and manifesting requirements for special medical waste.

(b) The requirements of this subchapter are in addition to the requirements of N.J.A.C. 7:26-1 and to the requirements of the Department of Health.

7:26-3A.2 Construction

This subchapter shall be liberally construed to permit the Department to implement its statutory duties.

7:26-3A.3 Severability

If any section, subsection, provision, clause or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

7:26-3A.4 Definitions

In addition to the definitions set forth in N.J.A.C. 7:26-1.4, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Blood banks" means blood banks as defined in N.J.A.C. 8:8-1.2.

"Clinical laboratories" means clinical laboratories as described in N.J.A.C. 8:44-2.2.

"Licensed health care facilities" means health care facilities as defined in N.J.S.A. 26:2H-2 which are licensed by the State Department of Health.

"Special medical waste" means any of the following when it is first generated and does not include any solid waste generated by home self-care:

1. Cultures and stocks of infectious agents and associated biologicals (Class A) including:

i. Specimen cultures;

ii. Culture dishes and devices used to transfer, inoculate and mix cultures;

iii. Wastes from the production of biologicals; and

iv. Discarded live and attenuated vaccines;

2. Bulk blood, blood products, and body fluids other than urine, at least 20 cubic centimeters of liquid volume per vessel (Class B);

3. Pathological wastes consisting of tissues, organs, body parts including products of conception which are discarded after surgery, obstetrical procedures, autopsy, and laboratory procedures (Class C);

4. Needles and syringes or any other medical or laboratory articles that are potentially infectious and that might cause punctures or cuts including intravenous tubing with needles attached, vacuum collection containers/tubes containing blood and blood products, etc. (Class D);

5. The carcasses, body parts, and bedding of all research animals that were intentionally exposed to pathogens (Class E); and

6. Solid waste generated from rare, unusual, or special cases involving highly communicable diseases as determined by the State Department of Health (Class F).

7:26-3A.5 Logging requirements for generators of special medical waste

(a) Commencing August 22, 1988, all generators of special medical waste who are required to manifest pursuant to this subchapter shall maintain a continuous daily log, on forms available from the Department, of all special medical waste generated. The continuous daily log shall include the information listed in (c) below.

(b) Commencing October 1, 1988, the following generators of special medical waste, who are not required by this subchapter to manifest, shall maintain a continuous daily log, on forms available from the Department, of all special medical waste generated. The continuous daily log shall include the information listed in (c) below.

1. Licensed health care facilities;

2. Clinical laboratories; and

3. Blood banks.

(c) Commencing November 15, 1988, all other generators of special medical waste (not listed in (a) and (b) above), shall maintain a continuous daily log, on forms available from the Department, of all special medical waste generated. The continuous daily log shall include, but is not limited to, the following information:

1. The date of the entry;

2. A description of the special medical waste generated, by Class;

3. The total quantity of the special medical waste generated each day;

4. The name and NJDEP Solid Waste Transporter Registration number of each transporter;

5. The name and address of each disposal facility and the Class of special medical waste disposed;

6. The date that the special medical waste was given to the transporter; and

7. The method of disposal for each Class (for example, on-site incineration, off-site disposal).

(d) The logging forms are available from the address listed in N.J.A.C. 7:26-3A.6(c).

7:26-3A.6 Reporting requirements for generators of special medical waste

(a) By December 1, 1988, the following generators, including small quantity generators, shall submit a report to the Department, on forms available from the Department, covering all special medical waste generated from October 1, 1988 through November 1, 1988. The report shall include the information listed in (b) below:

1. Licensed health care facilities;

2. Clinical laboratories; and

3. Blood banks.

(b) By January 16, 1989, all other generators of special medical waste (not listed in (a) above), including small quantity generators, shall submit a report to the Department, on forms available from the Department, covering all special medical waste generated from November 15, 1988 through December 15, 1988. The report shall include, but is not limited to, the following information:

1. A description of the special medical waste, by Class;

2. The total quantity of the special medical waste generated;

3. Whether the special medical waste was decontaminated, sterilized or otherwise rendered non-infectious on-site and, if yes, the method employed for each Class;

4. The quantity of special medical waste transported off-site to each disposal facility;

5. The name and address of all transporters, with the NJDEP Solid Waste Transporter Registration number for each;

6. The name and address of all off-site disposal facilities; and

7. The method of ultimate disposal, by Class.

(c) The reports forms are available from and shall be submitted to:

Division of Solid Waste Management
Bureau of Registration and Permits Administration
New Jersey Department of Environmental Protection
401 East State Street, CN 414
Trenton, New Jersey 08625

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7:26-3A.7 Special medical waste requirements, generally

(a) In addition to the requirements of this subchapter, all relevant requirements of the Department of Health shall be complied with.

(b) Special medical waste from small quantity generators and special medical waste not required to be manifested may be disposed of in the same manner as ID 10 municipal solid waste, provided that the requirements of the Department of Health are met.

(c) Solid waste facilities approved by the Department to accept ID 10 municipal solid waste may accept special medical waste from small quantity generators and special medical waste not required by this subchapter to be manifested.

(d) For the purpose of this subchapter, special medical waste manifest forms, available from the Department upon request, shall be used for the tracking of special medical waste.

(e) Copies of the special medical waste manifest forms shall be retained by the generator, transporter and disposal facility for a period of three years, unless the Department specifically requires an additional retention period for a particular generator, transporter, or disposal facility.

(f) The manifesting requirements of this subchapter apply only to the following portions of special medical waste:

1. Class A special medical waste which has not been rendered noninfectious on site by approved sterilization techniques;

2. Class B special medical waste;

3. Class C special medical waste;

4. Class D special medical waste as follows:

i. Needles and syringes that have not been decontaminated and destroyed on site in accordance with N.J.S.A. 2A:170-25.17; or

ii. Any other medical or laboratory articles that are potentially infectious and that might cause punctures or cuts including intravenous tubing with needles attached, vacuum collection containers/tubes containing blood and blood parts, etc.;

5. Class E special medical waste; and

6. Class F special medical waste which has not been rendered noninfectious on site by State Department of Health-approved sterilization/decontamination techniques.

(g) All special medical waste records, including the daily log required by N.J.A.C. 7:26-3A.5 and the special medical waste manifests, shall be made available for inspection by the Department.

7:26-3A.8 Small quantities of special medical waste

(a) Special medical waste from small quantity generators are exempt from the manifesting requirements of this subchapter.

(b) A generator is a small quantity generator in a calendar month if he or she generates 100 kilograms (220 pounds) or less of special medical waste in that month.

1. For example, in October, X generates 100 kilograms of special medical waste. In November, X generates 150 kilograms of special medical waste and transports 50 kilograms of the special medical waste described in N.J.A.C. 7:26-3A.7(f) off-site. Result: X is a small quantity generator for the month of October and is not required to manifest in that month. X is required to manifest for the month of November because she is not a small quantity generator for that month.

(c) If a small quantity generator generates special medical waste in a calendar month in quantities greater than set forth in (a) above, all quantities of that special medical waste are subject to regulation under N.J.A.C. 7:26-3A.9.

7:26-3A.9 Manifesting requirements for generators of special medical waste

(a) The requirements of this section apply only to special medical waste described in N.J.A.C. 7:26-3A.7(f).

(b) All special medical waste generators, except small quantity generators, shall comply with the following requirements commencing August 22, 1988.

1. Special medical waste shall be segregated by all generators from other solid waste. If a generator combines special medical waste with any other solid waste, the entire combination shall be considered special medical waste.

2. A generator who transports, or offers for transportation, special medical waste for off-site disposal shall complete a manifest prior to transporting the waste off-site.

3. A generator shall not offer special medical waste to, or allow special medical waste to be transported by, a transporter who does not possess a NJDEP Solid Waste Transporter Registration number or who is not registered in accordance with N.J.A.C. 7:26-3 (unless they are exempted under that subchapter) and a Board of Public Utilities certification number.

4. A generator shall provide the following information on manifests available from the Department:

i. The generator's name, address, business phone number and contact person at the point of generation;

ii. The transporter's name, address, business phone number, NJDEP Solid Waste Transporter Registration number and Board of Public Utilities certification number;

iii. The name, address and business phone number of the disposal facility;

iv. A description of the special medical waste;

v. Any special handling instructions; and

vi. The generator's signature.

5. The generator shall remove and retain copy 4 of the manifest and shall give the remaining copies of the manifest to the transporter.

6. If within 15 days of the date on the generator's certification, the generator has not received a copy of the manifest signed by the owner or operator of the in-State disposal facility (or from the transporter if the waste is taken to an out-of-State disposal facility), the generator shall immediately contact the transporter and the disposal facility to determine the status of the special medical waste.

7. If within 20 days of the date on the generator's certification, the generator has not received a signed copy of the manifest form from the designated disposal facility (or from the transporter if the waste is taken to an out-of-State disposal facility) or if there are any discrepancies, the generator shall notify the Department in writing and the notification shall include the following:

i. A copy of the manifest; and

ii. An explanation of the efforts taken to ascertain the status of the special medical waste and the results of those efforts.

8. The notification shall be sent to the following address:

Bureau of Registration and Permits Administration
Division of Solid Waste Management
Department of Environmental Protection
401 E. State Street, CN 414
Trenton, New Jersey 08625

(c) Manifests are available from the Department at the address specified in (b)8 above.

7:26-3A.10 Manifesting requirements for transporters of special medical waste

(a) The requirements of this section apply only to special medical waste described in N.J.A.C. 7:26-3A.7(f).

(b) Unless the generator is a small quantity generator, a transporter shall not accept special medical waste from a generator located in New Jersey or special medical waste from an out-of-State generator for disposal in New Jersey unless it is accompanied by a special medical waste manifest, properly completed with all information required by the Department and signed by the generator in accordance with the provisions of N.J.A.C. 7:26-3A.9.

(c) Before transporting the special medical waste, and in accordance with the instructions on the manifest, the transporter shall supply the generator with the following:

1. The transporter's NJDEP Solid Waste Transporter Registration number and Board of Public Utilities certification number; and

2. The name, address, and business phone number of the disposal facility that will receive the special medical waste.

(d) The transporter shall note any discrepancies, sign and date the manifest acknowledging acceptance of the special medical waste from the generator and return a signed copy (copy 4) to the generator before leaving the generator's property.

(e) The transporter shall retain copies 1, 2 and 3 of the manifest.

(f) The transporter shall deliver the special medical waste to the disposal facility designated on the manifest. No special medical waste required to be manifested shall be transported to or otherwise unloaded at any transfer station.

