

NEW JERSEY REGISTER



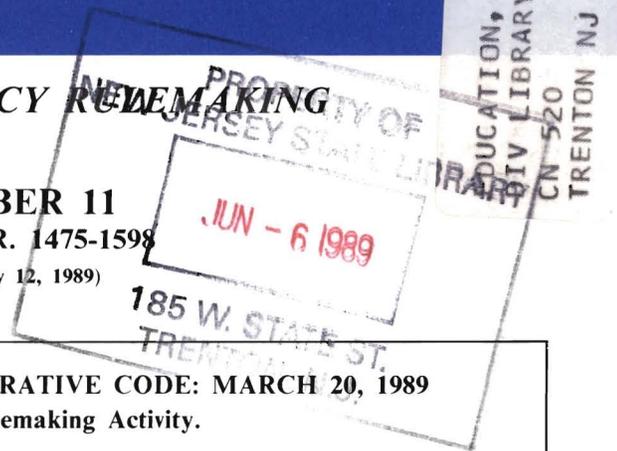
THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 21 NUMBER 11

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(Includes adopted rules filed through May 12, 1989)

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MARCH 20, 1989

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT APRIL 17, 1989

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Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **July 5, 1989**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Livestock and Poultry Importations

Proposed Readoption: N.J.A.C. 2:3

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

Authority: N.J.S.A. 4:5-54-75.

Proposal Number: PRN 1989-274.

Submit comments by July 5, 1989 to:

Sidney R. Nusbaum
Director, Division of Animal Health
N.J. Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-3965

The agency proposal follows:

Summary

This chapter, which expires on June 18, 1989, was internally reviewed in January and February, 1989 in compliance with Executive Order No. 66 (1978), and found to be adequate, reasonable and necessary. However, some changes in wording and terminology have been made throughout the chapter to insure compliance with the U.S. Department of Agriculture's regulations and today's terminology.

Most changes made have been to broaden the scope of the pertinent rules to treat animals as classes, rather than to be specific as to particular animals. As an example, the specific requirements for goats and nutria have been dropped and they shall be treated as other forms of livestock. Specificity to animals is retained in those instances of particular diseases and particular disease control programs.

Subchapter 1 contains the general requirements relative to the importation of livestock and poultry, namely that an interstate health certificate (proposed for amendment to a Certificate of Veterinary Inspection) accompany all livestock and poultry moved into the State.

Subchapter 2 provides the specific health-related importation rules for livestock for breeding and herd replacements. In addition to the current rules addressing tuberculosis, brucellosis and other infections, a new rule is proposed at N.J.A.C. 2:3-2.9 concerning Anaplasmosis or Bluetongue.

Subchapter 3 contains the health-related importation rules for feeder stock. Subchapter 4 is reserved. Subchapter 5 regulates the importation of poultry and hatching eggs. A new rule is proposed at N.J.A.C. 2:3-5.4 relating to Salmonella enteritidis control.

Subchapter 6 regulates the importation of livestock for exhibition, and subchapter 7 governs nutria importation.

Social Impact

The prevention and control of disease by the regulation of the importation of animals is a key element in animal disease control programs. The rules are a socially beneficial program that prevents the introduction of diseases which may be inimical to the health of the animal husbandry industry and to humans.

Economic Impact

The burden of these rules falls upon the farmer, consumer and the intermediaries between the two. Compliance imposes costs in the processing of paperwork and the treatment of any disease found. This is, however, outweighed by the safety of the products produced and the higher return of the product from the compliance with the rules, in that more animals get to market and receive a better price, and live longer if free from disease.

Regulatory Flexibility Analysis

While most farmers are small businesses, the rules proposed for re-adoption do not impose new or increased recordkeeping and/or other compliance requirements other than mandated by the authorizing statutes.

Without the imposition of many of these rules New Jersey farmers would, by the nature of commerce, be foreclosed from the participation in interstate and international commerce.

Further, the purposes of these rules are to control the spread of disease and affect the public health, welfare and safety; therefore no regulatory flexibility analysis is needed. The N.J. Department of Agriculture has attempted to balance the need of restrictions for disease control and the impact on the citizen. However, the Department must err on the side of caution.

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

CHAPTER 3

LIVESTOCK AND POULTRY IMPORTATIONS

SUBCHAPTER 1. GENERAL REQUIREMENTS

2:3-1.1 Interstate health certificate to accompany animals entering State

All livestock and poultry moved into New Jersey, except for immediate slaughter, shall be accompanied by an official [interstate health certificate] **Certificate of Veterinary Inspection** approved by the livestock disease control agency of the state or county of origin. **A National Poultry Improvement Plan (NPIP) Form 3-B may be used for poultry in lieu of the Certificate of Veterinary Inspection.**

2:3-1.2 Contents of [interstate health certificate] **Certificate of Veterinary Inspection**

(a) The official [interstate health certificate] **Certificate of Veterinary Inspection** shall indicate that the livestock designated thereon comply with all requirements for entry into New Jersey.

(b) The official [interstate health certificate] **Certificate of Veterinary Inspection** shall include a legible report of the following[.]:

1. Complete name and address of consignor[.];
2. Origin of the livestock[.];
3. Complete name and address of consignee[.];
4. Destination of the livestock[.];
5. Description of the livestock. Cattle, **sheep and swine** shall be identified by ear tag, tattoo or registration name and number. **Horses shall be identified by physical description and/or tattoo or brand;**
6. Statement that the livestock received an [examination] **inspection** by a veterinarian within 30 days of entry, and that the veterinarian found the livestock [to be apparently free from contagious or parasitic disease or exposure thereto.] **not showing signs of infectious, contagious and/or communicable disease; and**
7. Additional information as required for specific class of livestock.

2:3-1.3 Copy of [interstate health certificate] **Certificate of Veterinary Inspection** to New Jersey Department of Agriculture

A copy of the official [interstate health certificate] **Certificate of Veterinary Inspection** shall be mailed promptly by the approving agency to the **Division of Animal Health**, New Jersey Department of Agriculture, [P.O. Box 1888] CN 330, Trenton, New Jersey 08625.

[2:3-1.4 Notification of Department on receipt of livestock

The consignee shall notify the Department of Agriculture of the receipt of livestock within three days of arrival.]

2:3-[1.5]1.4 Expiration date of [interstate health certificates] **Certificates of Veterinary Inspection**

Official [interstate health certificates] **Certificates of Veterinary Inspection** shall be void 30 days after issuance.

2:3-[1.6]1.5 Quarantine of livestock entering State

All livestock entering the State [shall be under quarantine until released] **are subject to quarantine** by the New Jersey Department of Agriculture.

Recodify 2:3-1.7 and 1.8 as **1.6 and 1.7** (No change in text.)

AGRICULTURE

PROPOSALS

SUBCHAPTER 2. LIVESTOCK FOR BREEDING AND HERD REPLACEMENTS

2:3-2.1 (No change.)

2:3-2.2 Definitions

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

"Accredited herd" shall mean a herd as defined in 9 C.F.R. Part 77.1(b).

"Accredited tuberculosis free state" shall mean a state [which maintains full compliance with all of the provisions of the Uniform Methods and Rules, Bovine Tuberculosis Eradication, and where no evidence of bovine tuberculosis has been disclosed for five or more years] as defined in 9 C.F.R. Part 77.1(a).

["Accredited herd" (cattle or dairy goats) shall mean an accredited herd that has passed at least two consecutive annual caudal fold tuberculin tests, has no other evidence of bovine tuberculosis, and meets the standards of Uniform Methods and Rules, Bovine Tuberculosis Eradication.]

"Brucellosis class free state or area" shall mean a state or area as defined in [Title] 9[,] C.F.R.[,] Part 78.1(t).¹

"Brucellosis class A state or area" shall mean a state or area as defined in [Title] 9[,] C.F.R.[,] Part 78.1(u).¹

"Brucellosis class B state or area" shall mean a state or area as defined in [Title] 9[,] C.F.R.[,] Part 78.1(v).¹

"Brucellosis class C state or area" shall mean a state or area as defined in [Title] 9[,] C.F.R.[,] Part 78.1(w).¹

"Certified brucellosis free herd" shall mean a herd as defined in [Title] 9[,] C.F.R.[,] Part 78.1(q).¹

¹Copies are filed with and may be received by writing to: Director, Division of Animal Health, New Jersey Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, CN 330, Trenton, New Jersey 08625.

2:3-2.3 Importing diseased [cattle and goats] livestock

[Cattle and goats] **Livestock** from herds under quarantine because of tuberculosis, brucellosis, or any other disease, or [cattle] **livestock** currently classified as suspects because of tuberculosis, **brucellosis** or **other infections** shall not be imported into the State.

2:3-2.4 Negative reaction of cattle and bison to the tuberculosis test

[(a) Cattle and bison six months of age or over shall be negative to a tuberculosis test within 60 days prior to entry.]

[(b)](a) Animals that originate from an accredited bovine Tuberculosis-Free State or an accredited bovine Tuberculosis-Free Herd and shall have been included in the annual herd test or are a natural addition to the herd are exempt from tuberculosis tests.

(b) **Cattle and bison six months of age or over shall be negative to a tuberculosis test within 60 days prior to entry.**

(c) **Requirements for tuberculosis testing may be waived if it is determined that livestock are from an area of equal disease-free status to New Jersey.**

2:3-2.5 and 2.6 (No change.)

2:3-2.7 Brucellosis testing—Class B and C States

(a) The following conditions apply to animals imported from Class B and Class C States:

1. A prior permit for movement shall be obtained by the consignee from the Director, Division of Animal Health, New Jersey Department of Agriculture.

2. **The herd test, certified herd number, prior permit number, and a statement by the accredited veterinarian that the animals being imported were included in the herd test or were natural additions, must appear on the Certificate of Veterinary Inspection.**

[2.]3. All animals to be imported must be members of or natural additions to a Certified Brucellosis-Free Herd.

[3.]4. All animals six months of age or over shall be negative to an official brucellosis test within 30 days prior to entry, except official brucellosis vaccinated heifers under 14 months of age.

[4. Steers and spayed heifers need not be tested.]

5. The imported animals shall be quarantined separate and apart from native animals upon entry into the [state] **State** until brucellosis

tested negative at **owner's expense**, not less than 45 or more than 120 days after entry into the state.

6. [The herd test, certified herd number, prior permit number, and a statement by the accredited veterinarian that the animals being imported were included in the herd test or were natural additions must appear on the health certificate.] **Steers and spayed heifers are exempt from (a)1 through 5 above.**

[2:3-2.8 Interstate health certificate

In all appropriate cases, vaccination tag, tattoo, or date of vaccination must be recorded on the interstate health certificate.]

2:3-[2.9]2.8 Brucellosis test for imported cattle

(a) The department may require cattle imported to be [held for testing] **tested** for brucellosis if in its judgment such testing would be necessary to prevent introduction of the disease.

(b) [All test eligible breeding cattle and bison as defined in U.S.D.A., APHIS 91-1 from Class B or Class C States shall be held under quarantine separate and apart from native livestock until tested negative not less than 45 or more than 120 days after entry into New Jersey.] **Brucellosis test requirements may be waived if it is determined that livestock are from an area of equal disease-free states as New Jersey, and did not pass through a livestock auction.**

2:3-2.9 Anaplasmosis or Bluetongue

(a) **Cattle from states with endemic Anaplasmosis or Bluetongue, as determined by the U.S.D.A., must have a negative test within 30 days of entry, or be tested negative at owner's expense following entry.**

(b) **Anaplasmosis positive animals will be quarantined until three repeated tests at least 30 days apart are negative or returned to state of origin.**

(c) **Bluetongue positive animals will be quarantined and must be isolated until epidemiology and retesting discloses no potential threat to contact animals.**

2:3-2.10 (No change.)

2:3-2.11 Horses, mules and asses

(a) All equidae entering New Jersey must meet the requirements of N.J.A.C. [2.3-1] **2:3-1.**

(b) All equidae entering the State after January 1, 1974, must have had a negative Coggins test for equine infectious anemia conducted at a jointly-approved U.S.D.A.-State laboratory within the past 12 months.

[(c) All equidae entering the State which originate in a state that does not have a mandatory identification and quarantine program for equidae having a positive test for equine infectious anemia (EIA) must have had a negative Coggins test for equine infectious anemia conducted at a jointly-approved U.S.D.A.-State laboratory within 30 days prior to entry.]

2:3-2.12 (No change.)

2:3-2.13 Health certificate to indicate swine free from brucellosis

The official [interstate health certificate] **Certificate of Veterinary Inspection** shall indicate that swine for breeding purposes are members of a brucellosis-free herd, or are negative to a blood test for brucellosis within 30 days prior to entry.

2:3-2.14 Imported breeding swine to conform to Federal Regulation

(a) All breeding swine imported into New Jersey must meet the requirements of [Title 9, part 76, sections 4 through 18 of the Code of Federal regulations] **9 C.F.R. 76.4 through 76.18.**¹

(b) All breeding swine imported into New Jersey must be individually identified by ear tag, tattoo or other approved individual identification.

¹Copies are filed with and may be received by writing to: Director, Division of Animal Health, New Jersey Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, CN 330, Trenton, New Jersey 08625.

2:3-2.15 (No change.)

2:3-2.16 Quarantine of imported breeding swine

All breeding swine imported must be held in quarantine on the farm of destination separate and apart from all native animals and

retested negative after 30 days for pseudorabies and brucellosis prior to release by the New Jersey Department of Agriculture, with the exception that swine from Validated/Qualified Free herds delivered directly by owner's vehicle are exempt.

2:3-2.17 All imported breeding swine; not infected with pseudorabies

(a) All imported breeding swine must come from a herd that has not been infected with pseudorabies in the past 60 days. Individuals must have been negative to [a serum neutralization] **an official pseudorabies** test within 30 days prior to entry, conducted at a State or Federal laboratory. Swine from Qualified Pseudorabies Negative Herds may enter if the Qualified Pseudorabies Negative Herd Number and the date of the last qualifying test are stated on the official [interstate health certificate] **Certificate of Veterinary Inspection**.