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(g) After the disposal facility owner or operator completes the manifest, the transporter shall retain copy 3 for his or her records and shall give the disposal facility copies 1 and 2. For out-of-State disposal, the transporter shall retain copies 1, 2 and 3, and within seven days after delivery, shall send copy 1 to the generator.

(h) Special medical waste shall not be transported in the same vehicle with other solid waste unless it is separately contained in rigid containers or kept separate by rigid barriers from other solid waste or unless all of the solid waste is to be treated or disposed of as special medical waste.

7:26-3A.11 Transporter registration

No person shall engage or continue to engage in the transportation of special medical waste in this State without first complying with N.J.A.C. 7:26-3.

7:26-3A.12 Manifesting requirements for owner/operator of a disposal facility

(a) The requirements of this section apply only to special medical waste described in N.J.A.C. 7:26-3A.7(f).

(b) The disposal facility owner or operator shall only accept special medical waste shipments which are accompanied by a properly completed special medical waste manifest, unless no manifest is required pursuant to N.J.A.C. 7:26-3A.8.

(c) If a disposal facility owner or operator receives special medical waste accompanied by a manifest, the disposal facility owner or operator shall:

1. Note any discrepancies in the manifest;

2. Sign and date the manifest to certify that the special medical waste described in the manifest was received; and

3. Give the transporter a copy (copy 3) of the signed manifest.

(d) The disposal facility shall retain copy 2 of the manifest for its records.

(e) Within seven days after the delivery, the owner or operator of a disposal facility shall send copy 1 of the manifest to the generator.

(f) The facility designated on the manifest shall not transport the special medical waste to another facility, unless prior written approval from the generator of the waste is obtained and all required manifest forms are completed.

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

General Assistance Manual

Emergency Assistance

Notice of Correction: Emergency Amendment, N.J.A.C. 10:85-4.6

Take notice that the Office of Administrative Law Note found in the Summary of the Emergency Adoption at 20 N.J.R. 1957(a) incorrectly cites an administrative rule which was litigated in *Johnny Franklin, et al. v. Department of Human Services,* and *Janet McCurdy et al. v. Department of Human Services.* In its decision issued on June 24, 1988, the Supreme Court upheld the validity of N.J.A.C. 10:82-5.10 concerning emergency assistance to homeless families. N.J.A.C. 10:85-4.6 concerning emergency assistance to homeless individuals was not litigated in or affected by the Supreme Court's decision and should not have been cited in the OAL note. A discussion of the Supreme Court decision may be found in the Summary at 20 N.J.R. 1956(a).

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PUBLIC NOTICES

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Hearing Rules of Special Applicability Special Education Program

Notice of Correction: N.J.A.C. 1:6A-1.1

Take notice that an error appears in the New Jersey Administrative Code at N.J.A.C. 1:6A-1.1 concerning applicability. N.J.A.C. 1:6A-1.1 should appear in the Code as follows:

1:6A-1.1 Applicability

(a) (No change in text.)

(b) These rules are established in implementation of Federal law, at 20 U.S.C.A. 1415 et seq. and 34 CFR 300 et seq. These rules do not duplicate each provision of Federal law, but highlight some of the key Federal provisions which form the source or authority for these rules. Where appropriate, the Federal source or authority for a rule or Federal elaboration of a rule will be indicated in brackets following the rule. In any case where these rules could be construed as conflicting with Federal requirements, the Federal requirements shall apply.

(c) (No change in text.)

AGRICULTURE

(b)

DIVISION OF ANIMAL HEALTH

Petition for Repeal of Biologics for Diagnostic or Therapeutic Purposes: N.J.A.C. 2:6

Extension of Comment Period

Take notice that the Department of Agriculture is extending until **September 30, 1988** the comment period for the submission of written comments on the Petition for Repeal of the above rule.

The Notice of Petition was published in the August 1, 1988 New Jersey Register at 20 N.J.R. 1958. Please refer to the Notice of Petition for additional information. This action has been taken at the request of the petitioner.

Interested persons may submit written comments on the petition until September 30, 1988 to:

Dr. Sidney R. Nusbaum, Director
Division of Animal Health
New Jersey Department of Agriculture
CN 330
Trenton, N.J. 08625
Telephone: (609) 292-3965

COMMUNITY AFFAIRS

(c)

DIVISION OF HOUSING AND DEVELOPMENT

Public Notice

Reorganization/Relocation of the Construction Code Element

Take notice that the Bureau of Construction Code Enforcement in the Division of Housing and Development has been reorganized. The new organization is called the Construction Code Element which is composed of two Offices and six Bureaus.

The two Offices are:

1. Office of the Assistant Director
   609-530-8820
2. Office of Code Development
   609-530-8789

The six Bureaus are:

1. Bureau of Construction Project Review
   609-530-8866
2. Bureau of Homeowner Protection
   609-530-6357
3. Bureau of Technical Services
   609-530-8793
4. Bureau of Code Services
   609-530-8857
5. Bureau of Regulatory Affairs
   609-530-8838
6. Bureau of Local Code Enforcement
   609-530-8866

The Construction Code Element is located at:

3131 Princeton Pike
Building 3
Lawrenceville, New Jersey

The mailing address for the Construction Code Element is:

Department of Community Affairs
(name of the Bureau and Section to
which correspondence addressed)
CN 805
Trenton, New Jersey 08625-0805

ENVIRONMENTAL PROTECTION

(d)

PINELANDS COMMISSION

Denial of Petition for Rulemaking Pinelands Land Capability Map

N.J.A.C. 7:50-5.3(a)24

Petitioner: Leisure Technology, Inc.
Authority: N.J.S.A. 13:18A-65.

Take notice that a petition for an amendment to the Pinelands Land Capability Map, at N.J.A.C. 7:50-5.3(a)24, was published in the April 18, 1988 New Jersey Register at 20 N.J.R. 936(a). The petition proposed that 828 acres of land in Berkeley Township be redesignated from a Forest Area land use classification to a Rural Development land use classification. The petition also acknowledged that a further reclassification to a Regional Growth Area could then be sought pursuant to N.J.A.C. 7:50-5, Part V.

The Executive Director of the Pinelands Commission analyzed the petition and prepared a report to the Commission recommending denial of the petition. The Pinelands Commission duly considered the petition and, based upon the Executive Director's report, denied the petition. The Executive Director's report and the Pinelands Commission resolution denying the petition are on file and available for public inspection at the offices of the Pinelands Commission, Springfield Road, Pemberton Township, New Jersey between 9:00 A.M. and 5:00 P.M. on regular business days, and at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

(e)

DIVISION OF ENVIRONMENTAL QUALITY

Reporting Requirements for Non-manufacturers under 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 on October 17, 1986, those facilities which recently became subject to the OSHA Hazard Communication Standard (see 53 FR 27679) are required to submit material safety data sheets or lists of data sheets to the State Emergency Response Commission (SERC), their local emerg-

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ency planning committee (LEPC), and their local fire department on or before September 24, 1988. These submissions serve as an initial planning tool to determine the scope of hazardous substances that are present in New Jersey.

The State encourages those affected facilities (private sector non-manufacturers who use or store hazardous substances at their workplace) to submit lists of data sheets rather than 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 have to be met under Section 312, in March 1989. Also, under Section 303(d), a local emergency planning committee may require submission of such a list where necessary for developing and implementing an emergency plan.

The list should be organized as follows:

SUBSTANCE NAME (listed alphabetically)	CAS NUMBER (if applicable)	HAZARD CATEGORY(IES)† (all that apply)	HAZARDOUS COMPONENT††

In its final rule (see the October 15, 1987 Federal Register, at 52 FR 38365, to be codified at 40 CFR 370), the U.S. Environmental Protection Agency established a first year reporting threshold of 10,000 pounds or more for all substances and materials requiring a material safety data sheet under the OSHA Hazard Communication Standard. The exception to this reporting threshold is any substance on the Extremely Hazardous Substance List (40 CFR 355, Appendices A and B; published in the Federal Register, on April 22, 1987, at 52 FR 13378 and amended in the Federal Register of February 25, 1988, at 53 FR 5574) which must be reported at 500 pounds (55 gallons) or the threshold planning quantity, whichever is less.

A facility may meet the reporting requirements for mixtures by either listing each hazardous component in the mixture or including the mixture as a whole on the list.

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 Substances Information
   ATTN: SARA, Section 311
   CN 405
   Trenton, New Jersey 08625-0405
2. Local Emergency Planning Committee
   If a facility doesn't know who their LEPC coordinator is, contact:
   New Jersey State Police
   Office of Emergency Management
   609/882-2000 ext. 2945
3. Local fire department

Any questions regarding this notice or compliance with Section 311 requirements should be directed to NJDEP, Bureau of Hazardous Substances Information, at 609/292-6714, or directly to the U.S. Environmental Protection Agency, at 1-800/535-0202. Additional information about SARA, Title III requirements will be included in future editions of the New Jersey Register.

†The U.S. Environmental Protection Agency (USEPA) has established five Hazard Categories, three physical and two health. They are 1) Fire, 2) Sudden Release of Pressure, 3) Reactivity, 4) Immediate (acute) Health, and 5) Delayed (chronic) Health. The final USEPA rule was published in the Federal Register, on October 15, 1987, at 52 FR 38344, to be codified at 40 CFR 370.

††See 52 FR 38365, to be codified at 40 CFR 370.21.

(a)

DIVISION OF PARKS AND FORESTRY

Management Plan for Bear Swamp East Natural Area

Take notice that Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection, pursuant to the Natural Areas System Act, N.J.S.A. 13:1B-15.12a et seq., and N.J.A.C. 7:2-11.8, has adopted the recommendations of the Natural Areas Council regarding the management plan for Bear Swamp East Natural Area.

The Bear Swamp East Natural Area is located in Downe Township, Cumberland County, on land that is owned by the Department of Environmental Protection and administered by the Office of Natural Lands Management. The purpose of the management plan is to identify specific long and short term management techniques which are necessary to achieve the designation objective of the Natural Area. For Bear Swamp East Natural Area, the designation objective is preservation of ecological communities and relationships, management of bald eagle nesting sites and other known and potential endangered species habitat.

The Natural Areas Council reviewed the staff recommendations and public comments at their meeting on September 24, 1986. By unanimous resolution, the Natural Areas Council adopted recommendations for management and has submitted these recommendations in the form of a management plan to the Commissioner of the Department of Environmental Protection.

Copies of the adopted plan may be obtained from:

Department of Environmental Protection
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
501 E. State Street
Bldg. #5, 2nd Flr.
Trenton, New Jersey 08625

This notice is published as a matter of public information.

(b)

Management Plan for Readington Natural Area

Take notice that Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection, pursuant to the Natural Areas System Act, N.J.S.A. 13:1B-15.12a et seq., and N.J.A.C. 7:2-11.8, has adopted the recommendations of the Natural Areas Council regarding the management plan for Readington Natural Area.

The Readington Natural Area is located in Readington Township, Hunterdon County, on land that is owned and administered by the State of New Jersey, Natural Lands Trust. The purpose of the management plan is to identify specific long and short term management techniques which are necessary to achieve the designation objective of the Natural Area. For Readington Natural Area, the designation objective is preservation of early stages of secondary field succession.

The Natural Areas Council reviewed the staff recommendations and public comments at their meeting on September 24, 1986. By unanimous resolution, the Natural Areas Council adopted recommendations for management and has submitted these recommendations in the form of a management plan to the Commissioner of the Department of Environmental Protection.

Copies of the adopted plan may be obtained from:

Department of Environmental Protection
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
501 E. State Street
Bldg. #5, 2nd Flr.
Trenton, New Jersey 08625

This notice is published as a matter of public information.

DIVISION OF WATER RESOURCES

(c)

Availability of Grants
Water Quality Management Planning and Implementation Process Pass-Through Grant Program

Take notice that, in compliance with P.L. 1987, c.7, the Department of Environmental Protection hereby announces the availability of the following grant program:

A. Name of Program:

Water Quality Management Planning and Implementation Process Pass-Through Grant Program

B. Purpose:

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Section 205(j)(3) of the Federal Clean Water Act as amended, requires, with certain exceptions, that at least 40 percent of a State's funds awarded under Section 205(j)(2) be allocated to other organizations for Water Quality Management Planning activities. It is the purpose of the Water Quality Management Planning and Implementation Process Pass-Through Grant Program to satisfy those requirements.

C. Amount of Money in the Program:

A total of $375,428 will be available in the program in State Fiscal Year 1989.

D. Governmental Entities which may Apply for Funding under the Program:

Regional public comprehensive planning organizations and interstate organizations, including but not limited to the following:

1. Municipal governments;
2. County governments;
3. Soil conservation districts, if the district is chartered with appropriate powers as a unit of local government; and
4. Interstate agencies of which New Jersey is a party.

E. Qualifications Needed by an Applicant to be Considered for the Program:

Applicants for funding must:

1. Have staff and resource capability, expertise, and environmental experience to perform the proposed work;
2. Have the ability to implement the proposals which result from the proposed work; and
3. Provide a match of an amount equivalent to at least 40 percent of the grant amount. The match may consist of either cash funds, in-kind services, or a combination of both.

F. Procedure for Eligible Entities to Apply for Grant Funds:

Applicants for a grant should submit a complete application addressing each of the following items:

1. The amount of funding requested;
2. A specific breakdown of personnel and non-personnel project costs;
3. The amount and nature of the matching fund to be provided by the applicant;
4. Staffing and resources which would be devoted to the proposed work;
5. A discussion of the expertise and experience of the applicant in endeavors related to the proposed work activities and with water resources planning in general;
6. Evidence of the ability of the applicant to implement the provisions which would result from the proposed work activities;
7. Detailed descriptions of each of the proposed work activities and the outputs to result from each;
8. A discussion of the waterbody(ies) to be affected (if applicable) and how the proposed work will help protect, preserve, or enhance its quality;
9. A time line which specifies the anticipated completion date of each activity and subactivity including the dates by which outputs are to be completed. The time line should be based on a project duration of one year; and
10. A discussion of those items which the applicant plans to subcontract to other entities to perform portions of the proposed work and justification for the subcontracting.

G. Priority Subjects:

In the review of grant applications, the Department of Environmental Protection will give preference to those proposals which will result in an implementable product and which are related to the following subject areas:

1. Nonpoint source management and stormwater quality control;
2. Restoration and protection of coastal and tidally-influenced waters;
3. Toxics study and control;
4. Wellhead protection; and
5. Lake quality protection and restoration.

H. Address for Applications:

Applications for funds should be submitted to:

George Horzepa, Chief
Bureau of Water Quality Planning
Division of Water Resources
CN-029
Trenton, New Jersey 08625

I. Deadline by which Applications Must be Submitted:

Complete proposals must be submitted by October 21, 1988.

J. Date by which Applicants shall be Notified of Approval or Disapproval:

Applicants shall receive notice of approval or disapproval of a Water Quality Management Planning and Implementation Process Pass-Through Grant by November 20, 1988.

(a)

Amendment to the Statewide Water Quality Management Program Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (Department) proposes to amend the Statewide Water Quality Management Program Plan (Statewide WQM Plan) by repealing all of the "Water Quality and Wastewater Management Policies and Procedures" contained in Chapter III of that Plan, and by replacing the text on page III-1 of that Plan with the following statement:

> "All of the 'Water Quality and Wastewater Management Policies and Procedures' that were contained in Chapter III of the Statewide WQM Plan that the Department adopted on December 5, 1985 have been repealed. This repeal did not restore the policies, procedures, population forecasts, and population projections that were replaced or superseded by those 'Water Quality and Wastewater Management Policies and Procedures'. For further information about policies and procedures for water quality and wastewater management, consult the Statewide Water Quality Management Planning Rule, N.J.A.C. 7:15."

The Department adopted a Statewide WQM Plan on December 5, 1985 (see 18 N.J.R. 110(b)). Chapter III of the present Statewide WQM Plan contains "Water Quality and Wastewater Management Policies and Procedures". The Department is proposing this amendment to the Statewide WQM Plan in order to consolidate Statewide water quality and wastewater management policies and procedures in the Statewide Water Quality Management Planning rules, and to eliminate certain policies and procedures that are outdated or unnecessary. Simultaneously, in this issue of the New Jersey Register, the Department is proposing to repeal the present planning rules, N.J.A.C. 7:15, and is proposing new Statewide Water Quality Management Planning rules at N.J.A.C. 7:15.

Some of the policies in Chapter III of the present Statewide WQM Plan are contained in modified form in the proposed Statewide Water Quality Management Planning Rules. These policies are the "Policy on Permitting of Domestic Wastewater Treatment Facilities", the "Policy on Wastewater Management Plans", the "Policy for Interim Construction, Expansion, Upgrade and Unplanned Wastewater Treatment Facilities" ("Planning Policies" only), and the "Policy on Incorporation of 201 Facilities Plans" (see proposed N.J.A.C. 7:15-3.5(k), 4.1 through 4.3, and 5). The other policies and procedures in Chapter III of the present Statewide WQM Plan are not contained in the proposed Statewide Water Quality Management Planning Rules because they are outdated or unnecessary.

This notice is being given to inform the public that the Department is proposing to amend the Statewide WQM Plan. The Statewide WQM Plan is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday, at the office of the Department of Environmental Protection, Division of Water Resources, Bureau of Water Quality Planning, located at 401 East State Street, Third Floor, CN 029, Trenton, New Jersey, 08625, and at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

Interested persons may submit written comments on the proposed amendment to George Horzepa, Bureau of Water Quality Planning, at the Department address cited above. All comments must be submitted within 15 days of the date of the public hearings (on or before November 10, 1988). All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Department with respect to the proposed amendment.

The Department will hold two nonadversarial **public hearings** on the proposed amendment to the Statewide WQM Plan and on the proposed Statewide Water Quality Management Planning Rule. The public hearings will be held at the times and locations specified below:

Thursday, October 20, 1988 at 10:00 A.M.
Auditorium, Haddonfield Boro Hall
242 Kings Highway East (between Haddon Avenue and Potter Street)
Haddonfield, New Jersey

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Monday, October 24, 1988 at 2:00 P.M.
Morris County Extension Office
Rutgers University Cooperative Extension
West Hanover Avenue (corner of West Hanover Avenue and Raynor Road)
Morris Township, New Jersey

(a)

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on April 21, 1988 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" Rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. This amendment will allow the expansion of the Rahway Valley Sewerage Authority from 35 million gallons per day (mgd) to 40 mgd. The plant expansion will be contingent on the facility meeting the appropriate State permit requirements.

(b)

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been submitted for approval. This amendment is to adopt a Wastewater Management Plan for the Township of Livingston. That document allows the Livingston Water Pollution Control Facility a design capacity of 4.2 million gallons per day (12 month average) and no change in the facility's effluent limits (concentration, pounds per day and efficiency will remain the same). The Township of Livingston will be designated as the Wastewater Management Agency.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(c)

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt an updated Wastewater Management Plan for Montgomery Township. Modifications to the sewer service areas and flows of several wastewater treatment facilities are addressed. The Bunker Hill subdivision will become part of the Riverside Sewage Treatment Plant (STP) sewer service area. The service area of the Pike Brook STP will be expanded to include a Continuous Care Retirement Community. Two new subsurface disposal facilities are identified to service the Tammybrook III Development and the Belle Mead Business Park.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(d)

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Monmouth County Water Quality Management (WQM) Plan has been submitted for approval. A Wastewater Management Plan (WMP) for Holmdel Township has been prepared. In the northern part of the township, the WMP provides for the expansion of the sewer service area of the Bayshore Regional Sewerage Authority within their facilities planning area. The southern portion of the township will continue to be served by individual septic tanks and, in designated areas, on-site wastewater treatment plants. The township agrees to be co-permittee for these on-site facilities. Environmentally sensitive areas are excluded from service.

This notice is being given to inform the public that a plan amendment has been developed for the Monmouth County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(e)

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Monmouth County Water Quality Management (WQM) Plan has been submitted for approval. This amendment will create specific provisions in the Monmouth County Water Quality Management Plan to allow the construction and operation in Howell Township of an oil/water separator and discharge to groundwater via a recharge bed at the site.

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This notice is being given to inform the public that a plan amendment has been developed for the Monmouth County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(a)

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Allamuchy Township. The WMP addresses the expansion of the Allamuchy Elementary School wastewater treatment facility and the expansion of the Pequest Sewer Company's sewer service area. A portion of the Township will be served by the Hackettstown Municipal Utilities Authority wastewater treatment facility. The remainder of the Township will be served by individual on-site disposal systems.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(b)

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on April 6, 1988 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" Rules (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 approved the Mount Laurel Township Utilities Authority Wastewater Management Plan (WMP). The WMP allows the expansion of the existing Hartford Road Sewage Treatment Plant (STP) from 2.95 million gallons per day (mgd) to 6.0 mgd. The WMP also calls for the abandonment of the existing Rancocas Woods, Ramblewood, and New Jersey Turnpike Service Area treatment facilities. The wastewater currently treated at these facilities will be conveyed to the Hartford Road STP for treatment. The WMP will also expand the sewer service area in Mount Laurel Township.