(b) "Qualified Pseudorabies Negative Herd" means a herd which complies with the provisions of 9 C.F.R. 85.1(ee).

SUBCHAPTER 3. FEEDER STOCK

2:3-3.1 Compliance with subchapter and importation requirements

In addition to the general requirements for importation, feeder stock moved into New Jersey shall meet the specific requirements of this subchapter, provided, however, that feeder swine are exempt from the general requirements for importation (see [subchapter 1 of this chapter] N.J.A.C. 2:3-1).

2:3-3.2 Tuberculin tests for steers and spayed heifers

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

(c) All other feeder cattle shall meet the [regulations as provided in section 1 of this subchapter] **provisions of N.J.A.C. 2:3-3.1**.

2:3-3.3 Certification of feeder lambs free from [scabies] **infectious disease**

Feeder lambs shall be certified to have originated in a flock [and in a state free from scabies and to be] free from infectious disease or recent exposure thereto.

2:3-3.4 Imported feeder swine to conform to Federal regulations[; hog cholera vaccination]

(a) All feeder swine imported into New Jersey must meet the requirements of [part 76, title 9, sections 4 through 18 of the Code of Federal Regulations] **9 C.F.R. 76.4 through 76.18.**¹

(b) All feeder swine imported into New Jersey must be individually identified by ear tag, tattoo or other approved individual identification.

¹Copies are filed and may be received by writing to: Director, Division of Animal Health, New Jersey Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, CN-330, Trenton, New Jersey 08625.

2:3-3.5 (No change.)

[2:3-3.6 Quarantine of imported feeder swine

All feeder swine imported into New Jersey must be held in quarantine on the farm of destination for 30 days until release by the New Jersey Department of Agriculture.]

2:3-[3.7]3.6 (No change in text.)

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. POULTRY AND HATCHING EGGS

2:3-5.1 and 5.2 (No change.)

2:3-5.3 Poultry for immediate slaughter

Poultry for immediate slaughter may be moved into New Jersey within restriction, except that poultry infected with or exposed to contagious diseases are prohibited **unless accompanied by special prior permit**.

2:3-5.4 **Salmonella enteritidis**

While present diagnosis and surveillance techniques for Salmonella enteritidis are not adequate for proper control and prevention, the State of New Jersey will require that chickens imported into the State for

the purpose of producing eggs for human consumption and hatching eggs imported for the purpose of raising chickens that will produce eggs for human consumption shall meet the standards of the United States Sanitation Monitored Program of the National Poultry Improvement Plan or such other regulations that may be imposed by USDA/NJ as better methods of control are developed.

SUBCHAPTER 6. LIVESTOCK FOR EXHIBITION

2:3-6.1 (No change.)

[2:3-6.2 Goats for exhibition purposes only

(a) Goats imported into the State for exhibition purposes only are required to comply with N.J.A.C. 2:3-1 (Livestock and Poultry Importations).

(b) No test is required if goats originate from certified brucellosis-free herd, an accredited tuberculosis-free herd, or if the animal is listed on the annual test.

(c) For goats not originating from a brucellosis-free herd, a negative brucellosis test is required within 90 days of the opening date of the show for all goats over six months of age.

(d) For goats not originating from an accredited tuberculosis-free herd, a negative tuberculosis test is required for all goats within 90 days of the opening date of the show.

(e) Goats imported for exhibition and sale must meet the same requirements as for animals imported for dairy or breeding purposes.]

SUBCHAPTER 7. NUTRIA (MYOCASTER COYPU)

2:3-7.1 Compliance with importation requirements

Nutria shall meet the general requirements for importation.

(a)

DIVISION OF ANIMAL HEALTH

Quarantines and Embargoes

Avian Influenza and Equine Infectious Anemia

Proposed Readoption with Amendments: N.J.A.C. 2:5

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

Authority: N.J.S.A. 4:5-1 through 3 and 4:5-94 through 106.

Proposal Number: PRN 1989-276.

Submit comments by July 5, 1989 to:

Sidney R. Nusbaum
Director, Division of Animal Health
N.J. Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-3965

The agency proposal follows:

Summary

N.J.A.C. 2:5 expires on June 18, 1989 pursuant to Executive Order No. 66 (1978). The Department of Agriculture proposes to readopt this chapter with amendments to N.J.A.C. 2:5-3.4, Avian Influenza. In 1988 and 1989, the Department substantially modified N.J.A.C. 2:5-2, Equine Infectious Anemia. There is a further need at this time to amend N.J.A.C. 2:5-2.7. This is in response to comments the Department received on the 1989 amendments. The proposed amendment provides for a registration procedure for slaughter buyers, which the Division of Animal Health believes is helpful.

1988-89 was the first winter in which there was no outbreak of Avian Influenza since 1985. However, prudence and good veterinary practice indicates leaving the rules on the books. Specific routes to be followed by trucks transporting poultry have been deleted. Such decisions in the future will be made by the Director of the Division of Animal Health at the time and location of any future outbreaks.

Social Impact

These rules are designed to prevent and deal with the outbreak of diseases. They have a positive social impact to the extent that they prevent them.

Economic Impact

Any outbreak of an economically destructive disease can be devastating to the owner and much more expensive than the costs of precaution or compliance with these rules. In the face of such an outbreak, the rules are economically beneficial.

Regulatory Flexibility Analysis

These rules will impact upon small businesses, but as there is no other effective method of dealing with such outbreaks known to the Department, the Department feels that prudence requires their being ready for such occurrences and to help prevent them. Therefore, because the rules affect the public health and welfare, no differentiation in requirements related to business size is provided, in accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 2:5, and in the May 15, 1989 New Jersey Register at 21 N.J.R. 1384(a).

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

2:5-2.7 Other authorized movement or transfer

(a) The provisions of N.J.A.C. 2:5-2.5 and 2.6 shall not apply to any horse or other equidae which is imported, sold, exchanged, bartered, given away or transported under permit from the Director of the Division of Animal Health, New Jersey Department of Agriculture for purposes of immediate slaughter, research, return of the animal to the state, country or farm of its origin, or other authorized purpose provided written authorization for such movement or transfer is obtained in advance thereof from the Director.

1.-2. (No change.)

3. Horses imported or purchased for slaughter may be purchased only by a registered slaughter buyer. Persons may become registered by application to the Director of the Division of Animal Health on forms available from him or her. Registered slaughter buyers shall maintain and make available to the Division a record of sales including dates, identification of animal and destination. Failure to maintain such records will be cause for removing the registered designation.

(b) (No change.)

2:5-3.1 Poultry importation

(a) No live poultry originating from those designated areas or counties with confirmed cases of Avian Influenza, so designated by the New Jersey Department of Agriculture[,], United States Department of Agriculture, or other [State] state Departments of Agriculture shall be allowed into New Jersey for any purpose unless inspected by or under a prior permit of the Department of Agriculture.

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

2:5-3.4 Routes: Interstate shipment through New Jersey of live poultry

(a) All trucks carrying live poultry through New Jersey for out-of-[state] State markets must confine themselves to interstate highway system roads. All trucks carrying birds for slaughter in New Jersey must follow [these] routes [:] **designated by the Director of the Division of Animal Health for slaughter facilities, as conditions require.**

[1. All trucks entering New Jersey from Pennsylvania and Delaware for the Vineland vicinity must adhere to the following routes: either across the Delaware Memorial Bridge north on I-295, or the New Jersey Turnpike to Route 322, east on Route 322 to Route 555 south, or Route 40 east to United Poultry on Route 555, south to Park Avenue west and Almond Road. West To B&B Poultry on Route 555, south to Chestnut Avenue, west to South Mill Road to Vineland Kosher Poultry, or across the Commodore Barry Bridge to Route 322 to Route 555.

2. All trucks entering New Jersey from New York must travel on the New Jersey Turnpike to Route 322 east, and follow the above route.]

PERSONNEL

(a)

Separations and Demotions

N.J.A.C. 4:3-16

Waiver of Executive Order No. 66(1978)

Authorized By: Governor Thomas H. Kean

Take notice that the Separations and Demotions rules, N.J.A.C. 4:3-16, adopted by the Department of Personnel, were due to expire on June 4, 1989, pursuant to the sunset provisions of Executive Order No. 66(1978). Although the Department of Personnel is in the process of readopting these rules, the rules would expire before readoption could be accomplished. Governor Thomas H. Kean has been informed by the Department of Personnel that readoption is expected by June 20, 1989.

These rules include procedures for layoffs in those political subdivisions subject to Title 11A of the New Jersey Statutes. The jurisdictions covered include all counties except Somerset and over 250 municipalities, including all the large cities. It is essential that regulations governing layoffs in these jurisdictions remain in force to provide guidance as required by N.J.S.A. 11A:8-1 et seq.

Therefore, as Governor of the State of New Jersey and by the authority vested in him by Executive Order No. 66(1978), Governor Kean, on April 25, 1989, directed that the five-year sunset provision of Executive Order No. 66(1978) be waived for N.J.A.C. 4:3-16, and the expiration for the rules be extended for a period from June 4, 1989 to June 20, 1989, inclusive of both dates.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF PARKS AND FORESTRY

Natural Areas System

Designation of West Pine Plains to System

Proposed Amendment: N.J.A.C. 7:2-11.12

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3 et seq.; 13:1B-15.4 et seq.;

13:1B-15.12a et seq., particularly 13:1B-15.12a4, and 13:1D-9.

DEP Docket Number: 026-89-05.

Proposal Number: PRN 1989-277.

A public hearing concerning the proposed amendment will be held on:

Wednesday, July 19, 1989

7:00 P.M.

Lebanon State Forest Office

Route 72 (Mile Marker 1, 1 mile east of Route 72
and Route 70 circle)

Woodland Township, New Jersey

(609) 726-1191

Submit written comments by August 4, 1989 to:

Judeth A. Piccinini, Esq.

Division of Regulatory Affairs

New Jersey Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:2-11.12 in order to designate the West Pine Plains as a component of the Natural Areas System. The West Pine Plains is a 3,380 acre State-owned parcel located within Bass River State Forest in Woodland Township, Burlington County.

The Natural Areas System was established for the purpose of protecting and preserving natural and ecological resources for present and future generations. Pursuant to the requirements of N.J.S.A. 13:1B-15.12a6, the Department maintains a registry (Register) of public and private lands which are suitable for inclusion within the System. The Natural Areas Council (Council) periodically reviews the Register for the purpose of

identifying Register sites which have the potential natural values to be designated as Natural Areas. After further study of such sites by the Division of Parks and Forestry, the Council may recommend sites to be designated as Natural Areas to the Commissioner of Environmental Protection. Upon proposal of the designation as a rule, the Commissioner of Environmental Protection may adopt the designation subject to Gubernatorial approval.

On August 19, 1985, Commissioner of Environmental Protection Hughey placed the West Pine Plains, as part of the 13,385 acre Pine Barren Plains, on the Natural Areas Register (see Administrative Order No. 104). In accordance with the procedures in N.J.A.C. 7:2-11.6, the Office of Natural Lands Management, Division of Parks and Forestry, prepared a designation study documenting the suitability of the West Pine Plains for designation to the Natural Areas System. The Council reviewed the designation study and recommended the addition of the West Pine Plains to the Natural Areas System by vote at their May 5, 1987 meeting and by letter to Commissioner Christopher J. Daggett on April 10, 1989. The recommendation of the Council was approved by Commissioner Daggett on May 2, 1989.

The objective of designating the West Pine Plains as a Natural Area is to protect a significant portion of the Pine Plains, a globally rare ecological community type which is only known to occur in areas of New Jersey and New York. The West Pine Plains is characterized by a naturally stunted forest vegetation which is native to several areas of the State. The biota of the West Pine Plains includes at least one rare plant species and 12 rare invertebrate species (moths), several of which are classified by the Office of Natural Lands Management as globally rare. The presence of so many globally rare moth species within one area is considered quite unusual.

The Department estimates that the West Pine Plains comprises more than one-fourth of the entire Pine Plains community in the State. The Natural Areas System currently contains 41 areas totaling 25,785 acres. The addition of the approximately 3,830 acres of the West Pine Plains would bring the total acreage in the system to 29,615 acres.

The proposed amendment assigns the West Pine Plains an interim classification of Conservation Preserve upon designation as a Natural Area (see N.J.A.C. 7:2-11.7). Classification as a Conservation Preserve reflects an initial determination that in order to attain the designation objective, the majority of the natural area may be managed such that habitat manipulation is permissible in order to preserve a plant or animal species, community type, or ecosystem. Specifically, the Department expects to implement management practices minimizing wildfire suppression and maximizing the size and intensity of natural burning, if weather conditions permit and life and property are not in danger. These techniques will help maintain the West Pine Plains ecosystem in its present form. In addition to such management practices specific to the West Pine Plains as the Commissioner may approve, after designation as a Natural Area the site will be subject to those general interim management guidelines at N.J.A.C. 7:2-11.9 not inconsistent with the approved specific management practices, pending completion of the formal management plan required by N.J.A.C. 7:2-11.8.

Social Impact

The West Pine Plains supports several rare plant and invertebrate species native to the State. Preserving the West Pine Plains as a component of the Natural Areas System will benefit present and future generations of State residents by preserving the natural and ecological values associated with its rare species.

Economic Impact

Adding the West Pine Plains to the Natural Areas System will not involve any acquisition of property, since the entire area is currently State-owned. Once the West Pine Plains is designated as a Natural Area, the Department will be required to produce a formal management plan designed to maintain and, if practicable, enhance those natural features of the site worthy of preservation. The majority of these management techniques will be passive in nature and will not impose any appreciable cost to State citizens. Moreover, implementing a formal management plan may reduce the Department's long-term management costs associated with this site by increasing management efficiency.

Designating the West Pine Plains as a Natural Area is not expected to have an adverse economic impact on the general public, since imposing management guidelines will only deny economic benefit to those persons seeking to profit from the unsafe or environmentally degrading use of the West Pine Plains.

Environmental Impact

Including the West Pine Plains in the Natural Areas System will allow the Department to impose rules for management and administration of the site, as specified at N.J.A.C. 7:2-11, thereby ensuring the permanent protection of the natural resource features that the site supports. Until such time as a formal management plan for the West Pine Plains is adopted, the interim management practices contained in N.J.A.C. 7:2-11.9 and other interim management practices which may be proposed for the West Pine Plains site will preserve the integrity of its ecological community.

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 will not impose reporting, recordkeeping, or other compliance requirements on small businesses since the amendment imposes land management responsibilities on the Department but not on members of the general public.

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

7:2-11.12 Natural Areas System

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

(c) The following are designated as components of the Natural Areas System:

1.-39. (No change.)

40. Wawayanda Swamp Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of Parks and Forestry, through Wawayanda State Park; [and]

41. West Pine Plains Natural Area:

i. Location: Bass River State Forest, Woodland Township, Burlington County;

ii. Designation Objective: preservation of a significant portion of the globally rare Pine Plains community, including rare plant and invertebrate species habitat;

iii. Interim Classification: conservation preserve;

iv. Administering Agency: Division of Parks and Forestry, through Bass River State Forest; and

Renumber existing 41. as 42. (No change in text.)

(a)

DIVISION OF COASTAL RESOURCES

Coastal Permit Program

N.J.A.C. 7:7

Flood Hazard Area Control

N.J.A.C. 7:13

Waiver of Executive Order No. 66(1978)

Authorized By: Governor Thomas H. Kean.

Take notice that Governor Thomas H. Kean has been informed by the Department of Environmental Protection that the Coastal Permit Program rules, N.J.A.C. 7:7, were to expire on May 7, 1989, and that the Flood Hazard Area Control rules, N.J.A.C. 7:13, expired on May 4, 1989. Although the Department of Environmental Protection is in the process of readopting these rules, they will or did expire before re adoption can be accomplished. Governor Kean has also been informed by the Department of Environmental Protection that re adoption of N.J.A.C. 7:7 will be completed by June 5, 1989 and re adoption of N.J.A.C. 7:13 will be completed by July 17, 1989.

The coastal permit program rules at N.J.A.C. 7:7 establish the procedures by which the Department of Environmental Protection reviews permit applications and appeals from permit decisions (including appeals to the Coastal Area Review Board) under the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), and the Waterfront Development Law (N.J.S.A. 12:5-3). Because of the extraordinarily environmentally sensitive nature of the coastal zone and the gravity of the subject matter covered by these rules, it is important that no lapse in these rules occurs.

The flood hazard area control rules at N.J.A.C. 7:13 establish the procedures by which the Department of Environmental Protection regu-

lates construction and other activities in flood prone areas. Because the flood hazard area control program is necessary to protect public health, public safety and the environment from the effects of unregulated activities in the flood hazard area, it is important that no lapse in these rules occurs.

Therefore, as Governor of the State of New Jersey and by the authority vested in him by Executive Order No. 66(1978), Governor Kean, on May 5, 1989, directed that the five-year sunset provision of Executive Order No. 66(1978) be waived for N.J.A.C. 7:7 to the extent that the expiration date for this chapter be extended for the period of May 7, 1989 through June 5, 1989, inclusive of both dates. Under the same authority, Governor Kean also directed that the five-year sunset provision of Executive Order No. 66(1978) be waived for N.J.A.C. 7:13 to the extent that the expiration date for this chapter shall be July 17, 1989.

(a)

DIVISION OF COASTAL RESOURCES

**Notice of Extension of Comment Period
Redelineation of the Ramapo River**

Proposed Amendment: N.J.A.C. 7:13-7.1(d)

Take notice that the Department of Environmental Protection is extending until June 19, 1989 the period for submission of written comments on the proposed amendment of the flood hazard delineation of the Ramapo River. The notice of proposal was published on May 1, 1989 in the New Jersey Register at 21 N.J.R. 1046(b). Please refer to the proposal (DEP Docket No. 021-89-04) for further information.

Submit written comments by June 19, 1989 to:

Suzanne Dice-Goldberg
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

(b)

**DIVISION OF FISH, GAME AND WILDLIFE
BUREAU OF SHELLFISHERIES**

Leasing of Atlantic Coast Bottom for Aquaculture

Proposed Amendment: N.J.A.C. 7:25-1.5

Proposed New Rules: N.J.A.C. 7:25-24

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 2C:28-1 et seq.; 13:1D-9; 23:2B-14; 50:1-5 et seq., particularly 50:1-23 through 50:1-31; and 50:4-3.

DEP Docket Number: 025-89-05.

Proposal Number: PRN 1989-278.

Submit written comments by August 4, 1989 to:

Judeth A. Piccinini, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Proposed new subchapter N.J.A.C. 7:25-24 codifies and clarifies the procedures followed by the Department of Environmental Protection and the Atlantic Coast Section of the New Jersey Shell Fisheries Council (Council) when leasing bottom on New Jersey's Atlantic Coast for shellfish culturing and harvesting. The proposed new rules establish procedures for obtaining and renewing leases, set annual lease fees, and specify penalties for noncompliance. The proposed new rules were developed with the advice and approval of the Council and have been approved by the Marine Fisheries Council.

A summary of sections of the proposed new rules follows:

N.J.A.C. 7:25-24.1 to 24.4 provide general information, background, and definitions.

N.J.A.C. 7:25-24.5 sets the requirements and procedures for applying for a lease, including payment of a biological survey fee.

N.J.A.C. 7:25-24.6 explains the Council's procedures for reviewing and deciding on lease applications.

N.J.A.C. 7:25-24.7 sets hydrographic survey charges and annual lease fees.

N.J.A.C. 7:25-24.8 contains the conditions and procedures for renewing leases.

N.J.A.C. 7:25-24.9 sets out limitations and procedures for transfer of leases.

N.J.A.C. 7:25-24.10 and 24.11 address proper and improper staking practices.

N.J.A.C. 7:25-24.12 prohibits invasion of leased areas by persons other than the lessee or the lessee's agent.

N.J.A.C. 7:25-24.13 and 24.14 govern the disposition of leased areas for which leases are terminated and those which have been condemned as unfit for shellfish harvesting.

N.J.A.C. 7:25-24.15 provides for leases to educational institutions for research or educational purposes or both.

N.J.A.C. 7:25-24.16 requires lease applicants, lease renewers, and parties transferring leases to certify the accuracy of the information contained in lease applications and annual reports.

N.J.A.C. 7:25-24.17 sets penalties for noncompliance.

The Department is also proposing concurrent amendment of N.J.A.C. 7:25-1.5, which currently specifies Atlantic Coast lease fees and survey fees, in order to transfer the fee schedule to the new subchapter at N.J.A.C. 7:25-24.7.

Social Impact

The Department expects the proposed new rules to have a positive social impact on the State's commercial clambers as well as the general public. By codifying and clarifying the Department's Atlantic Coast leasing practices, the proposed new rules will promote the fair, systematic distribution of leased areas. The proposed prohibition on leasing productive areas should benefit both commercial and recreational clambers by designating productive bottom for use by all members of the public. By making leases available for research and education purposes, the leasing policy will encourage research for the improvement of the shellfish resource and improve the general public's knowledge of the shellfish industry. The penalty provisions contained in the proposed rules will broaden the Department's oversight of the shellfish industry and will help protect clambers from poaching and other lease infringements. In general, the proposed new rules should help the Department in its long-term management of the shellfish resource, to the benefit of the clamming industry and all State citizens.

Economic Impact

The fees contained in the proposed new rules should have a minimal adverse economic impact upon the State's clambers. The Department is proposing a nominal annual lease fee of \$2.00 per acre (or \$2.00 per 100 linear feet of shoreline in Mullica River and tributaries and Motts Creek and tributaries), with a \$5.00 minimum fee per lessee. A one-time biological survey fee of \$15.00 is proposed to reimburse the Bureau of Shellfisheries for its administrative costs in performing biological surveys of prospective lease areas, as authorized by N.J.S.A. 50:1-28. The proposed survey charge of \$16.50 per corner will compensate the Bureau of Shellfisheries for the cost of delineating lease area boundaries, as authorized by N.J.S.A. 50:1-28. The typical commercial clammer can easily recoup the survey fees in approximately one week in the course of his or her business; after the first year, clambers renewing their leases need only pay the annual lease fee of \$2.00 per acre.

The penalties proposed for violations of the leasing policy are established by the provisions of N.J.S.A. 23:2B-14. Codifying the Atlantic Coast lease policy, especially these penalty provisions, should enhance the Department's efforts to deter poaching and other lease encroachments. These efforts will have direct economic benefit for commercial clambers by protecting their investments in the aquaculture industry.

Environmental Impact

The proposed new rules make very few changes in the current leasing practices of the Council and are not expected to significantly alter the amount or type of shellfishing on New Jersey's Atlantic Coast. The new leasing policy may have a positive environmental impact by facilitating research to improve aquaculture practices.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., (Act), the Department has determined that these proposed new rules and amendment will not impose significant reporting.

PROPOSALS**Interested Persons see Inside Front Cover****ENVIRONMENTAL PROTECTION**

recordkeeping or other compliance requirements on small businesses. Although most Atlantic Coast commercial clambers are "small businesses" as defined by the Act, the paperwork involved in the lease application process and annual reporting will be minimal. Likewise, the Department has determined that compliance with staking and other leasing requirements will not be burdensome on small business clambers. The Department anticipates that small businesses affected by the proposed rules will not need additional professional services or incur additional capital costs in order to comply with the proposal. Because of the de minimus nature of the proposed compliance requirements, the proposed subchapter does not contain exemptions or special provisions for affected small businesses.

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

7:25-1.5 Fee schedule

(a) The following schedule of fees shall become effective immediately:

1. (No change.)
 2. Atlantic Coast lease fees \$2.00 per acre;
 3. Atlantic Coast lease fees \$2.00 per 100 feet of frontage;
 4. Surveying (per corner) \$15.00.]
- Renumber existing 5. through 9. as **2. through 6.** (No change in text.)

Full text of the proposed new rules follows:

SUBCHAPTER 24. LEASING OF ATLANTIC COAST BOTTOM FOR AQUACULTURE

7:25-24.1 Scope and authority

This subchapter constitutes the rules of the Department of Environmental Protection governing the leasing of bottom on New Jersey's Atlantic Coast for the culturing of shellfish as authorized by N.J.S.A. 50:1-18 and 50:1-23 through 50:1-31. The objective of the leasing program is to provide bottom for use in the planting and cultivating of shellfish, including aquaculture (growout of hatchery reared seed) and layout (wet storage). If bottom will be used for cleansing (relay) activities, its use is subject to the requirements of N.J.A.C. 7:12-9.7 and 7:25-15.1 instead of this subchapter.

7:25-24.2 Construction

This subchapter shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1-5 et seq.

7:25-24.3 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, such judgment shall be confined in its operation to the section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this subchapter or the application thereof to other persons.

7:25-24.4 Definitions

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

"Bottom" means lands of the State under the tidal waters of the State except in the tidal waters of the Delaware River, Delaware Bay and their tributaries.

"Bureau" means the Bureau of Shellfisheries in the Division of Fish, Game and Wildlife.

"Commercial Shellfish License" means the commercial clam license required and available as specified in N.J.S.A. 50:2-1 to 50:2-5 and N.J.A.C. 7:25-8.1.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her designee.

"Council" means the Atlantic Coast Section of the New Jersey Shell Fisheries Council.

"Department" means the Department of Environmental Protection.

"Lessee" means that person or persons holding a lease of bottom to be exclusively used and enjoyed by the lessee for the planting and cultivating of shellfish, approved by a majority of the Council and approved and signed by the Commissioner.

"New ground" means bottom not leased as of the effective date of this subchapter, and any leased bottom not subject to a valid lease after the effective date of this subchapter.

"Overstaking" means the placement of stakes or buoys so as to delineate an area greater than that described in the lease.

"Productive" means a determination by the Bureau that the bottom surveyed exhibits significant natural recruitment of one or more shellfish species, as evidenced by one or more of the following factors: shellfish density, shellfish year class strength, presence of juvenile shellfish, size distribution of shellfish population, environmental parameters (salinity, sedimentation), and historical production record.

"Public bottom" means bottom not subject to a valid lease on which shellfish may be harvested by members of the public subject to the provisions of this subchapter and any other applicable statutes and regulations.

"Shellfish" means hard clams (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), sea clams (*Spisula solidissima*) and oysters (*Crassostrea virginica*).

"Shellfish Certificate" means any of the classifications of licenses or certificates issued by the New Jersey Department of Health pursuant to N.J.A.C. 8:13.

"Staking" means the placement of stakes or buoys to mark the boundaries of a leased area.

7:25-24.5 Lease applications for new ground

(a) Lease applications for new ground shall be submitted in person, on forms provided by the Department, to:

Nacote Creek Shellfish Office
P.O. Box 418, Route 9
Port Republic, New Jersey 08241
(609) 441-3284

(b) An application for a shellfish lease for new ground may be submitted by any person who meets the statutory requirements for leasing specified at N.J.S.A. 50:1-23 through 50:1-31 and who is the holder of the following:

1. A valid New Jersey Commercial Shellfish License; or
2. A valid New Jersey Shellfish Certificate.

(c) The biological survey fee for a lease of new ground is \$15.00 per application, payable upon application.

(d) Except pursuant to (e) below, no single lease application for new ground shall cover more than two acres.

(e) An application for a single lease of new ground of more than two acres will be accepted only for those lots located within the interior of a block of leased lots, containing more than two acres but less than three acres, which have already been mapped by the Department as of the effective date of this subchapter.