(c)

Amendment to the Cape May County Water Quality Management Plan

Public Notice

Take notice that on April 15, 1988 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" Rules (N.J.A.C. 7:15-3.4), an amendment to the Cape May County Water Quality Management Plan was adopted by the Department. This amendment will allow for the expansion of a sewer service area to include the North Cape Convalescent Center, Lot 1.02, Block 742.01 located in Lower Township.

HEALTH

(d)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Removal of Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) Services for one time only from the November 15, 1988 Certificate of Need Batching Cycle for Diagnostic Imaging Services.

Public Notice

Take notice that the Department of Health, in conjunction with the Health Care Administration Board (HCAB), has removed from consideration, for one time only, applications for Nuclear Magnetic Resonance (NMR) or Magnetic Resonance Imaging (MRI) services from the November 15, 1988 certificate of need batching cycle for diagnostic imaging equipment (that is, CT, PET, NMR/MRI, Nuclear Medicine). No services other than NMR/MRI are affected by this proposed action. The two year NMR/MRI demonstration period is scheduled to conclude on or before September 15, 1988. During this period, only one of the eight approved NMR/MRI service providers has been operational for the entire two year demonstration period. Two additional NMR/MRI sites became operational during 1987; however, the remaining five demonstration sites will not be operational until mid-late 1988.

It will be several months before all eight approved NMR/MRI demonstration sites are able to fully participate in the Statewide data collection and analysis effort. Since the critical factor in determining future need for NMR/MRI is the relationship between MRI and CT utilization in the New Jersey population, it is essential that data from all eight NMR/MRI sites are analyzed to determine future NMR/MRI policy. The eight approved NMR/MRI demonstration sites were selected to maximize geographic and patient access to this therapeutic modality and are located at:

Englewood Hospital, Englewood
MRI of Northern New Jersey, Inc., Hawthorne
New Brunswick Affiliated Hospitals, New Brunswick
Overlook Hospital, Summit
St. Barnabas Medical Center, Livingston
University Hospital/UMDNJ, Newark
Mercer MRI Consortium, Lawrenceville
Cooper Hospital/University Medical Center, Camden

Since the majority of the State's existing NMR/MRI demonstration service providers have not been operational for a sufficient period of time to participate in the Statewide data collection and analysis effort, a brief six-month extension of the NMR/MRI demonstration period is necessary in order to develop a rational approach to future Statewide need for NMR/MRI services. The Department is proposing an amendment to its NMR/MRI rule at N.J.A.C. 8:33J-1.3, to extend the demonstration period to March 15, 1989. (See this issue of the New Jersey Register.)

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In order to extend this NMR/MRI demonstration period, it is necessary to remove NMR/MRI equipment from consideration in the November 15, 1988 diagnostic imaging certificate of need batching cycle. The next certificate of need batching cycle for NMR/MRI equipment will be the May 15, 1989 cycle (April 1, 1989 submission date).

The Department is, therefore, proposing to extend the Statewide demonstration period for six months to conclude on or before March 15, 1989 and postponing consideration of new certificate of need applications for NMR/MRI equipment until the May 15, 1989 diagnostic imaging batching cycle (April 1, 1989 submission date).

Any inquiries should be addressed to:

John A. Calabria, Chief
Health Systems Services
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Notice of Application for Certificate of Public Convenience Permit

Take notice that Glenn Paulsen, Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E.11, hereby lists the name and address of an applicant who has filed an application for common carrier's Certificate of Public Convenience Permit.

COMMON CARRIER (NON-GRANDFATHER)
CARBON EXPRESS, INC.
328 ROUTE 15 SOUTH
P.O. BOX 403
WHARTON, NJ 07885

Protests in writing and verified under oath may be presented by interested parties to the Director of Motor Vehicles, 25 South Montgomery Street, Trenton, N.J. 08666, within 20 days (September 26, 1988) following the publication of application.

(b)

BOARD OF DENTISTRY

Petition for Rulemaking
Dental Hygienist Rules
N.J.A.C. 13:30-2.10, 2.14, 2.18, 2.9, 6.2 and 6.9

Petitioners: New Jersey Dental Hygienists Association.
Authority: N.J.S.A. 52:14B-4(f).

Take notice that on July 2, 1986, petitioners filed a petition with the Board of Dentistry requesting amendments to N.J.A.C. 13:30-2.10, 2.14, 2.18, 2.9, 6.2 and 6.9, concerning dental hygienists and dental assistants. The notice of the petition was published at 18 N.J.R. 1844(a). The preliminary response, published at 18 N.J.R. 1715(c), provided for the formulation of a Board committee to study the petition and to make recommendations to the full Board.

The Board adopted amendments to its rules at 19 N.J.R. 1909(b) in partial response to the petition. These included, among other changes, amendments to N.J.A.C. 13:30-2.14 to permit a dental hygienist who has graduated from an approved dental hygiene program in New Jersey in 1984 or thereafter to perform expanded functions without furnishing proof of qualifications; amendments to N.J.A.C. 13:30-6.2 to permit a licensed dental hygienist to be the administrator of a dental hygiene school; and amendments to N.J.A.C. 13:30-6.9 to eliminate any reference to gender.

The petition request for the creation of an inactive status for dental hygienists was denied by the Board on the basis that there was no statutory authority for such licensure status. Thereafter, inactive status was created legislatively (P.L. 1988, c.31), and the Board is in the process of amending its fee schedule accordingly.

The Board requested advice from the Attorney General as to whether the Board's current rule N.J.A.C. 13:30-2.10, which requires that a licensed dental hygienist perform his or her duties under the "direct supervision" of a licensed dentist, is authorized by the Dental Auxiliaries Act, N.J.S.A. 45:6-48 et seq. The petition requested an amendment which would permit a licensed dental hygienist to work under the "supervision" of a dentist. The Board was advised that the current rule implementing a "direct supervision" standard is authorized by the Act.

The Board thoroughly reviewed all of the material it received, including oral and written comments in regard to the supervision standard and the administration of local infiltration anesthesia by dental hygienists. The Board determined to deny the requested amendment of the petition on the basis that the Board is satisfied that the public health, safety and welfare are best served by maintaining the current rules. The petitioners have not provided compelling reasons to the Board which would persuade it to amend its rules in these areas.

In addition to the advice received from the Attorney General, the Board determined to maintain the "direct supervision" standard for the following reasons:

1. The education and training of a dental hygienist presumes that the auxiliary will be functioning with supervision. The "Accreditation Standards for Dental Hygiene Education Programs" published by the Commission on Dental Accreditation provides that "the ultimate objective of the basic dental hygiene curriculum must be the education of a dental hygienist who, as a member of the dental health team, can assume delegated responsibility for providing patient care under the direction and supervision of the dentist." The Board is convinced that, in order to deliver the highest quality health care services, the team approach is best implemented when the dentist is physically present and available to provide supervisory, consultative and referral services.

2. The material presented to the Board did not indicate that the current rules resulted in any diminution in quality of care to patients.

3. No evidence was presented to the Board showing a public need for change. There was no indication that any patients were denied care under the current rules.

In regard to the petition's request to include local infiltration anesthesia as a duty of a licensed dental hygienist, the request was denied by the Board for the following reasons:

1. The Board strongly believes that local anesthesia requires an expertise in administration and patient monitoring that is not to be taken lightly. The level of education required which includes substantive training and clinical work in anatomy, physiology, biochemistry, and pharmacology, is not met in dental hygiene programs.

2. Pain is an important diagnostic factor in dental treatment. The responsibility for monitoring pain and for responding to unexpected adverse reactions is the dentist's whose training has provided a deeper understanding of the health sciences and should not be delegated.

3. The petition did not provide any reasons sufficiently convincing to indicate that the patient's health and safety would benefit by delegating the administration of local anesthesia to the dental hygienist.

Minority Report by Cynthia Fong, R.D.H., Board Member: Ms. Fong concurred with the Board's committee recommendations to amend N.J.A.C. 13:30-2.14, 2.18, 6.2 and 6.9. However, Ms. Fong disagreed with the recommendation to deny amendment to N.J.A.C. 13:30-2.10 on the following basis:

N.J.A.C. 13:30-2.10: To include local infiltration anesthesia as a duty of a licensed dental hygienist.

Material was submitted by the petitioners that indicated that dental hygienists possess the educational background and clinical competence required to administer local anesthesia. The American Dental Association Commission on Dental Accreditation, Accreditation Standards for Dental Hygiene Education Programs, Standard 5.3:

Curriculum Content, addresses the education of dental hygienists. The curriculum of a dental hygiene program must include content in:

Basic Sciences: Content in sciences, including general chemistry, ANATOMY, PHYSIOLOGY, BIOCHEMISTRY, MICROBIOLOGY, pathology, nutrition and PHARMACOLOGY must be included to provide background for dental and clinical sciences.

Dental Sciences: Content in dental sciences, including tooth morphology, head, neck and oral anatomy, oral embryology and histology, oral pathology, radiography, periodontology, PAIN CONTROL, and dental materials must be included in the curriculum.

Dental Hygiene Science: The dental hygiene science aspect of the curriculum must include content in the oral health education and preventive counseling, patient management, clinical dental hygiene, community dental health, MEDICAL AND DENTAL EMERGENCIES INCLUDING BASIC LIFE SUPPORT, and legal and ethical aspects of dental hygiene

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practice to prepare the student to perform clinical and health education functions as an integral member of the health team.

Standard 5.2: Functions—mandates that all functions students are taught to perform must be taught to clinical competence.

In addition, a copy of the National Board Dental Hygiene Examination was submitted to document that prior to licensure, dental hygienists are currently tested on issues relating to the administration of local anesthesia. The examination includes such areas as the recognition of contraindications for local anesthesia use and management of medical emergencies as a consequence of local anesthesia administration.

Furthermore, the petitioner cited several research studies and a document that substantiated the high degree of safety with which local anesthesia can be administered by a dental hygienist.

Those studies are as follows:

Lobene, RR: The Forsyth Experiment. Harvard University Press, 1979, pp 86-89.

Sisty-LePeau, et al.: The Administration of Local Anesthesia by Dental Hygiene Students. Journal of ADHA, January, 1986, pp 28-32.

Lobene, RR: A Study of New Duties for Dental Hygienists—Final Report. Forsyth Dental Center, 1975.