(f) An individual may have only a single lease application for new ground pending at any time. Once an individual's application is denied by the Council or granted by the Council and approved by the Commissioner, that individual may submit an additional lease application for new ground.

(g) Applications for leases of new ground in areas classified as Prohibited, Special Restricted, or Seasonal Special Restricted, as defined in N.J.A.C. 7:12, will not be accepted.

(h) Applications for leases of new ground in areas classified as Approved or Seasonal, as defined in N.J.A.C. 7:12, will be accepted subject to the provisions of this subchapter and N.J.S.A. 50:1-23.

7:25-24.6 Consideration of lease applications for new ground

(a) Once the Department has received a fully completed lease application and biological survey fee, submitted by a person satisfying the requirements at N.J.A.C. 7:25-24.5(b), (d), (f) and (g), the Department shall consider the area of new ground applied for closed to use by the public and the applicant until the Council decides to deny the lease or until the applicant receives the executed lease from the Department.

(b) Once an applicant satisfying the requirements at N.J.A.C. 7:25-24.5(b), (d), (f), and (g) has submitted a fully completed lease application and biological survey fee to the Department, the appli-

cant shall delineate the approximate boundary of the proposed lease area with temporary corner stakes or buoys marked with the applicant's last name, to enable the Bureau to conduct the biological survey specified in (c) below.

(c) Except as specified in (c)1 and 2 below, before the Council grants any lease application for new ground, the Bureau will conduct a biological survey to determine the shellfish productivity of the proposed lease area. If the applicant fails to place temporary stakes on the proposed lease area within six months of submitting the lease application, the Council shall automatically deny the application.

1. Any application to lease new ground in the area west of the exterior line delineated by lot numbers 2239, 2240, 2224, 2236.1, 2262, 2261, 2267, 2271, 2269, 2252, 2254, 2213.1, 2213, and 2282, on the Bureau's Section B, Chart 24.2, available for public inspection at the Nacote Creek Shellfish Office, in the region known as Dry Bay/Hammock Cove shall be exempt from the requirement of a biological survey and from payment of the biological survey fee.

2. Any application to lease new ground in the following areas will be exempt from the requirement of a biological survey and from payment of the biological survey fee, provided, however, that after the effective date of this subchapter applications for new ground in the following areas will only be accepted from applicants who possess no other leases:

i. Big Creek (Great Bay) lot numbers: 398, 399, 400.1, 401.1, 402.1, 403.1, 404.1, 405.1, 406, 407.1, 408.1, 409.1, 410, 411.1, 412.1, on the Bureau's Section B, Chart 10, available for inspection at the Nacote Creek Shellfish Office; and

ii. Mordecai Island (Little Egg Harbor Bay) lot numbers: 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, on the Bureau's Section B, Chart 13.1, available for inspection at the Nacote Creek Shellfish Office.

(d) The leasing of new ground in areas classified as productive is discouraged.

1. Applications to lease new ground will not be accepted for the following productive areas, as delineated by the Bureau by reference to the National Oceanic and Atmospheric Administration Nautical Chart 12316, available for inspection at the Nacote Creek Shellfish Office:

- i. Cape Horn (Great Bay);
- ii. Goose Bar (Little Egg Harbor Bay);
- iii. Lakes Bay; and
- iv. Sunflower Island

2. For lease applications in all other areas, the Bureau will classify the productivity of the proposed lease area based on the results of the biological survey, and provide this information to the Council to aid the Council's evaluation of the lease application.

(e) Consideration of lease applications by the Council shall be governed by the following:

1. Upon completion of the biological survey, the Bureau shall place the application to lease new ground on the agenda, filed with the Secretary of State pursuant to N.J.S.A. 10:4-6 et seq., of the next regularly scheduled Council meeting for the Council's consideration;

2. At each regularly scheduled meeting, the Council will receive public comment on all lease applications on its agenda; and

3. The Council shall render a decision to deny a lease application or grant a lease application subject to approval by the Commissioner by the second regularly scheduled meeting after receiving public comment on the lease application.

(f) The applicant shall attend at least one of the Council meetings at which the lease application is discussed in order to answer any questions that the Council might have about the lease application. Failure to attend at least one of the Council meetings at which the lease application is discussed shall constitute grounds for denial of the lease application, and the area applied for shall revert to public bottom.

(g) Once the Council and the Commissioner have decided whether to grant or deny the lease application, the applicant shall remove any temporary corner stakes or buoys placed pursuant to (b) above. If a lease application is approved by the Council and the Commissioner, the lessee is subject to the staking requirements of N.J.A.C. 7:25-24.10 upon receiving the executed lease from the Department.

7:25-24.7 Hydrographic survey charges; annual lease fees

(a) Following approval of a lease of new ground by the Council and the Commissioner, the Bureau shall perform a hydrographic survey of the lease area described in the application to verify its location and boundaries. Before the Department issues an executed lease to the applicant, the applicant shall reimburse the Bureau for the expense of the hydrographic survey at the rate of \$16.50 per corner. Failure to reimburse the Bureau within 30 days of the Council's approval of the lease will constitute grounds for denial of the lease application, and the area applied for shall revert to public bottom.

(b) The annual lease fee for Atlantic coast shellfish leases is \$2.00 per acre for those areas measured in acres.

(c) The annual lease fee for Atlantic coast shellfish leases is \$2.00 per 100 linear feet of shoreline for those areas measured in linear feet of shoreline (Mullica River and tributaries, Motts Creek and tributaries).

(d) Notwithstanding (b) and (c) above, the minimum annual lease fee for any lessee leasing bottom on the Atlantic Coast is \$5.00.

7:25-24.8 Lease renewal

(a) Lessees may renew their leases by submitting the annual lease fee in person at the Nacote Creek Shellfish Office by December 31 for the following calendar year. If illness or other extenuating circumstances prevent a lessee from renewing a lease by December 31, the Council in its discretion may extend the payment deadline by one month if an extension is requested by the lessee or the lessee's agent at the January Council meeting. If a lessee does not either renew the lease by the payment deadline or receive an extension of the payment deadline from the Council, the lease shall be terminated for non-payment after the January Council meeting and the area described in the terminated lease shall revert to the public bottom.

(b) Renewal of the lease is subject to the lessee's meeting all statutory criteria for leasing, specified at N.J.S.A. 50:1-23 through 50:1-31.

(c) Renewal of the lease is subject to the lessee's maintaining a valid Commercial Shellfish License or Shellfish Certificate.

(d) At the time of renewal, the lessee shall file a completed report indicating the number of days per month the lease was worked during the past lease term. The Bureau will provide reporting forms to all lessees by September 15 of each year.

7:25-24.9 Lease transfers

(a) Leases may be transferred only with the approval of both the Council and the Commissioner and only under the following circumstances:

1. The new lessee shall meet all statutory criteria for leasing specified at N.J.S.A. 50:1-23 through 50:1-31 and shall be the holder of a valid Commercial Shellfish License or a Shellfish Certificate;

2. The new lessee and the current lessee shall apply for the lease transfer in person at the Nacote Creek Shellfish Office;

3. A lease of new ground acquired through the application process shall not be transferred for a period of one year following the grant of the lease;

4. An application for lease transfer shall be placed on the agenda of the next regularly scheduled Council meeting for consideration. At that meeting, the Council will receive public comment on the transfer application and shall render a decision to deny the lease application or shall grant the transfer application subject to approval by the Commissioner; and

5. Following approval of a transfer by the Council and the Commissioner, the Bureau will perform a hydrographic survey of all lease areas to be transferred to verify their location and boundaries. Before the Department issues an executed lease to the new lessee, the new lessee shall reimburse the Bureau for the expense of the hydrographic survey at a rate of \$16.50 per corner. Failure to reimburse the Bureau within 30 days of the Council's approval of the transfer will constitute grounds for denial of the lease transfer, and the lease area shall revert to public bottom.

7:25-24.10 Staking of leases

(a) All leases must be staked before working or by May 1 of each year, whichever occurs first, as specified below:

1. There shall be at least two stakes or buoys at each corner;
2. Line stakes or buoys shall be placed no greater than 150 feet apart so as to delineate a definite line between corners;
3. All stakes and buoys must project at least four feet above high water;
4. If the lessee of record holds leases for two or more adjacent leased areas, it is only necessary that the outside perimeter of the lessee's combined area be staked as specified in (a)1, 2 and 3 above; and
5. The above staking requirements do not apply where corner or line stakes or buoys would fall within a designated navigation channel. The placement of corner or line stakes or buoys within designated navigation channels is prohibited.

(b) Failure to stake leases as specified at (a) above before working or by May 1 of each year shall subject the violator to termination of the lease upon the recommendation of the Council and the approval of the Commissioner.

7:25-24.11 Improper staking of leases

(a) Any person who stakes an area for which he or she does not possess a valid lease or lease application shall be subject to the penalties prescribed in N.J.A.C. 7:25-24.17.

(b) If a survey by the Bureau of Shellfisheries reveals that a lease is overstaked the lessee shall be required to:

1. Pay the expense of the survey;
2. Pay a monetary penalty as provided in N.J.A.C. 7:25-24.17; and
3. Relocate corner and line stakes to their proper positions immediately.

(c) Failure to relocate corner or line stakes, or both, immediately upon notification of overstaking shall subject the violator to termination of the lease upon the recommendation of the Council and the approval of the Commissioner.

(d) More than one instance of overstaking shall subject the violator to termination of the lease upon the recommendation of the Council and approval of the Commissioner.

(e) Removal of a lessee's stakes or buoys by a person other than the lessee or the lessee's agent is prohibited. Violators shall be subject to the penalties prescribed in N.J.A.C. 7:25-24.17.

7:25-24.12 Protection of leased lands from invasion

A person shall not dredge upon, throw, cast or drag an oyster dredge, use oyster tongs, rakes, forks or other instruments or appliances used for catching oysters or clams, or tread for clams, upon any of the leased lands of the State lying under the tidal waters of the Atlantic seaboard or tributaries thereof, above Cape May Point, other than land or ground for which such person or his or her employer then holds a lease from the Council. Violators shall be subject to the penalties prescribed in N.J.A.C. 7:25-24.17.

7:25-24.13 Disposition of condemned lease areas

(a) Any bottom leased through the application process after the effective date of this subchapter and subsequently condemned for the harvest of shellfish pursuant to N.J.S.A. 58:24-1 et seq., as implemented by N.J.A.C. 7:12, shall be governed by the following:

1. The lessee shall be given a period of two years from the date the lease area was condemned during which time the lessee may move any shellfish present to a lease in approved water. To exercise the option to remove shellfish to approved waters, the lessee of a condemned lease area shall maintain a valid Commercial Shellfish License or Shellfish Certificate, and renew the lease if necessary, as specified in N.J.A.C. 7:25-24.8;

2. Prior to moving any shellfish, the lessee shall apply for and receive a special permit for this purpose, issued pursuant to N.J.S.A. 58:24-1 et seq., as implemented by N.J.A.C. 7:12, from the Division of Water Resources, Bureau of Marine Water Classification and Analysis;

3. During the two year period following the condemnation of a lease area, the lease shall not be transferred except by descent or distribution upon the death of the lessee, using the procedure in N.J.A.C. 7:25-24.9. The new lessee shall meet all criteria for the transfer of a lease specified in N.J.A.C. 7:25-24.9(a). A transfer occurring because of the lessee's death does not affect the two year period allowed for removal of shellfish; and

4. At the end of the two year period specified in (a) above, the lease shall be terminated. The lease shall not be renewed or extended unless the lessee demonstrates the need to continue the lease to the Council and the Commissioner. Grounds for extension of the lease may include illness. Failure to obtain a permit for transplanting shellfish shall not be grounds for extension of the lease.

7:25-24.14 Disposition of terminated lease areas

If a lease governed by this subchapter is terminated for any reason, the lease area shall be considered public bottom available for harvesting or lease application provided not prohibited by this subchapter or other statutes or rules.

7:25-24.15 Research/educational activities

(a) The Council may grant, subject to the approval of the Commissioner, leases of new ground to educational institutions for the purpose of research or education, or both. Such leases shall be in the name of the institution and the responsible investigator.

(b) The application for a research/education lease shall be accompanied by a written proposal explaining the need for the lease and describing the research to be conducted.

(c) The holder of a research/education lease shall apply for annual lease renewal prior to December 31 of each year. Renewal of a research/education lease is contingent upon a written report on the use of the lease during the past lease term. The report shall explain the research and education activities conducted and the results obtained. In addition, a proposal for use of the lease for the coming year shall be submitted as part of the report.

(d) Applications, reports and proposals for research/education leases and research/education lease renewals shall be reviewed by Bureau staff who shall recommend to the Council and to the Commissioner whether to grant, renew or deny each lease for the purpose of research or education, or both.

(e) A lease issued for the purpose of research or education, or both, shall not be used as a commercial venture or profit making activity for any institution, investigator, student or any other person. Shellfish or other items obtained through a research/education lease shall not be sold under any circumstances.

(f) Leases for research/education purposes are subject to the provisions of this subchapter except as follows:

1. A commercial shellfish license or shellfish certificate is not required for obtaining or renewing the lease (see N.J.A.C. 7:25-24.5);

2. The Bureau will not conduct a biological survey unless requested by the Council. If the Bureau conducts a biological survey, a biological survey fee will not be charged unless requested by the Council in its discretion (see N.J.A.C. 7:25-24.6(c));

3. A lease fee will not be charged (see N.J.A.C. 7:25-24.7);

4. The Bureau will not conduct a hydrographic survey and will not charge a hydrographic survey fee; however the lessee shall follow the provisions of N.J.A.C. 7:25-24.10 concerning staking (see N.J.A.C. 7:25-24.7); and

5. The Council, with the approval of the Commissioner, may grant a research/education lease of more than two acres if, in the opinion of the Council, the written proposal accompanying the lease application justifies the need for the increased lease size.

g. The lessee of record shall comply with all other provisions of this subchapter.

(h) Failure to comply with the specific provisions of this section may result in termination of the lease by the Council, with the approval of the Commissioner.

7:25-24.16 Signatories; certification

(a) All applicants shall, upon submission of initial or renewal applications, transfer applications, or annual reports, sign the following certification on the application or report forms:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil penalties for submitting false, inaccurate or incomplete information and significant criminal penalties, including fines and/or imprisonment, for submitting false, inaccurate or incomplete information or information which I do not believe to be true."

(b) Penalties for false swearing or false reporting may include the penalties set forth in N.J.S.A. 2C:28-3, and the penalties set forth in N.J.A.C. 7:25-24.17.

7:25-24.17 Penalties

Violations of any section of this subchapter, or any lease or order issued pursuant to it, shall subject the violator to the penalties set forth in the Marine Fisheries Management and Commercial Fisheries Act, N.J.S.A. 23:2B-1 et seq., at N.J.S.A. 23:2B-14. Penalties may include monetary penalties of \$100.00 to \$3,000 for a first violation, and \$200.00 to \$5,000 for any further violations. Penalties may also include confiscation of any vessel or equipment used in committing a violation. The Department may compromise and settle any claim for a penalty under this subsection in such amount in the discretion of the Department as may appear appropriate and equitable under all the circumstances.

(a)

DIVISION OF SOLID WASTE MANAGEMENT BOARD OF PUBLIC UTILITIES

Interdistrict and Intradistrict Solid Waste Flow Bergen County

Proposed Amendment: N.J.A.C. 7:26-6.5

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection, and Board of Public
Utilities, Christine Todd Whitman, President
Authority: N.J.S.A. 13:1E-6, 13:1E-23 and 48:13A-1 et seq.
DEP Docket Number: 024-89-04.
Proposal Number: PRN 1989-270.

A public hearing concerning this proposed amendment will be held on Tuesday, July 11, 1989 at 7:00 P.M. at the following location:

Administration Building/Court Plaza South
21 Main Street
Hackensack, New Jersey

Submit written comments by August 5, 1989 to:

Marlen Dooley, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The joint agency proposal follows:

Summary

On February 24, 1988, the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) issued an emergency waste flow order to redirect the solid waste generated from within Bergen County, New Jersey, except waste from the Borough of North Arlington, from the Kingsland Park Sanitary Landfill Extension, facility number 0232C, to the temporary Bergen County Transfer Station located in the Borough of North Arlington for processing and transport to out-of-State facilities. This order became effective on March 1, 1988. The emergency occurred due to the closure of the Kingsland Park Sanitary Landfill Extension on February 29, 1988 and the lack of available alternative solid waste disposal capacity within Bergen County. Subsequently, Bergen County constructed a permanent regional baler/transfer station facility in the Boroughs of Lyndhurst and North Arlington. On September 21, 1988, the DEP and the BPU issued a second emergency waste flow order to initiate the redirection of solid waste generated from all the municipalities in Bergen County, except for type 10 household waste from North Arlington, from the temporary baler/transfer station to the permanent baler/transfer station.

This proposed amendment reflects the September 21, 1988 emergency redirection order. Therefore, the proposed amendment directs all Bergen County solid waste, except type 10 household waste from North Arlington, to the permanent baler/transfer station facility number 0239E1SP01. Type 10 household waste from North Arlington will continue to be directed to the HMDC Baler/Balefill facility number 0239C/0232D located in North Arlington.

Social Impact

The proposed amendment will have a positive social impact. The Kingsland Park Sanitary Landfill Extension closed on February 29, 1988. There was a lack of adequate alternative disposal capacity for Bergen County waste. The county designated a temporary and, subsequently, a permanent baler/transfer station for the processing of all the solid waste generated within Bergen County and the transport of the waste to out-of-State facilities, (except for type 10 household waste from North Arlington). The use of the transfer station ensures coordination and final disposal of Bergen County's solid waste until alternative in-county solid waste disposal facilities are constructed and operational.

Economic Impact

The tipping fee charged at the transfer station is higher than the tipping fee that was charged at the Kingsland Park Sanitary Landfill Extension. The increase in tipping fees at the transfer station was a result of the increased cost associated with long distance hauling to out-of-State facilities, the development of a state-of-the-art transfer station and the securing of long term contracts for guaranteed disposal privileges for Bergen County's waste. The proposed amendment, which will amend the rules to reflect the September 21, 1988 emergency order, will continue this adverse economic impact. No additional economic impact is expected to result from this amendment.

Environmental Impact

The proposed amendment will have a positive environmental impact upon Bergen County. The direction of waste to the transfer station will ensure the ability of Bergen County to process and dispose of all solid waste generated within the County utilizing a state-of-the-art transfer station. During the DEP's permitting process, the transfer station was determined to satisfy the performance standards reflected in the DEP's rule at N.J.A.C. 7:26-1.10 and not to pose unnecessary impacts to the public health, safety and the environment while handling approximately 3,000 tons per day of solid waste. Moreover, the operation of this facility, in conjunction with long term contracts for the disposal of the solid waste it processes, will ensure the undisrupted provision of waste disposal services within Bergen County pending construction and operation of the County's planned resource recovery facility.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department and the Board have determined that this proposed amendment will not impose additional reporting, record keeping or other compliance requirements on small businesses. The existing waste flow rules direct solid waste from Bergen County to the Kingsland Park Sanitary Landfill Extension and the HMDC Baler/Balefill. The record keeping and reporting requirements associated with utilization of a transfer station do not differ from the record keeping and reporting requirements associated with utilization of the landfill. The compliance requirement is only to redirect waste from one facility to another.

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

7:26-6.5 District waste flow planning requirements and disposal facility designations

Due to the lack of adequate disposal capacity within certain solid waste districts, and pursuant to a finding by the BPU that the public interest will be best served by [designated] **designating** specific disposal facilities as the ultimate destination of specific waste streams, it is necessary to direct waste flows, described in this section.

(a) (No change.)

(b) Waste flows within, into and out of the Bergen County District:

1. All waste types 10, 13, 23, 25 and 27 generated from within all of Bergen County's municipalities, with the [exceptions of North Arlington and Westwood] **exception of waste type 10 (household) from North Arlington**, shall be disposed of at the [Kingsland Park Sanitary Landfill Extension, facility number 0232C, located in Lyndhurst, Bergen County, New Jersey] **Bergen County Baler/Transfer Station, Facility Number 0239E1SP01 located in the Boroughs of Lyndhurst and North Arlington, Bergen County, New Jersey.**

i-ii. (No change.)

2. [All waste] **Waste type [s] 10 (household) [13, 23, 25 and 27]** generated from within the Bergen County municipality of North

Arlington shall be disposed of at the HMDC Baler/Balefill, facility number 0239C/0232D, located in North Arlington.

[3. Waste types 10, 13, and 23 generated from within the Bergen County municipality of Westwood shall be disposed of at the Westwood Landfill, facility number 0267A located in Westwood.

i. Waste types 25 and 27 generated from within Westwood shall be disposed of at the Kingsland Park Sanitary Landfill Extension, facility number 0232C, located in Lyndhurst, Bergen County.

ii. When disposal operations cease at the Westwood Landfill, Westwood will utilize the Kingsland Park Sanitary Landfill Extension, facility number 0232C.

4. In addition to the above mentioned waste flows, other modifications, directives and/or resolutions approved and issued by the Department and/or the HMDC may affect the Bergen County waste flow (see (i) below, Waste flows within, into and out of the Hackensack Meadowlands District.)

(c)-(v) (No change.)

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Revenues and Deductions from Revenue

Proposed Amendment: N.J.A.C. 8:31B-4.15

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health (with approval of the Health Care
Administration Board).

Authority: N.J.S.A. 26:2H-18.4 et seq., specifically 26:2H-18.13e.
(P.L. 1989, c.1) and N.J.S.A. 26:2H-1 et seq. specifically
26:2H-5b and 26:2H-18(d).

Proposal Number: PRN 1989-272.

Submit comments by July 5, 1989 to:
Scott Crawford, Director
Health Care for the Uninsured Program
N.J. Department of Health
CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 8:31B-4.15(a)4 will implement N.J.S.A. 26:2H-18.9c, which states,

"The uniform statewide uncompensated care add-on for patients whose hospital bills are paid by a health maintenance organization or other payer which has negotiated a discounted rate of payment with the hospital shall be based on the full rate of reimbursement for the services provided by the hospital to the patient under the hospital reimbursement system established pursuant to P.L. 1979, c.83, rather than on the discounted rate of payment."

Currently, N.J.A.C. 8:31B-3.39(b) specifies that such negotiated discounts are to be treated as courtesy adjustments and may not be charged to other payers.

Social Impact

This proposed amendment may have no social impact because the Department is not aware of any hospital which is applying a negotiated discount to a patient's bill prior to applying the Statewide uncompensated care add-on.

However, to the extent that this is occurring, the amended rule will enforce the Legislature's intent that all patients, regardless of payer, pay their proportionate share of uncompensated care. This will enhance the equity of the system.

Economic Impact

Again, this proposed amendment may have no economic impact. However, to the extent that any hospital has applied negotiated payment discounts prior to calculating the amount attributable to the uncompensated care add-on, this amendment will increase costs to any payers which have negotiated a discount. On the other hand, it will benefit hospitals who may not have been collecting their full and appropriate amount of uncompensated care from the payers with negotiated discounts.

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 amendment 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 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-4.15 Revenues and deductions from revenue

(a) In many instances, the hospital receives less than its full charge for the services it renders. This necessitates the reporting of both the gross revenue and revenue "adjustments" resulting from failure to collect full charges for services provided. These revenue adjustments are called Deductions from Gross Revenue. The specific deductions required for reporting Revenue Related to Patient Care, as defined in N.J.A.C. 8:31B-4.32, are defined in (a)1-11 of this section. Any individual allowance must be reported in only one of the 10 deduction categories and three contra categories (although individual transactions may be distributed among several if appropriate):

1-3. (No change.)

4. Courtesy adjustments: These deductions represent adjustments from charges for services rendered to any individual other than employees of the hospital and not otherwise more appropriately categorized, including any patient accounts written off contrary to the hospital's [formed] formal policies relative to credit, bad debts and indigency care. [(]Except in unusual circumstances, the Commissioner will not consider courtesy adjustments as a proper financial element for inclusion in the rate of other patients[)].

i. The uniform Statewide uncompensated add-on for patients whose bills are paid by a payer which has negotiated a discounted rate of payment shall be based on the full rate of reimbursement rather than on the discounted rate of payment.

5.-11. (No change.)

(b) (No change.)

(b)

UNCOMPENSATED CARE TRUST FUND

Uncompensated Care Trust Fund Cap

Proposed New Rule: N.J.A.C. 8:31B-7.9

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health (with the approval of the Health Care
Administration Board).

Authority: N.J.S.A. 26:2H-18.4 et seq., specifically 26:2H-18.13e.
(P.L. 1989, c.1) and 26:2H-1 et seq.

Proposal Number: PRN 1989-271.

Submit comments by July 5, 1989 to:
Scott Crawford, Director
Health Care for the Uninsured Program
N.J. Department of Health, 8th Floor
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

Proposed new rule N.J.A.C. 8:31B-7.9 is designed to implement N.J.S.A. 26:2H-18.9 (P.L. 1989 c.1), which placed a cap of 13 percent on Chapter 83 uncompensated care as a portion of total hospital revenue. If the cap is exceeded, the overage must be collected by the hospitals through their individual rates.

The overage will be allocated in the following way. Each year the hospitals report the amount of uncompensated care for the previous year. This amount is used to determine uncompensated care for the year after the data were submitted. The Department will determine the percentage increase or decrease from the prior year for each hospital. These figures will be averaged to create a Statewide average increase. Hospitals whose increase exceeds this mean will have the amount of the overage divided among them on a pro rata basis, determined by their amount of un-

compensated care. Hospitals will then have to seek Hospital Rate Setting Commission approval to have that amount added to their rates.

Social Impact

There are two possible social impacts because there are two possible sources of large increases in uncompensated care. The first is circumstances within the hospital's control, such as policy changes and failure to use appropriate collection procedures in a particular year. Through this rule, hospitals will be encouraged to manage their receivables efficiently and effectively in order to ensure that they will be paid their full uncompensated care through the Trust Fund.

However, to the extent that large uncompensated care increases are the result of circumstances beyond the hospital's control, such as economic dislocation in the community or a change in case mix which makes uncompensated care more expensive, this methodology will have a negative social impact in that it will require these hospitals to collect some of their uncompensated care through their own rates, rather than through the Trust Fund add-on.

Economic Impact

If this shortfall allocation method is triggered because total uncompensated care exceeds the 13 percent cap, this shortfall will be paid through the hospital's rates, not the Trust Fund. However, all hospitals will be paid for all their uncompensated care during the year. Hospitals which had large increases during the year will have to raise their rates. This will raise costs in areas served by those hospitals.

Regulatory Flexibility Statement

The proposed new rule 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 rule has no impact on any institution which would qualify as a small business pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed new rule follows.

8:31B-7.9 Uncompensated Care Trust Fund cap

(a) Any prospectively established payment shortfall due to the uncompensated care trust fund cap established pursuant to N.J.S.A. 26:2H-18.9 will be allocated to hospitals in the manner described in (b) and (c) below.

(b) The Department will determine a hospital-specific amount of uncompensated care from the most recent reliable figures available on a Statewide basis. The Department will also determine a hospital-specific amount from reliable figures available on a Statewide basis for the year immediately prior to the one used above. From these figures the Department will determine the percentage change.

(c) The Department will determine a Statewide mean percentage change from the hospital-specific percentage changes determined pursuant to (b) above. Hospitals whose percentage change exceeds the mean shall have the shortfall due to the uncompensated care trust fund cap allocated among them on a pro rata basis determined by the relative amounts of uncompensated care provided by each hospital in this subgroup.