Oliver, RC, Dean of the University of Minnesota, School of Dentistry. Testimony submitted to the Minnesota Board of Dentistry, January 1979.

Finally, the petitioner highlighted the fact that in 1972, the American Dental Association-Council on Dental Education recommended, "that the dental hygienist be taught additional services other than traditional because research has demonstrated that auxiliaries could be taught to perform certain functions with competence and without loss of quality in the delivery of dental care". Among the nontraditional services suggested for dental hygienists was the administering of local anesthesia.

(a)

STATE BOARD OF MEDICAL EXAMINERS

Advertising and Solicitation Practices

Notice of Action Regarding Petition for a Rule: N.J.A.C. 13:35-6.10

Petitioner: Chiropractic Legal Action Committee.

A Notice of Petition for a Rule to amend N.J.A.C. 13:35-6.10 was published in the New Jersey Register at 19 N.J.R. 2499(c). The petition by the Chiropractic Legal Action Committee requested deletion of the prohibition in N.J.A.C. 13:35-6.10(c)11 against advertising containing statements offering gratuitous services or substantially discounted services. The petitioners also requested an amendment to that rule permitting the advertisement of free services, discounted fee or reduced fee services by licensed chiropractors within the State of New Jersey. The petitioned-for amendment would also grant the consumer the right to refuse to pay for services performed as a result of and within 72 hours of responding to an advertisement for free, discounted fee or reduced fee services.

The New Jersey State Board of Medical Examiners has established a committee to review the petition pursuant to N.J.S.A. 52:14B-14(f). The committee will make a determination as to what action the Board should take, and then the Board will vote on whether to follow the committee's recommendations or to adopt a different course of action.

STUDY COMMISSION

(b)

COMMISSION TO STUDY SERVICES AND PROGRAMS AVAILABLE TO HEARING IMPAIRED CHILDREN

Notice of Public Hearings

Take notice that the Commission to Study Services and Programs Available to Hearing Impaired Children, created by Joint Resolution No. 2, effective February 19, 1987, will hold public hearings on October 5, 12, 19 and 26, 1988. The hearings will be held at the following places:

October 5, 1988	Ocean County College 5:00 P.M. to 9:00 P.M. College Drive Toms River, New Jersey
October 12, 1988	Rider College 5:00 P.M. to 9:00 P.M. Route 206 Lawrenceville, New Jersey
October 19, 1988	Camden County College 5:00 P.M. to 9:00 P.M. Peter Cheeseman and Little Gloucester Roads Blackwood, New Jersey
October 26, 1988	Bergen County College 5:00 P.M. to 9:00 P.M. Adult Basic Education Building Main Street Hackensack, New Jersey

To help the Commission respond to and evaluate service and programs, the Commission is seeking public comment to the following questions.

The Commission is organizing advance registration if anyone wishes to testify. On-site registration will also be held.

Please call or write the Commission at:

6323 Browning Road
Pennsauken, NJ 08109-1548
(609) 488-2309 (voice)
(call after 7:00 P.M.)

Interpreters will be present at all Commission hearings. David Fleming, Chairman.

QUESTIONS FOR PUBLIC HEARINGS

Topic #1: What is the availability and quality of evaluation services for hearing impaired children in New Jersey?

(a) What is the availability, quality, timeliness and effectiveness of the diagnostic procedures used to identify your infant's hearing loss? Was infant hearing screening available to you?

(b) What is the quality of audiological services you received for diagnosis, prescription of hearing aids and referral for additional services?

(c) What is the availability and effectiveness of service delivery by the school psychologists for hearing impaired students? Knowledge of appropriate assessment/evaluation materials, procedures and interpretations for hearing impaired students? Communication skills?

(d) Is at least one specialist in deafness available on Teams evaluating a child with hearing loss? If not, is a qualified outside evaluator made available?

(e) Is the Specialized Child Study Team for the Deaf in your region utilized by your school district?

(f) How satisfactory are the goals and objectives set for hearing impaired children?

(g) What are the criteria used for educational placement of hearing impaired children?

(h) Are parents informed of the range of placement options for hearing impaired children?

Topic #2: How available and effective are parent guidance and parent education for families of deaf and hearing impaired children?

(a) How accessible are early intervention programs? To deaf families?

(b) How appropriate was the information you were given at the time your child was diagnosed as hearing impaired regarding: hearing aids? education? speech/language development? community support services?

(c) To what extent do school programs encourage parents to improve communication and educational involvement with their deaf children?

(d) To what extent do educational programs incorporate parent education, training, and follow-up procedures into their service models?

Topic #3: What is the availability and appropriateness of educational programs for deaf and hearing impaired students in New Jersey?

(a) How accessible to you was information about the availability of specialized early intervention for your hearing impaired child from: your doctor? a local agency? (ex.: Child Find)?

(b) What is the appropriateness and quality of early intervention services? Are specially trained staff in the area of hearing impairment available?

(c) What is the availability, quality and effectiveness of early intervention services to multiply handicapped hearing impaired children?

(d) How available is the certified Teacher of the Deaf or Hard of Hearing to the hearing impaired child's educational program? To the home-bound hearing impaired child?

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(e) Are appropriate educational programs available to deaf and hard of hearing children in all regions of the State? If not, what are the shortcomings?

(f) What is the quality of supervision, evaluation and monitoring of the academic progress of hearing impaired children? Are children with permanent and temporary loss of hearing identified, assisted and monitored?

(g) How available are personnel, knowledgeable in deafness, to deaf children placed in classes for other handicapping conditions?

(h) What is the extent of school transfers needed to create a continuation of school programming for hearing impaired children?

(i) What is the availability of educational technology to the hearing impaired schoolchild? Are amplification devices, computer software for speech and language development, telecommunication devices, warning systems and closed captioning available?

(j) What is the availability of extra-curricular activities to the hearing impaired child?

(k) Are current vocational educational programs readily accessible to deaf or hard of hearing students who require them?

(l) Are current vocational transition programs sufficient to meet the needs of deaf students when they graduate from secondary school?

(m) Are postsecondary vocational training and community-based training programs available to hearing impaired students?

(n) Are appropriate postsecondary, adult, and continuing educational opportunities available to deaf and hearing impaired youth?

Topic #4: How available and effective are educational programs for multi-handicapped and minority group hearing impaired students?

(a) How adequately are deaf-blind children served? Are personnel appropriately trained and/or certified to work with vision and hearing impaired students?

(b) How adequately are severely impaired multi-handicapped children with hearing loss served? Are personnel appropriately trained and/or certified to work with severe-profoundly impaired children and hearing loss as well?

(c) How adequately are deaf children with mild-moderate secondary impairments served? Are personnel trained and/or certified in education of the hearing impaired, and in special education as well?

(d) How adequately are minority group hearing impaired children served? Are personnel appropriately prepared to meet their unique cultural needs? Is a teacher of the deaf and/or interpreter fluent in the family's native language available to deaf children and their families?

Topic #5: What is the availability and quality of support services to deaf and hearing impaired children in New Jersey schools?

(a) Are adequate support services available to deaf and hearing impaired school children?

(b) What is the extent of the school district's hearing aid maintenance program?

(c) Are classroom interpreters and notetakers available to meet the needs of students who require them? Is sufficient time scheduled to meet students' needs?

(d) What is the availability and effectiveness of service delivery by the speech and language specialists for hearing impaired students? Is sufficient time scheduled to address individual students' needs?

(e) Are counselors knowledgeable in deafness available for hearing impaired children and their families? Knowledge of postsecondary resources for hearing impaired students?

(f) What is the availability and effectiveness of service delivery by the social worker for hearing impaired students?

(g) What is the availability and effectiveness of service delivery by the learning disabilities teacher-consultants for hearing impaired students?

(h) What is the availability and accessibility of Learning Resource Centers to parents and professionals serving hearing impaired students? Are materials and equipment current, relevant, and adequate for enhancing instruction of deaf and hearing impaired students?

(i) What is the availability and effectiveness of service delivery by paraprofessionals, i.e., dorm supervisors, teachers' assistants, for hearing impaired students?

Topic #6: What are the training and technical assistance needs of professionals and staff serving hearing impaired students at all levels of educational programs?

(a) To what extent is the hearing impaired child's mainstreamed classroom teacher prepared to deal with the child's hearing loss, learning style, communication, and social needs? Are support and advisement available from a case manager trained in education of the hearing impaired? Is technical assistance available from a specialist in education of the hearing impaired?

(b) Are sufficient professional development opportunities being offered to administrators and other professionals providing programs and services for deaf and hearing impaired students?

(c) To what extent are all levels of education and government agencies coordinating their training and technical assistance activities for deaf and hearing impaired children and youth?

(d) To what extent are all levels of education and government agencies providing technical assistance activities for deaf and hearing impaired children and youth?

(e) Are New Jersey certification requirements for Teachers of the Deaf or Hard of Hearing sufficient to ensure quality instruction? Are the standards current and in line with national certification standards? Are there appropriate training programs where teachers can obtain certification?

(f) Are evaluation and certification standards and procedures for professionals, e.g., speech/language specialists, education audiologists, educational interpreters, sufficient to ensure quality services? Are there appropriate training programs where professionals can obtain certification?

(g) What are training and technical assistance needs for infant and early childhood education programs? Are there appropriate training programs available?

Topic #7: What is the availability and accessibility of community services for hearing impaired children and youth in New Jersey? Background: Community services being investigated are: childcare, transportation, medical services, police, libraries, recreation programs, welfare, Medicaid, food stamps, SSI, juvenile shelters, criminal system, human service agencies, and group homes.

(a) What has been your experience in trying to obtain community services for your hearing impaired child? Has the lack of services negatively affected your child?

(b) To what extent have you experienced difficulty in using community services? Re: communication, awareness, etc.?

Topic #8: What is the availability and quality of mental health services for hearing impaired children and youth in New Jersey?

(a) When a hearing impaired family member needed professional mental health services, were adequate services found? How? Where?

(b) Did the mental health services satisfy the original referral, and were they satisfactory? Was the mode of communication appropriate?

(c) Was the cost of services more because of a hearing impaired family member? And, why?

(d) Did people consulted have training or experience with the hearing impaired?

(e) Were you denied adequate services because your family member was hearing impaired?

(f) If hospitalization was recommended, was it available, was communication facilitated, and was there adequate discharge planning?

d quality of assistance to mental health professionals serving hearing impaired children and youth in New Jersey?

(a) Are mental health professionals aware of sources of assistance and referral services when working with hearing impaired children and youth?

(b) As a professional in the mental health area, were you able to find an interpreter knowledgeable and experienced in therapeutic settings?