(d) Hospitals who had a portion of the uncompensated care trust fund cap shortfall allocated to them may seek Commission approval for an individual hospital rate increase for uncompensated care in addition to the add-on. Such increases shall be paid through the hospital's rates, not through the Uncompensated Care Trust Fund.

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Proposed Amendment: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Sanford Luger, Chairman.

Authority: N.J.S.A. 24:6E-6(e).

Proposal Number: PRN 1989-258.

A public hearing concerning this proposal will be held on June 26, 1989 at 3:00 P.M. at the following address:

Board Room, Room 103
First Floor
Department of Health
Health-Agriculture Bldg.
Trenton, N.J.

Submit written comments by July 5, 1989 to:

Thomas T. Culkin, PharmD, MPH
Executive Director
Drug Utilization Review Council
New Jersey Department of Health
Room 108, CN 360
Trenton, New Jersey 08625-0360
609-984-1304

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a list of acceptable generic drugs and their manufacturers which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

The Drug Utilization Review Council is mandated by law to ascertain whether every manufacturer included in the List of Interchangeable Drug Products meets all Federal and State standards, specifically to include compliance with the U.S. Food and Drug Administration's (FDA's) Current Good Manufacturing Practices (CGMP) regulations.

The FDA is periodically asked by the Drug Utilization Review Council whether those manufacturers currently listed in the List of Interchangeable Drug Products continue to meet CGMPs. On March 2, 1989, the FDA sent notice to the Drug Utilization Review Council that three manufacturers (Ambix, Clay-Park, and Hi-Tech) were "unacceptable" in regard to CGMPs for certain types of drugs.

At its April 11, 1989 meeting, the Drug Utilization Review Council agreed that the appropriate products of those three manufacturers should be proposed for DELETION from the List of Interchangeable Drug Products due to failure to meet CGMPs.

Social Impact

There would be no social impact on prescribers, pharmacies or patients, because in all but one instance other manufacturers who continue to meet the FDA's CGMPs will remain on the List of Interchangeable Drug Products. (If Clay-Park is deleted, no other substitutes for Vioform HC ointment will remain in the List of Interchangeable Drug Products. However, Vioform HC ointment is seldom prescribed.) There is no evidence that the failure to meet CGMPs has resulted in products being marketed that would be detrimental to the public's health. Thus, the main impact of these proposed amendments would fall on the non-compliant manufacturers.

Economic Impact

A negative economic impact would primarily affect the involved manufacturers, who would lose sales in New Jersey (of a magnitude not determinable) because their products would no longer be acceptable as legal substitutes for brand-name medications. To the extent that some of the medications from the involved manufacturers cannot be returned to suppliers for credit, a secondary impact would also be felt by certain pharmacies that stocked medications made by these companies.

Regulatory Flexibility Statement

The proposed amendments impact only the three small manufacturers listed. No other small businesses need respond to these amendments nor is there any need for pharmacies to report to the Drug Utilization Review Council.

Full text of the proposal follows:

The Drug Utilization Review Council proposes to **delete** from the List of Interchangeable Drug Products the following products:

Betamethasone valerate cream 0.1%, ointment 0.1%	Clay-Park
Fluocinolone acetonide cream 0.01%, 0.025%	Clay-Park
Fluocinonide cream 0.5%	Clay-Park
Gentamicin cream and ointment 0.1%	Clay-Park
Hydrocortisone cream 1%, 2.5%	Ambix, Clay-Park
Hydrocortisone ointment 1%	Ambix, Clay-Park
Hydrocortisone ointment 2.5%	Clay-Park
Hydrocortisone Lotion 1%	Clay-Park
Iodochlorhydroxyquin 3.0% with hydrocortisone 0.5% cream, ointment	Clay-Park
Iodochlorhydroxyquin 3.0% with hydrocortisone 1.0% cream, ointment	Clay-Park
Multiple vitamin with fluoride drops, 0.25 mg/ml and 0.5 mg/ml	Hi-Tech
Nystatin cream and ointment 100,000 U/g	Clay-Park
Sulfabenzamide 3.7%, sulfacetamide 2.86%, sulfathiazole 2.42% vaginal cream	Clay-Park
Triamcinolone acetonide cream and ointment, 0.025%, 0.1%, and 0.5%	Clay-Park
Triamcinolone acetonide 1% with nystatin, cream and ointment	Clay-Park
Triple vitamin with fluoride drops, 0.25 mg/ml and 0.5mg/ml	Hi-Tech

HIGHER EDUCATION

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Financial Eligibility for Undergraduate Grants

Proposed Amendment: N.J.A.C. 9:11-1.5

Authorized By: Board of Directors of the Educational Opportunity Fund, Judith Cambria, Chairperson.

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

Proposal Number: PRN 1989-291.

Submit comments by July 5, 1989 to:

Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Educational Opportunity Fund Program is open to students from educationally and economically disadvantaged backgrounds. Participants in the program are eligible to receive financial aid and other support services for attending institutions of higher education in New Jersey. The Board of Directors of the Educational Opportunity Fund determines the income levels for which eligibility to participate in the program is based. This proposed amendment increases those income levels.

Social Impact

The proposed amendment, by increasing the maximum income levels for participation in the Educational Opportunity Fund Program, recognizes the changes in family income levels in the State. The amendment will enable the Educational Opportunity Fund Program to continue to offer higher educational opportunities to disadvantaged citizens of New Jersey consistent with the spirit and intent of the original legislation.

Economic Impact

The proposed amendment changes eligibility requirements for the Educational Opportunity Fund Program but does not change the amount of aid which each program participant receives. The increase in the income levels will serve to expand the potential pool of applicants to the program and increase the number of current program participants who will have continued eligibility.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Board of Directors has determined that the proposed amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The amendment provides for increased eligibility requirements for EOF students attending New Jersey institutions of higher education.

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

9:11-1.5 Financial eligibility for undergraduate grants

(a) A dependent student is financially eligible for an initial E.O.F. grant if the gross income of his or her parent(s) or guardian(s) does not exceed the applicable amount set forth below in the E.O.F. Income Eligibility Scale. Where the dependent student's parent(s) or guardian(s) are receiving welfare as the primary means of family support, the student is presumed to be eligible without regard to the amount of primary welfare support.

1. EOF Dependent Student Eligibility Scale:

Applicants With a Household of:	Gross Income (Not to Exceed):
2 persons	[\$15,050] \$15,130
3	[17,110] 17,270
4	[19,170] 19,410
5	[21,230] 21,550
6	[23,290] 23,690
7	[25,350] 25,830

2. For each additional member of the household, an allowance of [2,060] **\$2,140** shall be added to this amount in order to determine eligibility for E.O.F. for the [1987-88] **1988-89** Academic Year. This allowance shall be adjusted annually to reflect changes in the Standard Maintenance Allowance as published by the College Scholarship Service. In addition, the gross income level for each household size also shall be adjusted to reflect the change in the annual Standard Maintenance Allowance.

3. The E.O.F. Executive Director shall annually inform institutions of adjustments to the Income Eligibility Scale, in accordance with the Standard Maintenance Allowance published by the College Scholarship Service.

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

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

1. [\$9,180] **\$9,260** family size (including student) 1;
2. [\$11,240] **\$11,400** family size (including spouse) 2;
3. [\$13,300] **\$13,540** family size (including spouse) 3;
4. [\$15,360] **\$15,680** family size (including spouse) 4;
5. Add [\$2,060] **\$2,140** for each additional dependent. This amount should be adjusted annually to reflect changes in the Independent Student Allowance as published by the College Scholarship Service.

6. An independent student who received welfare as the primary means of family support is presumed to be eligible without regard to the amount of primary welfare support.

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

CORRECTIONS**(a)****THE COMMISSIONER****Public Information****Proposed New Rules: N.J.A.C. 10A:19**

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

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1989-290.

Submit comments by July 5, 1989 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Proposed new rules N.J.A.C. 10A:19 provide the guidelines for the dissemination of information to the public by the Department of Corrections and the news media. Subchapter 1 provides the purpose and scope of the rules. Subchapter 2 sets forth the rules for public information dissemination. Subchapter 3 concerns news media contacts with institutions and inmates.

Social Impact

The proposed new rules will have no new or additional social impact on the public or correctional facilities since they simply reflect a codification of the present Department of Corrections Standards into rules.

Social Impact

The proposed new rules will provide an established process and the procedures necessary to expedite the continuous gathering and dissemination of information related to the programs, services, activities, achievements and emergencies within the Department of Corrections to the news media and the public at large. The proposed new rules will provide the guidelines whereby news media representatives may photograph, interview, record or videotape inmates for public dissemination.

Economic Impact

The proposed new rules will provide an efficient process for information gathering and dissemination which will reduce the time, effort and expenditure that is necessary for providing information to the public.

Regulatory Flexibility Analysis

The proposed new rules impose no reporting or recordkeeping requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance requirements placed upon the news media and free lancers, some of whom may be small businesses, are contained in proposed N.J.A.C. 10A:19-3, and relate to procedural requirements for inmate contact. No business-size related differentiation in the requirements is provided, since the Department considers these the minimum requirements necessary to maintain the security and orderly administration of correctional facilities.

Full text of the proposal follows:

**CHAPTER 19
PUBLIC INFORMATION**

SUBCHAPTER 1. INTRODUCTION**10A:19-1.1 Purpose**

(a) The purpose of this chapter is to establish policies and procedures for:

1. Disseminating information to the public; and
2. Photographing, interviewing, recording, filming and/or videotaping inmates for public dissemination by the news media.

10A:19-1.2 Scope

This chapter is applicable to all administrative units within the New Jersey Department of Corrections.

10A:19-1.3 Forms

(a) The following forms related to public information shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1. 283-I INMATE CONSENT;
2. 283-II NEWS MEDIA AGREEMENT; and
3. 283-III JUVENILE CONSENT.

**SUBCHAPTER 2. PUBLIC INFORMATION
DISSEMINATION**

10A:19-2.1 Office of Public Information

(a) The Office of Public Information, within the Office of the Commissioner of the New Jersey Department of Corrections, is responsible for:

1. Maintaining and increasing public knowledge of the Department of Corrections by developing and disseminating information relative to correctional philosophy and programming to the following:
 - i. The news media;
 - ii. The general public;
 - iii. Governmental agencies;
 - iv. Community and social organizations; and
 - v. Department of Corrections personnel.
2. Publicizing the effectiveness of innovative programs;
3. Responding to public inquiries and complaints; and
4. Coordinating all public communications including, but not limited to:
 - i. Speaking engagements;
 - ii. Interviews;
 - iii. Press releases;
 - iv. Tour groups;
 - v. Annual reports; and
 - vi. Department of Corrections pamphlets.

10A:19-2.2 Responsibilities of the Public Information Officer

(a) The Office of Public Information, New Jersey Department of Corrections, is managed by the Public Information Officer who shall be responsible for:

1. Being accessible to information sources within the Department of Corrections in order to receive and gather information;
2. Keeping abreast of major trends and events within the Department of Corrections;
3. Disseminating accurate and often instant information concerning emergencies, Departmental plans, programs, services and activities to the following:
 - i. The news media;
 - ii. The general public;
 - iii. Governmental agencies;
 - iv. Community and social organizations; and
 - v. Department of Corrections' personnel.
4. Preparing news releases, fact sheets and reports describing and explaining events, policies and activities of the Department of Corrections;
5. Conferring regularly with the Department of Corrections' Commissioner; and
6. Arranging for news media interviews with personnel and inmates within the Department of Corrections.

10A:19-2.3 Release of information

(a) Personal information concerning inmates and information on matters affecting security within correctional facilities shall be considered confidential and shall not be released to the public (see N.J.A.C. 10A:22-2, release and examination of inmate and parolee records).

(b) To ensure compliance with (a) above, employees of the Department of Corrections shall not impart information to news media representatives or other persons not officially connected with a correctional facility or the Department of Corrections without prior authorization from the Office of Public Information.

(c) The Office of Public Information shall consult with the Office of the Commissioner, New Jersey Department of Corrections, whenever possible, before releasing information to the public.

10A:19-2.4 Newsworthy events

(a) The Office of Public Information, New Jersey Department of Corrections, shall be notified of upcoming newsworthy events at least one week before the event.

(b) The Office of Public Information shall evaluate the newsworthiness of events and provide for appropriate news coverage.

(c) Events considered newsworthy shall include, but are not limited to:

1. Supervisory staff appointments;
2. Approval of Federal grants;
3. New construction;
4. Expansion or addition of services;
5. Significant changes in programs;
6. Opening of new correctional facilities;
7. Open houses;
8. Inspection tours;
9. Special events;
10. Volunteer activities and social functions of a commemorative or programmatic nature;
11. Public appearances by Department of Corrections' personnel;
12. Participation of Department of Corrections' personnel at conferences;
13. Publication of books, pamphlets or articles by Department of Corrections' personnel;
14. Creation and/or operation of special programs or projects by inmates; and
15. Any other event worthy of public notice.

10A:19-2.5 Emergency situations

(a) The Office of Public Information, New Jersey Department of Corrections, shall be informed of all incidents of an unusual nature, which occur at a correctional facility or involve inmates, parolees or staff, that may stimulate inquiries from the news media.

(b) In emergency situations, such as disturbances, unusual or unexpected deaths or injuries to inmates or employees, escapes and walkaways, the Superintendent or his or her designee shall immediately notify the appropriate Assistant Commissioner and the Office of Public Information of the incident.

(c) After obtaining full information from the correctional facility, the Office of Public Information may relay the pertinent facts to the news media with the approval of the Commissioner.

(d) Should it be felt that public knowledge of emergency situations or ongoing investigations would threaten the maintenance of order or security within a correctional facility, the Office of Public Information may choose to withhold information from the news media or release the information at a later more appropriate time.

(e) Information concerning the suspension of visiting programs within correctional facilities shall be disseminated in accordance with N.J.A.C. 10A:18-6, Visits.

10A:19-2.6 News media contacts

All news media inquiries shall be processed in the Office of Public Information, New Jersey Department of Corrections, in accordance with N.J.A.C. 10A:19-3, News Media Contacts with Institutions and Inmates.

10A:19-2.7 Division monthly and annual reports

(a) The Assistant Commissioner of each Division within the New Jersey Department of Corrections shall submit a copy of his or her monthly and annual reports to the Office of Public Information.

(b) The annual report for the preceding fiscal year shall be submitted by the Assistant Commissioner to the Office of Public Information, New Jersey Department of Corrections, no later than October 1 of each calendar year.

(c) The institutions, Board of Trustees and Advisory Council shall submit monthly and annual reports to the Office of Public Information.

SUBCHAPTER 3. NEWS MEDIA CONTACTS WITH INSTITUTIONS AND INMATES

10A:19-3.1 Interviewing and photographing adult inmates by the news media

(a) An inmate age 18 or over with the New Jersey Department of Corrections may be photographed, interviewed, recorded, filmed and/or videotaped by the news media:

1. If the inmate has sufficient mental capacity to understand the nature and implication of these activities;

2. If the inmate indicates his or her approval by signing Form 283-I INMATE CONSENT; and

3. If such activity does not interfere with the security or orderly running of an institution, satellite unit or residential facility.

(b) In the event an inmate does not have sufficient mental capacity to understand the nature and implication of being photographed, interviewed, recorded, filmed and/or videotaped by the news media, the written consent of the inmate's guardian shall be required.

10A:19-3.2 Interviewing and photographing juvenile inmates by the news media

An inmate under the age of 18 within the New Jersey Department of Corrections may be photographed, interviewed, recorded, filmed and/or videotaped by the news media only when a parent or guardian indicates his or her approval by signing Form 283-III JUVENILE CONSENT.

10A:19-3.3 Requests by news media representatives and free lancers

(a) All requests by news media representatives and free lancers to photograph, interview, record, film and/or videotape an inmate(s) shall be submitted in writing, in person, or by telephone to the Office of Public Information, New Jersey Department of Corrections for review.

(b) The Office of Public Information shall verify the affiliation of each news media representative or free lancer.

(c) An electronic or print free lancer must have his or her publisher or company submit a statement to the Office of Public Information which indicates that the product of the free lancer will be published or broadcast.

10A:19-3.4 Decision on news media requests

(a) The Office of Public Information, New Jersey Department of Corrections, shall approve or disapprove all requests by the news media to photograph, interview, record, film and/or videotape an inmate(s) and shall notify the Superintendent of the correctional facility of the decision by telephone.

(b) The Superintendent of the correctional facility may override the Office of Public Information's approval to the news media when the Superintendent determines that the interests of security and/or the orderly operations of the correctional facility would be disrupted by news media activity.

10A:19-3.5 Inmate consent

(a) When a request by the news media to photograph, interview, record, film and/or videotape an inmate(s) has been approved by the Office of Public Information and the Superintendent of the correctional facility, a staff member designated by the Superintendent shall provide the inmate with Form 283-I INMATE CONSENT for his or her review.

(b) The inmate shall indicate his or her approval of the news media request by signing Form 283-I INMATE CONSENT in the presence of the staff member.

(c) The Superintendent of the correctional facility shall notify the Office of Public Information of the inmate's decision.

10A:19-3.6 Notification of news media

The Office of Public Information, New Jersey Department of Corrections, shall notify the news media representative, by telephone, of the final decision to approve or disapprove the request to photograph, interview, record, film and/or videotape an inmate(s).

10A:19-3.7 News media agreement

(a) Upon arrival at the correctional facility, the news media representative shall present valid press credentials or other identification approved by the Office of Public Information, New Jersey Department of Corrections.

ment of Corrections, and complete and sign Form 283-II NEWS MEDIA AGREEMENT.

(b) Photographing, interviewing, recording, filming or videotaping of an inmate by any news media representative shall not be permitted to take place prior to the signing of Form 283-II NEWS MEDIA AGREEMENT and the completion of Form 283-I INMATE CONSENT.

(c) The original of Forms 283-I and 283-II shall be retained by the correctional facility. A copy of these forms shall be given to the news media representative, and a copy shall be forwarded to the Office of Public Information, Department of Corrections.

INSURANCE

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Life and Health Insurance Unfiled Policy Forms

Proposed New Rules: N.J.A.C. 11:4-9

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

Authority: N.J.S.A. 17:1C-6(e), 17:44A-1, 17B:25-18, 17B:26-1 et seq., 17B:27-25, 17B:27-49, 17B:28-4, 17B:29-7, 17B:30-15 and 18, and 17:22A-17a, b and 24.

Proposal Number: PRN 1989-288.

Submit comments by July 5, 1989 to:

Verice M. Mason
Assistant Commissioner
Department of Insurance
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department is aware that some insurance producers and limited insurance representatives are soliciting, negotiating or executing in New Jersey life and/or health insurance policy forms which are not filed for use in this State. Apparently, in an effort to avoid New Jersey regulatory requirements, some insurance producers and limited insurance representatives are submitting applications, purportedly solicited and/or negotiated and/or executed in a state where the policy form has been filed, when, in fact, the solicitation, negotiation or execution occurred in New Jersey. Such solicitation, negotiation and execution is prohibited by statutes declaring that unfiled policy forms cannot be issued for delivery or delivered in New Jersey (see authority above). If it is impermissible to deliver or issue for delivery in New Jersey unfiled policy forms, then, concomitantly, it is impermissible to solicit, negotiate or execute in New Jersey such insurance forms and insurance. The Department also believes that the commission of the above-mentioned activities is an unfair trade practice in violation of N.J.S.A. 17B:30-1 et seq., a fraudulent act within the meaning of N.J.S.A. 17:22A-17a(4), and is "unworthiness," "lack of integrity" and "bad faith" within the meaning of N.J.S.A. 17:22A-17a(20). The commission of the proscribed activities provides a basis for the revocation of licensure or the loss of a registration privilege or a fine for insurance producers and limited insurance representatives, and for the imposition of fines or other penalties against recalcitrant insurers.

The proposed new rules prohibit insurance producers and limited insurance representatives from soliciting, negotiating, executing or delivering insurance in New Jersey when the relevant policy form has not been filed by or with the Commissioner of Insurance. The rule also requires insurance companies to monitor the issuance and delivery of unfiled policy forms to assure that life and/or health policy forms which are not first filed by or with the Commissioner are not delivered or issued for delivery in New Jersey. As part of their monitoring requirements, insurance companies are required to establish procedures to monitor applications for life and/or health insurance to identify those applications where the address of the applicant is within New Jersey but the application indicates that the execution of the contract occurred in another

state. Upon receipt of such an application, insurance companies are required to verify that the solicitation, negotiation and execution of the contract occurred outside of New Jersey. Upon such ascertainment, the insurance company may issue the policy provided it is delivered outside of New Jersey. Monitoring procedures must also include, at a minimum, the requirement that solicitation and negotiation materials provided to insurance producers and limited insurance representatives contain clear instructions advising them as to whether certain forms are authorized for use in New Jersey.

The problem addressed in the proposed new rules was originally the subject of Bulletin No. 88-3, issued on July 15, 1988. The proposed new rules implement this Bulletin.

Social Impact

The proposed new rules will benefit the public by establishing a mechanism to identify cases of fraud, unfair trade practices and other malfeasance by insurers, insurance producers or limited insurance representatives. The proposed new rules will also serve to protect the public by implementing current law by ensuring that forms not approved for use in New Jersey are not the subject of marketing activity in New Jersey and are not issued for delivery or delivered in New Jersey—in implementation of legislation disfavoring the use by New Jersey consumers of unfiled policy forms.

The proposed new rules require insurance companies to establish procedures to monitor the issuance of life and/or health policies to assure that unfiled policy forms are not issued for delivery in New Jersey, and that unfiled policy forms are not solicited, negotiated or executed in New Jersey.

The proposed new rules will better enable the Department to identify cases of insurance fraud and unfair trade practices by establishing specific procedures to assist in identifying instances of such activity. Such procedures include the requirement that insurance companies make direct contact with the Department where fraudulent activity and an unfair trade practice is suspected, and the requirement that relevant records be maintained by insurance companies for Departmental review for at least five years.

Insurance producers, limited insurance representatives and insurance companies which violate the proposed new rules may be subject to penalties as provided by law.

Economic Impact

There is no economic impact on insurance producers or limited insurance representatives since the proposed new rules merely codify existing requirements of law or Departmental policy concerning their conduct. Insurance companies that have not already established mechanisms to identify the improprieties addressed in the proposed new rules may incur minimal costs to do so (see proposed N.J.A.C. 11:4-9.4). It is believed, however, that many companies currently do not accept applications from New Jersey residents which are executed outside of New Jersey.

The Department will incur no appreciable costs in implementing the proposed new rules since existing staff can be used without significantly impinging upon their other regulatory duties.

No costs will be incurred by the consumer. Uncovering cases of insurance fraud or unfair trade practices, however, generally inures to the economic benefit of the public.

Regulatory Flexibility Analysis

Since the proposed new rules are intended to identify instances of insurance fraud or unfair trade practices, they do not purport to establish differing compliance standards or reporting requirements for small businesses. Insurance companies of all sizes, most, if not all of which, are not "small businesses," must ensure to the extent possible that the law is not being violated. However, although the compliance standard itself is absolute and uniform, the proposed new rules afford insurance companies optional methods of implementing this standard by approving the use of various methods of verifying cases of potential insurance fraud or unfair trade practices by insurance producers and limited insurance representatives.

Insurance companies are also afforded a certain amount of discretion in establishing procedures to monitor the issuance of life and/or health policies and to identify applications where the address is within New Jersey but the application indicates that the solicitation, negotiation and execution occurred elsewhere.

The proposed new rules will apply to all insurance companies authorized to sell life and/or health insurance in New Jersey and to all insurance producers and limited insurance representatives marketing such insurance in New Jersey. There are presently about 60,000 licensed in-

insurance producers and 7,000 limited insurance representatives in New Jersey. Insurance producers and limited insurance representatives are required to comply with the proposed new rules only in the sense that the rules codify existing requirements of law and Departmental policy and describes existing illegal conduct. Reporting and recordkeeping requirements are clearly described in the proposed new rules and are imposed only on insurance companies authorized to sell life and/or health insurance in New Jersey—few, if any of which, are "small businesses" as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The services of additional professional staff will not be required since the proposed new rules impose only minimal reporting and recordkeeping requirements, which tend to be clerical in nature or which can be easily assumed by existing professional staff.

The initial cost of compliance for insurance companies will be the costs incurred in establishing the aforesaid monitoring procedures, which are flexible, but which must include the requirement that solicitation and negotiation materials provided to insurance producers and limited insurance representatives licensed and registered in New Jersey contain clear instructions advising them whether forms are authorized for use in New Jersey. Initial and annual costs of compliance for insurance companies are expected to be minimal and a function of the monitoring procedure chosen. Annual costs will vary depending upon the amount of insurance producer or limited insurance representative impropriety unveiled.

Full text of the proposed new rules follows:

SUBCHAPTER 9. PROHIBITION AGAINST SOLICITING, NEGOTIATING, EXECUTING OR DELIVERING IN NEW JERSEY UNFILED LIFE AND HEALTH POLICY FORMS

11:4-9.1 Purpose; scope

(a) The purpose of this subchapter is to prevent an insurance producer or limited insurance representative from soliciting, negotiating, executing or delivering in New Jersey, and insurers from issuing for delivery in New Jersey, life and/or health insurance policy forms which have not been filed in New Jersey.

(b) This subchapter applies to all insurers authorized to sell life or health insurance in New Jersey and to all insurance producers and limited insurance representatives, as defined herein.

11:4-9.2 Definitions

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

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

"Department" means the New Jersey Department of Insurance.

"Delivery" means the act by an insurer or insurance producer of transmitting to an applicant for insurance a contract of insurance, whether by personal delivery or by mail.

"Execution" means the act of signing a policy form as this term is defined in this section.

"Filed" means the act of the Commissioner of affirmatively filing or accepting for filing a form or policy form submitted by an insurer, or of failing to notify an insurer within the time prescribed by law that a form has been disapproved for filing pursuant to N.J.S.A. 17:44A-1 et seq. and N.J.S.A. 17B.

"Form" or "policy form" means life or health insurance policies, including an application where a written application is required and is to be made a part of such policy, printed riders or endorsements for use with such policy, notices of proposed insurance and certificates of insurance, or any other form required to be filed by or with the Commissioner pursuant to N.J.S.A. 17:44A-1 et seq. and N.J.S.A. 17B.

"Health insurance" is defined at N.J.S.A. 17B:17-4.

"Insurance producer" means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as these terms are defined at N.J.S.A. 17:22A-2.

"Insurer" means any company, individual, partnership, association or organization, including a fraternal benefit society, that underwrites or issues an insurance policy or contract for life and/or health insurance in New Jersey.

"Life insurance" is defined at N.J.S.A. 17B:17-3 and includes annuities as defined at N.J.S.A. 17B:17-5.

"Limited insurance representative" means a person who is authorized to solicit, negotiate or effect contracts for a particular line of insurance as an agent for an insurance company authorized to write that line in this State which by the nature of the line of business and the manner by which it is marketed to the public does not require the professional competency demanded for an insurance producer license.

"Negotiate" or "negotiation" means the act of conferring with a prospective purchaser of a contract of insurance concerning any of the substantive benefits, terms of, or the premium to be charged for the contract.

"Solicit" or "solicitation" means any activity which is designed to initiate the purchase of a contract of insurance that is being offered for sale by or through the person making the solicitation.

11:4-9.3 Duties of insurance producer or limited insurance representative

(a) No insurance producer or limited insurance representative shall solicit, negotiate, execute or deliver in New Jersey any life or health insurance policy form not first filed by or with the Commissioner.