(c) Were you able to find an interpreter skilled in facilitating communication in a therapeutic setting?

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection
Notice of Assignments—Month of July 1988

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated July 5, 1988.

The following assignments have been made:

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DBC No.	PROJECT	A/E	CCE
M573	Renovations to Group Home Mantoloking, NJ	M. Benton & Associates	$250,000
E173	Interior Design Services (-01) Renovations Dept. of Education Bldg. Trenton, NJ	The Grad Partnership	$200,000 Services
M796	Re-roof Stratton Building Trenton Psychiatric Hospital Trenton, NJ	Richard M. Horowitz, AIA	$117,000
A555-01	HVAC Improvements OTIS Hub Facility W. Trenton, NJ	London, Kantor, Umland & Assoc.	$420,000
P576	HVAC Feasibility Study Terminal Building Liberty State Park Jersey City, NJ	Energy Engineering Corp.	$7,500 Services
I035	Emergency Circuit Breaker Replacement Stockton State College Pomona, NJ	John C. Morris Assoc.	$168,000
A557	Roofing Repair & Replacement State House Annex Building State House Capitol Complex Trenton, NJ	ARMM Designs, Inc.	$350,000
P575	Restoration, Repair & Drainage Study Drumthwacket Estate Princeton, NJ	Holt & Morgan Assoc., PA	$5,000 Services
I038	Feasibility Study & Asbestos Removal Kendall Hall Trenton State College Trenton, NJ	Gaudet Assoc.	$95,835 Services
M561	Testing Inspection Services Restoration of Ceiling & Lighting Systems Life Safety Improvements-Main Building Ancora Psychiatric Hospital Hammonton, NJ	Materials Engineering Testing Services, Inc.	$1,200 Services
M604	Testing Inspection Services New Fire House Ancora Psychiatric Hospital Hammonton, NJ	Lipponcott Engineering Associates, Inc.	$4,000 Services
Y020	Facility Consultant FY-89 Dept. of Transportation	Armstrong, Jordan, Pease	$10,000 Services
Y021	Facility Consultant FY-89 Dept. of Transportation	Colm Engineering, PA	$10,000 Services
D051	Facility Consultant FY-89 Dept. of Corrections	Pedro E. Campos, AIA	$20,000 Services
D052	Facility Consultant FY-89 Dept. of Corrections	CUH2A	$20,000 Services
D053	Facility Consultant FY-89 Dept. of Corrections	Matthew L. Rue, AIA	$10,000 Services
D054	Facility Consultant FY-89 Dept. of Corrections	Vaughn Organization	$20,000 Services
D055	Facility Consultant FY-89 Dept. of Corrections	Capriotti & Vining	$20,000 Services
D056	Facility Consultant FY-89 Dept. of Corrections	Frank R. Holtaway & Associates, Inc.	$20,000 Services
D057	Facility Consultant FY-89 Dept. of Corrections	William F. Selders, PE	$10,000 Services
D058	Facility Consultant FY-89 Dept. of Corrections	Applied Wastewater Technology	$10,000 Services
D059	Facility Consultant FY-89 Dept. of Corrections	M. Benton & Associates	$20,000 Services
D060	Facility Consultant FY-89 Dept. of Corrections	J. M. Di Giacinto & Associates	$20,000 Services
D061	Facility Consultant FY-89 Dept. of Corrections	Maitra Associates, Inc.	$10,000 Services
D062	Facility Consultant FY-89 Dept. of Corrections	Thomas Tyler Moore Associates	$20,000 Services
D063	Facility Consultant FY-89 Dept. of Corrections	John C. Morris Associates, Inc.	$10,000 Services
D064	Facility Consultant FY-89 Dept. of Corrections	Syska & Hennessy	$20,000 Services
D065	Facility Consultant FY-89 Dept. of Corrections	Borda Engineers & Energy Consultants	$10,000 Services
I042	Horizons of Science Upgrade Lab Facilities Stockton State College Pomona, NJ	Kerht Shatken Sharon: Architects	$1,700,000

COMPETITIVE PROPOSALS

Kehrt Shatken Sharon: Architects	9.90%
Geddes Brecher Qualls Cunningham	11.30%
Lammey & Giorgio, PA	12.00%

P482	Administration Building Belleplain State Forest Cape May County, NJ	Waskeski Steelman Sindoni Wertz, PA	$350,000

COMPETITIVE PROPOSALS

Wasleski Steelman Sindoni Wertz, PA	$23,750 Lump Sum
Capriotti & Vining	$48,500 Lump Sum
David R. Crawford, AIA	$89,200 Lump Sum

I036	Parking Lot, Walk & Roadway Improvements Kean College Union, NJ	Andrew Marshall, Jr., PE & LS	$425,000

COMPETITIVE PROPOSALS

Andrew Marshall, Jr., PE & LS	$19,125 Lump Sum
Berson, Ackermann & Assoc., Inc.	$21,250 Lump Sum
Tighe, Firtion, Carrino & Associates	$28,475 Lump Sum

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EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter.** If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
2:3	6/18/89
2:5	6/18/89
2:6	9/3/90
2:7	9/29/88
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	2/11/90
2:32	6/1/92
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	8/1/88
2:69	10/3/88
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	8/29/89
2:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	3/19/89
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91
3:21	2/2/92
3:22	5/21/89
3:23	7/6/92
3:24	8/20/89
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:38	10/5/92
3:41	10/16/90
3:42	4/4/93

PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:9	10/5/92
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:3	9/1/88
5:4	10/5/92
5:10	12/1/88
5:11	3/1/89
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/90
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93
5:31	12/1/89
5:37	11/18/90
5:38	11/7/88
5:51	9/1/88
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91

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N.J.A.C.	Expiration Date
5:92	6/16/91
5:100	5/7/89

DEPARTMENT OF DEFENSE—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	3/1/89
6:3	7/8/93
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	7/5/93
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	12/1/88
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:6	12/19/88
7:7	5/7/89
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:10	9/4/89
7:11	5/13/93
7:12	4/11/93
7:13	5/4/89
7:14	4/27/89
7:14A	6/4/89
7:14B	12/21/92
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/19/88
7:22	1/5/92
7:23	6/18/89
7:24	5/19/91
7:25 (Except for 7:25-1 which expired 9/17/85)	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36-1	8/5/90
7:36-2	Expired 1/9/86
7:36-3	Expired 1/9/86
7:36-4	8/5/90
7:36-5	Expired 1/9/86
7:36-6	Expired 1/9/86
7:36-7	8/5/90
7:37	Exempt
7:38	9/18/90
7:45	Expired 1/11/85

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	9/8/92
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33D	2/1/87
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	9/15/91
8:33J	5/17/89
8:33K	4/16/89
8:34	11/18/88
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/12/91
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:43I	3/21/93
8:44	11/7/88
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90

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N.J.A.C.	Expiration Date
8:59	10/1/89
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	9/17/88
8:71	4/2/89

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	1/17/89
9:2	6/17/90
9:3	10/17/88
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/88
9:11	1/17/89
9:12	1/17/89
9:14	5/20/90
9:15	10/25/88

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	5/6/88
10:2	1/5/92
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/88
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/30/90
10:87	3/1/89
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	12/7/92
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	12/7/92
10:125	7/16/89
10:127	9/19/88
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/21/89

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	11/7/88
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91
11:17	4/18/93

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LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
12:20	11/5/89
12:35	8/5/90
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	12/9/88
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	8/15/89
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:100-1	9/8/91
12A:120	9/6/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	10/17/88
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	11/21/88
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	11/3/88
13:43	9/8/88
13:44	8/20/89
13:44B	11/2/92
13:44C	7/18/93
13:45A	12/16/90
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	1/4/89
13:47C	8/20/89
13:48	1/21/91
13:49	12/19/88
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	6/27/93
13:77	2/1/93

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:11	1/27/92
14:17	5/7/89
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:12	2/7/88
14A:13	2/2/92
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89

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N.J.A.C.	Expiration Date
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25	8/15/93
16:25A	7/18/93
16:26	8/6/89
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:33	9/3/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:49	3/18/90
16:51	4/6/92
16:53	3/19/89
16:53A	4/15/90
16:53C	6/16/93
16:53D	5/7/89
16:54	4/7/91
16:55	6/14/93
16:56	6/4/89
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	12/19/88
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	12/17/89
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	2/19/89
17:7	6/6/88
17:8	6/27/90
17:9	6/6/88
17:10	5/6/93
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	11/7/88
17:25	6/18/89
17:27	11/7/88
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:2	9/6/93
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	7/13/88
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/12/93
19:42	5/12/93
19:43	4/27/89
19:44	10/13/88
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/88
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the July 5, 1988 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1988 d.1 means the first rule adopted in 1988.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JUNE 20, 1988

NEXT UPDATE: SUPPLEMENT JULY 18, 1988

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
19 N.J.R. 1589 and 1676	September 8, 1987	20 N.J.R. 571 and 692	March 21, 1988
19 N.J.R. 1677 and 1758	September 21, 1987	20 N.J.R. 693 and 842	April 4, 1988
19 N.J.R. 1759 and 1858	October 5, 1987	20 N.J.R. 843 and 950	April 18, 1988
19 N.J.R. 1859 and 1926	October 19, 1987	20 N.J.R. 951 and 1018	May 2, 1988
19 N.J.R. 1927 and 2086	November 2, 1987	20 N.J.R. 1019 and 1126	May 16, 1988
19 N.J.R. 2087 and 2224	November 16, 1987	20 N.J.R. 1127 and 1316	June 6, 1988
19 N.J.R. 2225 and 2324	December 7, 1987	20 N.J.R. 1317 and 1500	June 20, 1988
19 N.J.R. 2325 and 2510	December 21, 1987	20 N.J.R. 1501 and 1594	July 5, 1988
20 N.J.R. 1 and 124	January 4, 1988	20 N.J.R. 1595 and 1758	July 18, 1988
20 N.J.R. 125 and 220	January 19, 1988	20 N.J.R. 1759 and 1976	August 1, 1988
20 N.J.R. 221 and 320	February 1, 1988	20 N.J.R. 1977 and 2122	August 15, 1988
20 N.J.R. 321 and 434	February 16, 1988	20 N.J.R. 2123 and 2350	September 6, 1988
20 N.J.R. 435 and 570	March 7, 1988		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-9.5	Transmittal of clerk's notices	20 N.J.R. 1979(a)		
1:1-14.3	Interpreters for hearing impaired: preproposal	20 N.J.R. 1979(b)		
1:1-14.8	Proceedings on the papers: inaction by requesting party	20 N.J.R. 1979(c)		
1:6-10.1	Discovery in school budget cases	20 N.J.R. 1980(a)		
1:6A-1.1	Applicability: correction to text	———	———	20 N.J.R. 2325(a)
1:30-1.2, 2.8	Agency rulemaking: use of appendices	20 N.J.R. 1021(a)	R.1988 d.383	20 N.J.R. 2052(a)
1:30-3.1	Regulatory flexibility analysis and proposed rulemaking	20 N.J.R. 573(a)		
	Most recent update to Title 1: TRANSMITTAL 1988-2 (supplement March 21, 1988)			
AGRICULTURE—TITLE 2				
2:5-2	Equine infectious anemia control	20 N.J.R. 695(a)	R.1988 d.369	20 N.J.R. 1870(a)
2:23	Gypsy moth control: voluntary suppression program	20 N.J.R. 845(a)	R.1988 d.323	20 N.J.R. 1688(a)
2:48-3	Sale of milk in new container sizes	20 N.J.R. 1129(a)	R.1988 d.385	20 N.J.R. 2052(b)
2:68-1	Association standards for commercial feeds	20 N.J.R. 1671(c)		
2:69	Commercial fertilizers and soil conditioners	20 N.J.R. 1673(a)		
2:71	Grades and standards	20 N.J.R. 953(a)	R.1988 d.370	20 N.J.R. 1871(a)
2:71-2.4, 2.5	Jersey Fresh Logo program	20 N.J.R. 1129(b)	R.1988 d.421	20 N.J.R. 2254(a)
2:72	Licensing and bonding of buyers of perishable commodities	20 N.J.R. 955(a)	R.1988 d.371	20 N.J.R. 1872(a)
2:73-2	Eggs: Seal of Quality program	20 N.J.R. 956(a)	R.1988 d.372	20 N.J.R. 1872(b)
2:74-1	Controlled atmosphere storage for apples	20 N.J.R. 956(b)	R.1988 d.368	20 N.J.R. 1873(a)
2:76-6.2, 6.5, 6.6, 6.8, 6.9, 6.10, 6.11, 6.16	Farmland preservation: acquisition of development easements	20 N.J.R. 1503(a)		
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites	20 N.J.R. 1761(a)		
2:76-6.9, 6.11, 6.14	Farmland preservation: acquisition of development easements	20 N.J.R. 1319(a)	R.1988 d.435	20 N.J.R. 2254(b)
	Most recent update to Title 2: TRANSMITTAL 1988-3 (supplement June 20, 1988)			
BANKING—TITLE 3				
3:1-2.17	Repeal (see 3:32-1)	20 N.J.R. 697(a)		
3:1-14	Revolving credit equity loans	19 N.J.R. 1594(a)		
3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)		
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	20 N.J.R. 1025(a)		
3:6-9	Capital stock savings bank: change in control	19 N.J.R. 1762(a)	R.1988 d.404	20 N.J.R. 2052(c)
3:32-1.1, 1.2, 1.4, 1.6, 1.7, 1.10, 1.11	Conversion of savings and loan associations from mutual to capital stock	20 N.J.R. 697(a)		
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)		
	Most recent update to Title 3: TRANSMITTAL 1988-4 (supplement June 20, 1988)			
CIVIL SERVICE—TITLE 4				
4:1-6, 7, 10.1, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
4:2-6.4–6.10, 7, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
4:3-2	Repeal (see 4A:3)	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
	Most recent update to Title 4: TRANSMITTAL 1988-1 (supplement January 19, 1988)			

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:1-1.3	State and local departments defined	20 N.J.R. 845(b)	R.1988 d.415	20 N.J.R. 2255(a)
4A:3	Classification, services, and compensation	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
4A:6-1.3, 1.10	Sick leave; leave without pay	20 N.J.R. 133(a)		
4A:6-1.3, 1.10	Sick leave, leave without pay: extension of comment period	20 N.J.R. 341(a)		

Most recent update to Title 4A: TRANSMITTAL 1988-2 (supplement June 20, 1988)

COMMUNITY AFFAIRS—TITLE 5				
5:3-2	Nonpublic records	20 N.J.R. 1763(a)		
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:22-2.1	Definition of multiple dwelling: correction	_____	_____	20 N.J.R. 1574(b)
5:23-2.5	Uniform Construction Code: increase in structure size	20 N.J.R. 1026(a)	R.1988 d.389	20 N.J.R. 2073(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)	R.1988 d.352	20 N.J.R. 1873(b)
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.18	Energy Subcode	20 N.J.R. 699(b)	R.1988 d.417	20 N.J.R. 2274(a)
5:23-3.21	Uniform Construction Code: one and two-family dwelling subcode	20 N.J.R. 1130(a)	R.1988 d.388	20 N.J.R. 2073(b)
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-7.104, 7.116	Barrier Free Subcode: recreation standards	20 N.J.R. 1764(b)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:24-2.5	Senior citizen and disabled protected tenancy: review of determination documents	20 N.J.R. 1026(b)	R.1988 d.362	20 N.J.R. 1877(a)
5:24-2.7	Senior citizen and disabled protected tenancy: appeal procedure	20 N.J.R. 437(a)	R.1988 d.361	20 N.J.R. 1878(a)
5:29-2.1, 2.2	Termination of lease by tenant because of disabling illness or accident	20 N.J.R. 1139(a)	R.1988 d.384	20 N.J.R. 2073(c)
5:30	Local Finance Board rules	20 N.J.R. 1027(a)	R.1988 d.350	20 N.J.R. 1879(a)
5:30	Local Finance Board rules: waiver of Executive Order No. 66 (1978) expiration provision	20 N.J.R. 1320(a)		
5:51	Handicapped Persons' Recreational Opportunities grant program	20 N.J.R. 1765(a)		
5:80-26.1, 26.2, 26.3, 26.11, 26.16, 26.21	Housing affordability controls	20 N.J.R. 862(a)	R.1988 d.331	20 N.J.R. 1688(b)
5:91-13.4	Council on Affordable Housing: motion procedure	20 N.J.R. 864(a)	R.1988 d.296	20 N.J.R. 1539(a)
5:92-1.3, 17	Council on Affordable Housing: rehabilitation of indigenous need	20 N.J.R. 864(b)	R.1988 d.295	20 N.J.R. 1539(b)
5:92-6.1, 11.4, 11.5, 12.9, 16.6, App. F	Affordable housing council rules	20 N.J.R. 1673(b)		
5:92-8.4	Council on Affordable Housing: developer agreements	20 N.J.R. 865(a)	R.1988 d.335	20 N.J.R. 1689(a)
5:92-11.2	Council on Affordable Housing: excess funds in regional contribution agreements; age restricted units	20 N.J.R. 1140(a)		
5:92-12.4	Council on Affordable Housing: initial pricing of rental units	20 N.J.R. 1320(b)		
5:92-12.11	Council on Affordable Housing: rental surcharge	19 N.J.R. 1597(a)		

Most recent update to Title 5: TRANSMITTAL 1988-6 (supplement June 20, 1988)

VETERANS' AFFAIRS AND DEFENSE—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

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6:2-1.21	Issuance of administrative order creating State-operated school district	20 N.J.R. 1505(a)		
6:3	School districts	20 N.J.R. 1027(b)	R.1988 d.367	20 N.J.R. 1879(b)
6:3-1.23, 1.24	Principal certification	20 N.J.R. 1320(c)		
6:11-12.5	Substance awareness coordinator	20 N.J.R. 1980(c)		
6:11-3.3	Certification fees	20 N.J.R. 865(b)	R.1988 d.307	20 N.J.R. 1539(c)
6:11-3.25, 4.2, 5.7, 10	Principal certification	20 N.J.R. 1320(c)		
6:22-1.2	School site approval	20 N.J.R. 1032(a)	R.1988 d.382	20 N.J.R. 2056(a)
6:27-1.14	Repeal (see 6:30)	20 N.J.R. 700(a)	R.1988 d.311	20 N.J.R. 1540(a)
6:28-11.12	Special Education Pilot Project: moderate behavior handicap class types	20 N.J.R. 1141(a)	R.1988 d.430	20 N.J.R. 2275(a)
6:29-4.2	Testing for tuberculosis infection	20 N.J.R. 1981(a)		
6:30	Adult education programs	20 N.J.R. 700(a)	R.1988 d.311	20 N.J.R. 1540(a)
6:31-1.10	Bilingual education and English as a second language programs: exit testing and reentry process	20 N.J.R. 1034(a)		
6:44-2, 3, 4	Repeal (see 6:30)	20 N.J.R. 700(a)	R.1988 d.311	20 N.J.R. 1540(a)
6:78-1.1, 1.2, 1.3	Marie H. Katzenbach School for the Deaf	20 N.J.R. 1678(a)		

Most recent update to Title 6: TRANSMITTAL 1988-4 (supplement June 20, 1988)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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7:1-1	Departmental organization	Exempt	R.1988 d.403	20 N.J.R. 2058(a)
7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)		
7:1I	Sanitary Landfill Facility Contingency Fund	20 N.J.R. 443(a)	R.1988 d.337	20 N.J.R. 1732(b)
7:2	State Park Service	20 N.J.R. 714(a)	R.1988 d.340	20 N.J.R. 1743(b)
7:2	State Park Service: extenstion of comment period	20 N.J.R. 1035(a)		
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7A-8.1	Freshwater Wetlands Protection Act rules: correction	20 N.J.R. 22(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7A-15, 16	Freshwater Wetlands Protection Act rules: fees, penalties and hearings	20 N.J.R. 576(a)	R.1988 d.312	20 N.J.R. 1553(a)
7:7E-3.41, 3.46, 7.14, 8.11	Hudson River waterfront development	20 N.J.R. 139(a)	R.1988 d.338	20 N.J.R. 2058(b)
7:7E-3.41, 3.46, 7.41, 8.11	Hudson River waterfront development: extension of comment period	20 N.J.R. 552(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A–G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)		
7:10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)		
7:10-16.13, 16.14, 16.15	Hazardous contaminants in drinking water: pre-proposal concerning short-term action levels, sampling response levels, and unregulated and total volatile organics	19 N.J.R. 2231(a)		
7:14-8	Penalties and hearings concerning violations of Water Pollution Control Act	20 N.J.R. 455(a)	R.1988 d.380	20 N.J.R. 1884(a)
7:14A-3.1	NJPDES permit requirements: discharges of dredged and fill material into freshwater wetlands and open waters	20 N.J.R. 1328(a)		
7:14A-5.12	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)		
7:19-6.14	Penalties and hearings concerning violations of Water Pollution Control Act	20 N.J.R. 455(a)	R.1988 d.380	20 N.J.R. 1884(a)
7:22-10	Environmental assessment requirements for State-assisted wastewater treatment facilities	20 N.J.R. 1983(a)		
7:25-1	Shellfishing license program	19 N.J.R. 2358(a)	R.1988 d.339	20 N.J.R. 1743(b)
7:25-5	1988-89 Game Code	20 N.J.R. 1035(b)	R.1988 d.376	20 N.J.R. 1895(a)
7:25-6	1989-90 Fish Code	20 N.J.R. 1627(a)		
7:26-1.1, 1.4, 4, 4A, 7.3, 7.5, 12.2, 13A.6, 16.2, 16.3	Hazardous waste fee schedule	20 N.J.R. 1995(a)		
7:26-1.4, 7.4, 9.1, 12.1	Hazardous waste research and testing facilities: pre-proposal	20 N.J.R. 460(b)		
7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, App. A, 12.1, 12.5, 12.12	Hazardous waste management	19 N.J.R. 1936(a)	R.1988 d.377	20 N.J.R. 1908(a)
7:26-1.4, 9.8–9.11, 9.13, App. A, 12.3	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:26-2.13	Dry industrial waste: correction to text	_____	_____	20 N.J.R. 1958(b)
7:26-3A	Special medical waste	Emergency (expires 10-9-88)	R.1988 d.429	20 N.J.R. 2321(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)	R.1988 d.357	20 N.J.R. 1910(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)	Expired	
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)		
7:26-7.4, 9.1, 12.1	Hazardous waste stored for reuse	20 N.J.R. 1329(a)		
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)		
7:26-12.12	Hazardous waste facilities and public participation in permit process	20 N.J.R. 715(b)	R.1988 d.375	20 N.J.R. 1913(a)
7:26B-1.10	Environmental Cleanup Responsibility Act: fee schedule	20 N.J.R. 2000(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:27-16.1, 16.3	Marine transfer of gasoline: vapor recovery program	20 N.J.R. 1866(a)		
7:27-23	Volatile organic substances in consumer products	20 N.J.R. 2002(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels	20 N.J.R. 1631(a)		
7:30	Pesticide Control Code	20 N.J.R. 579(a)		
7:31	Toxic Catastrophe Prevention Act rules: correction	_____	_____	20 N.J.R. 1743(c)
7:31-2.12, 2.15, 5	Toxic Catastrophe Prevention Act program: confidentiality and trade secrets	20 N.J.R. 350(a)	R.1988 d.378	20 N.J.R. 1913(b)
7:31-2.12, 2.15, 5	Confidentiality and trade secrets: correction and extension of comment period	20 N.J.R. 554(a)		
7:36	Green Acres Program	19 N.J.R. 2358(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 552(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 869(a)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)		
7:45	Delaware and Raritan Canal review zone: extension of comment period	20 N.J.R. 552(c)		
7:50-2.11, 3.32, 4.1, 4.40, 4.66, 5.22–5.26, 5.30, 5.43, 5.47, 6.7, 6.84, 6.107, 6.123, 6.131, 6.132, 6.133	Pinelands Comprehensive Management Plan	20 N.J.R. 716(a)		

Most recent update to Title 7: TRANSMITTAL 1988-6 (supplement June 20, 1988)

HEALTH—TITLE 8

8:31A-7.2, 7.4, 7.5, 7.11	Reimbursement for new SHARE facilities	20 N.J.R. 1633(a)		
8:31B-3.45	Hospital reimbursement: submission of uniform bill-patient summaries	20 N.J.R. 1143(a)		
8:31B-4.37, 4.39	Uncompensated Care Trust Fund: charity care eligibility	20 N.J.R. 595(a)	R.1988 d.420	20 N.J.R. 2276(a)
8:33B-1.3	Demonstration of extracorporeal shock wave lithotripsey services	20 N.J.R. 869(b)	R.1988 d.322	20 N.J.R. 1690(a)
8:33E-1.1, 1.2	Cardiac diagnostic facilities: complex electrophysiology studies	20 N.J.R. 467(a)	R.1988 d.321	20 N.J.R. 1690(b)
8:33E-2.2, 2.3, 2.4	Cardiac surgery centers: complex electrophysiology studies	20 N.J.R. 468(a)	R.1988 d.320	20 N.J.R. 1690(b)
8:39-20.1, 29.1, 30.5, 31.2	Long-term care licensing standards: corrections to text	_____	_____	20 N.J.R. 1944(a)
8:42B	Drug treatment facilities: standards for licensure	20 N.J.R. 598(a)	R.1988 d.319	20 N.J.R. 1692(a)
8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
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8:65-1.3, 6.6, 8.13	Handling of sodium pentobarbital in animal humane facilities	20 N.J.R. 366(a)		
8:65-10.5	Schedule V, Controlled Dangerous Substances	20 N.J.R. 1506(a)		
8:70	Evaluation criteria for interchangeable drug products	20 N.J.R. 1507(a)		
8:70-1.4	Drug Utilization Review Council: notice of action on a drug product	20 N.J.R. 870(a)	R.1988 d.328	20 N.J.R. 1710(a)
8:71	Interchangeable drug products (see 19 N.J.R. 2279(b), 2401(a); 20 N.J.R. 190(a), 655(a), 899(b), 1462(a))	19 N.J.R. 1488(a)	R.1988 d.325	20 N.J.R. 1711(a)
8:71	Interchangeable drug products (20 N.J.R. 191(b), 654(b), 899(a), 1462(b))	19 N.J.R. 1878(a)	R.1988 d.327	20 N.J.R. 1711(c)
8:71	Interchangeable drug products (see 20 N.J.R. 900(a), 1461(a))	20 N.J.R. 146(a)	R.1988 d.326	20 N.J.R. 1711(b)
8:71	Interchangeable drug products	20 N.J.R. 871(a)	R.1988 d.329	20 N.J.R. 1710(b)
8:71	Interchangeable drug products	20 N.J.R. 1766(a)		
8:71	Interchangeable drug products: correction to list	_____	_____	20 N.J.R. 2290(a)

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9:4-1.5	Chargeback for disability-specific programs at county colleges	20 N.J.R. 1330(a)		
9:7-3.1	Correction to text	_____	_____	20 N.J.R. 1576(b)
9:7-3.5	Tuition Aid Grant Program: part-time students	20 N.J.R. 2007(a)		
9:7-4	Garden State Scholarship Program	20 N.J.R. 720(a)	R.1988 d.303	20 N.J.R. 1558(a)
9:7-4.2, 4.3, 4.4	Garden State Scholarships	20 N.J.R. 1635(a)		
9:9	Student loan programs: policies and procedures	20 N.J.R. 1636(a)		
9:9-11	Guaranteed Student Loan Program: compliance evaluation of participating institutions	20 N.J.R. 872(a)	R.1988 d.334	20 N.J.R. 1712(a)
9:9-11.2	Guaranteed Student Loan Program: institution compliance	20 N.J.R. 1641(a)		
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)		

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9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)		
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10:3	Contract administration	20 N.J.R. 1771(a)		
10:4	Communication with communities regarding development of group homes	19 N.J.R. 1976(a)		
10:4	Communication with communities regarding development of group homes: extension of comment period	20 N.J.R. 149(a)		
10:13	Legal Assistance for Medicare Patients (LAMP)	20 N.J.R. 873(a)	R.1988 d.330	20 N.J.R. 1713(a)
10:14-1.4, 4.1, 6.3	Statewide Respite Care Program	20 N.J.R. 1051(a)		
10:44A	Licensed community residences for developmentally disabled	20 N.J.R. 149(b)		
10:46	Services for developmentally disabled: determination of eligibility	20 N.J.R. 2008(a)		
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)	R.1988 d.349	20 N.J.R. 1945(a)
10:49-1.12	Timely claim submittal—pharmaceutical services	20 N.J.R. 1642(a)		
10:49-3.19, 3.20	HealthStart provider reimbursement	_____	_____	20 N.J.R. 2101(a)
10:49-6.9	Medicaid providers and administrative charges and service fees	20 N.J.R. 518(a)		
10:50-3.2	Ambulance services: provider reimbursement	_____	_____	20 N.J.R. 2101(a)
10:51-1, App. B, C, D, E	Pharmaceutical Services Manual: covered products	20 N.J.R. 875(a)	R.1988 d.363	20 N.J.R. 1945(b)
10:51-1.17, 3.15	Pharmaceutical services: provider reimbursement	_____	_____	20 N.J.R. 2101(a)
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10:53-1.5, 1.7	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)	R.1988 d.349	20 N.J.R. 1945(a)
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:54-4	Physicians' services: provider reimbursement	_____	_____	20 N.J.R. 2101(a)
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10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:58-3	Nurse-midwifery services: provider reimbursement	_____	_____	20 N.J.R. 2101(a)
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10:61-3	Independent laboratory services: provider reimbursement	_____	_____	20 N.J.R. 2101(a)
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10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
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10:81-7.40	AFDC program: fraudulent receipt of assistance	20 N.J.R. 722(b)	R.1988 d.310	20 N.J.R. 1559(a)
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:81-11.18	Child support guidelines: spousal support obligation	20 N.J.R. 1058(a)	R.1988 d.423	20 N.J.R. 2292(a)
10:82-3.2, 3.6, 3.7	ASH: client resources in AFDC program	20 N.J.R. 1059(a)	R.1988 d.424	20 N.J.R. 2292(b)
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10A:3-5.6, 5.7	Pat and strip searches	20 N.J.R. 1331(a)	R.1988 d.406	20 N.J.R. 2294(a)
10A:4-11.9, 12	Inmate discipline: appeal to Office of Administrative Law	20 N.J.R. 496(b)		

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10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
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10A:22-2	Inmate and parolee records	20 N.J.R. 723(a)	R.1988 d.305	20 N.J.R. 1561(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)	R.1988 d.336	20 N.J.R. 1716(b)

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11:5-1.23	Real estate services to handicapped	20 N.J.R. 725(a)	R.1988 d.412	20 N.J.R. 2295(b)
11:5-1.25	Sale of interstate real properties: advertisements	19 N.J.R. 1718(a)		
11:5-1.27	Educational requirements for real estate licensure	20 N.J.R. 725(b)	R.1988 d.411	20 N.J.R. 2296(a)
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12A:54	Cogeneration equipment and use tax exemption: technical sufficiency standards	20 N.J.R. 1073(a)	R.1988 d.391	20 N.J.R. 2067(a)
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