(b) No insurance producer or limited insurance representative shall indicate on an application for life or health insurance that the application was executed in any state other than where the execution of the application actually occurred.

11:4-9.4 Duties of insurer

(a) All insurers shall establish procedures to monitor the issuance of life and health insurance policies to assure that policy forms not first filed by or with the Commissioner are not delivered or issued for delivery in New Jersey. These procedures shall include, at a minimum, the requirement that solicitation and negotiation materials provided to insurance producers licensed, or limited insurance representatives registered, in New Jersey contain clear instructions advising the insurance producer or limited insurance representative as to whether the forms are authorized for use in New Jersey.

(b) All insurers shall establish procedures to monitor applications for life and health insurance to identify those applications where the address of the applicant is within New Jersey but the application indicates that the execution of the contract occurred in another state, for the purpose of preventing the delivery or issuance of delivery in New Jersey of unfiled policy forms where the solicitation, negotiation or execution concerning these forms took place in New Jersey.

(c) Upon receipt of an application for life or health insurance which indicates that the applicant resides in New Jersey but that the execution of the contract occurred in another state, the insurer shall verify with both the applicant and the insurance producer or limited insurance representative that the solicitation, negotiation and execution of the contract occurred outside of New Jersey. Such verification shall be made in one of the following ways:

1. By separate letters, addressed to the insurance producer or limited insurance representative and the applicant, requiring signed verification of the place of solicitation, negotiation and execution, as these terms are defined in this subchapter, which verification shall be returned to the insurer; or

2. By direct telephone communication with the insurance producer or limited insurance representative and the applicant, by home office personnel, followed within one business day by written confirmation of the telephone communication addressed to the insurance producer or limited insurance representative and the applicant.

(d) Upon verification that the solicitation, negotiation or execution did not occur in New Jersey, in accordance with (c) above, the insurer may issue the policy; provided, however, that:

1. The policy is sent to the insurance producer or limited insurance representative with instructions that the policy shall be delivered outside the State of New Jersey; and

2. The insurance producer or limited insurance representative be required to submit to the insurer a statement, within seven business days after the delivery of the policy, attesting to the fact that delivery took place outside of New Jersey and indicating the date of delivery.

(e) In cases where the verification statement from either the applicant or the insurance producer or limited insurance representative indicates that the solicitation, negotiation or execution of the application took place in New Jersey, the insurer shall, within five business days of ascertainment, so notify the Division of Enforcement and Consumer Protection of the Department, which shall thereupon commence an investigation of the allegation.

(f) Copies of all verifications and confirmations of solicitation, negotiation, execution and delivery required by this section shall be maintained by the insurer for a period of at least five years.

(g) Nothing in this subchapter shall be construed as requiring an insurer to accept from insurance producers or limited insurance representatives applications from a New Jersey resident which were solicited, negotiated or executed outside of this State.

11:4-9.5 Penalties

Failure to comply with any of the provisions of this subchapter may constitute a violation of N.J.S.A. 17:22A-17 and 17B:30-1 et seq., and/or other provisions of law, and the violator may be subject to the penalties prescribed therein.

11:4-9.6 Severability

The provisions of this subchapter shall be severable, and if any of its provisions shall be declared invalid, the validity of the remaining provisions of this subchapter shall not be affected thereby.

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Notice of Correction to Proposal Summary Employment Agreements; Commissions; Accounting to Salesperson

Proposed New Rule: N.J.A.C. 11:5-1.10

Take notice that the Real Estate Commission has discovered an error in the text of the first sentence of the second paragraph of the Summary of proposed new rule N.J.A.C. 11:5-1.10, Employment agreements; commissions; accounting to salesperson, which was proposed in the May 15, 1989 New Jersey Register at 21 N.J.R. 1308(b). This notice of correction is made to clarify the meaning of the sentence.

Full text of the corrected sentence follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

The proposed new rule changes the language in the existing rule by adding a list of the essential provisions which, at a minimum, must be included in all employment or independent [contracts or] **contractor** agreements between brokers and salespersons.

(b)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Joint Insurance Funds for Local Governmental Units Proposed Amendments: N.J.A.C. 11:15-2.2, 2.13 and 2.21

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 40A:10-36 et seq.
Proposal Number: PRN 1989-287.

Submit comments by July 5, 1989 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 1983, N.J.S.A. 40A:10-36 was enacted to permit two or more local governmental units to establish a joint insurance fund for the purpose

of insuring against liability, property damage, and workers' compensation. Rules were adopted and became effective on December 3, 1984, which regulate aspects of these joint insurance plans (see N.J.A.C. 11:15-2). The Department has determined that some modification to the existing rules is necessary. Therefore, the following amendments have been proposed.

N.J.A.C. 11:15-2.13 currently prohibits intertrust fund transfers (transfers from one claim or loss retention fund to another) without the prior written approval of the Commissioner. The proposed amendment to N.J.A.C. 11:15-2.13 would permit an intertrust fund transfer upon 30 days prior written notification to the Commissioner of Insurance and the Department of Community Affairs subject to disapproval by the Commissioner during the 30 day period. This notification must be supported by appropriate assessment and claims and expense documentation. In addition, every member municipality must participate in each and every claim and loss retention fund account for that fund year.

The purpose of the proposed amendment is to create more consistency in regulating this aspect of joint insurance funds. The proposed amendment eases the approval procedures for intertrust fund transfers. While maintaining adequate safeguards (for example, requiring appropriate documentation and participation of every member municipality in each and every claim and loss retention fund account for that fund year).

N.J.A.C. 11:15-2.21(a) currently requires the passage of a 12-month period from the end of a fiscal year before a joint insurance fund may declare an amount to be refunded. The proposed amendment changes the 12-month requirement to a 24-month requirement. The purpose of this change is to allow more time for claims experience to develop before permitting a joint insurance fund to make an initial refund.

N.J.A.C. 11:15-2.21(b) currently requires that any initial refund not exceed 30 percent of the surplus available for the fiscal year. The present rules do not provide specific surplus requirements for subsequent refunds. The proposed amendment provides that any initial or subsequent refund may be in any amount provided that the remaining net current surplus exceed 35 percent of unpaid claims.

N.J.A.C. 11:15-2.21(b) also currently permits joint insurance funds to seek approval for subsequent refund payments from a claim or loss retention trust account of a particular fiscal year after passage of a 30-month period from the end of that fiscal year. The proposed amendment permits joint insurance funds to seek approval to make subsequent refund payments after passage of a 36-month period from the end of the fiscal year, and only at 12-month intervals thereafter. The current rules do not set forth specific time intervals that a joint insurance fund may seek approval for subsequent refunds after passage of the 30-month period. Furthermore, the allowance of subsequent refund payments at 12-month intervals is consistent with the time period for filing the financial reports that joint insurance funds must submit to the Department, pursuant to N.J.A.C. 11:15-2.24.

Currently, the rules allow interyear fund transfer only upon the prior written approval of the Commissioner pursuant to N.J.A.C. 11:15-2.13(a)1. Interyear fund transfers are transfers of funds from a claim or loss retention trust account for a fiscal year, to a similar claim or loss retention trust account for a different fiscal year. The allowance of interfund year transfers mitigates against possibility of supplemental assessments. It permits a surplus in one fiscal year to be credited against a possible assessment for another fiscal year where losses were greater than anticipated.

The proposed amendment to N.J.A.C. 11:15-2.21 provides that a joint insurance fund may seek approval from the Commissioner at 12-month intervals for interyear fund transfers after passage of a 12-month period following the end of the fiscal year. As with refunds, the transfer may be in any amount provided that the remaining net current surplus exceeds 35 percent of unpaid claims. Furthermore, the membership for each fiscal year involving the interyear fund transfer must be identical between such fiscal years.

Pursuant to the proposed amendment, joint insurance funds are permitted to refund money in a relatively short period of time (24 months). This may not be sufficient time for claims experience to mature. There may be late reported claims, reopened claims or claims that deteriorate. If a fund's assessment and investment income is not adequate, it may need to make a supplemental assessment. The proposed amendment requires the funds to maintain at least 35 percent of unpaid claims as a safeguard against such an occurrence.

The requirements of the proposed amendment reflect requirements of the financial data reports submitted to the Department by joint insurance funds, pursuant to N.J.A.C. 11:15-2.24. The proposed amendment ties the surplus requirement to claims data, which is contained in the reports

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submitted to the Department. Furthermore, the new retained surplus requirement is more appropriate because it is related to the level of open claims rather than to the level of surplus.

The proposed amendments to N.J.A.C. 11:15-2.2 define "fiscal year," "fund year," "interyear fund transfer," "intertrust fund transfer," "unpaid claims," and "net current surplus." These added definitions are necessary to explain these terms as they are used in the proposed amendments.

Social Impact

The proposed amendment to N.J.A.C. 11:15-2.13 permitting intertrust fund transfers will benefit joint insurance funds since it will make the administration of the funds less difficult. The proposed amendment also changes the reserve and waiting period requirements for refund payments. In addition, the proposed amendment would allow interyear fund transfers provided the waiting period and reserve requirements are met. These requirements decrease the likelihood of supplemental assessments. This allows municipalities to budget their financial resources more effectively since their insurance costs will be better defined, thereby providing an incentive for municipalities to join joint insurance funds.

In addition, the proposed amendments further consistency by bringing the surplus requirement in line with the data contained in the financial reports submitted to the Department. This benefits both joint insurance funds and the Department. Furthermore, the allowance of subsequent refunds at 12-month intervals also brings the rule in line with the annual reporting requirements. The proposed amendment to N.J.A.C. 11:15-2.21 also benefits both joint insurance funds and the Department by setting forth the surplus requirement that exists for subsequent refunds (unlike the present rules). Safeguards are also maintained (for example, written notification of intertrust fund transfer must be supported by appropriate data; each municipality must participate in each and every retention fund account for that fund year).

The impact to the public is that as the likelihood of supplemental assessments is lessened, the predictability of the municipality's budgetary requirements is increased. Therefore, the likelihood of more frequent increases in property taxes is lessened.

Economic Impact

The economic impact of the proposed amendments is that joint insurance funds may make an interyear fund transfer or make a refund payment provided that the remaining net current surplus exceeds 35 percent of unpaid claims. This creates a funding minimum that joint insurance funds must maintain. Furthermore, relating the required surplus to claims data better assures the financial solvency of the fund. Joint insurance funds will also be able to seek approval to refund money more frequently (every 12 months) under the proposed amendments. Furthermore, the allowance of intertrust fund transfer upon 30 days written notification will lend itself to more efficient handling of joint insurance fund claim or loss retentions fund accounts.

The impact to municipalities is that interyear fund transfers mitigates against possible supplemental assessments for years where losses were greater than anticipated. This is also true of the requirement that joint insurance funds maintain more than 35 percent of unpaid claims after a refund payment or interyear fund transfer. This decreases the likelihood of supplemental assessments. This benefits municipalities in that for budgeting purposes, their insurance costs are better defined. The impact to the public is that as the likelihood of supplemental assessments is decreased, the budgetary requirements of a municipality are more predictable. Therefore, the likelihood of an increase in residents' property taxes is decreased.

There are no additional economic costs associated with the proposed amendments. All of the data required is already submitted by joint insurance funds to the Department in the annual financial reports. No new data need be generated. Also, no new data need be reviewed by the Department. The Department already reviews the above mentioned financial reports. Therefore, there are no new costs to the Department due to these proposed amendments.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses. N.J.S.A. 10A:10-36 et seq. created a public entity composed of member municipalities. These are the entities that must comply with this regulation. These public entities do not meet the definition of a "small business" as defined in N.J.A.C. 1:30-3.1(f)4ii.

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

11:15-2.2 Definitions

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

"Fiscal year" or "fund year" means the calendar year January 1 through December 31.

"Intertrust fund transfer" means an actual transfer of funds from one claim or loss retention fund account in a fiscal year to another account within the same fiscal year.

"Interyear fund transfer" means the transfer of funds from a claim or loss retention trust account for a fiscal year, to a similar claim or loss retention trust account for a different fiscal year.

"Net current surplus" means that amount of monies in a trust fund that is in excess of all fixed costs, investment income, returned surplus, incurred losses and incurred but not reported reserves attributed to the fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.

"Unpaid claims" means case reserves and case reserves for incurred but not reported claims attributed to the fund net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.

11:15-2.13 Establishment of trust fund accounts; transfers or withdrawals prohibited

(a) Pursuant to the terms of the indemnity and trust agreement, each fund shall establish a separate trust fund account from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance or reinsurance premiums for each type of liability or risk retained jointly on a self-insured basis. Such accounts shall be designated as claims or loss retention fund accounts.

1. [Other than for the purposes specified in (a) above, or as otherwise authorized by this subchapter, no transfer or withdrawal may be affected from a claim or loss retention fund without the prior written approval of the Commissioner.] Other than for the purposes specified in (a) above, or as otherwise authorized by this subchapter, no withdrawals may be affected for a claim or loss retention fund without prior written approval of the Commissioner, except for intertrust fund transfers. Intertrust fund transfers, within a fund's fiscal year, may be conducted by the fund at any time, by providing 30 days prior written notification to the Commissioner and the Department of Community Affairs. If the Commissioner does not disapprove of the transfer, in writing, within 30 days after receiving such written notification, the request for intertrust fund transfer(s) shall be deemed approved. Any intertrust fund transfer request must be supported by appropriate assessment and claim and expense documentation. Intertrust fund transfers may be conducted only where each member municipality participates in each and every claim or loss retention fund account for that fund year.

11:15-2.21 Refunds; interyear fund transfers

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary may be declared to be refundable by the fund not [less] sooner than [12] 24 months after the end of the fiscal year.

(b) [The initial refund for any year from a claim or loss retention trust account shall not exceed 30 percent of the surplus available for the year. The fund may, however, seek annual approval for payment of refunds from a claims or loss retention trust fund account remaining from any year which has been completed for at least 30 months or longer and may include such refund payments with initial refund payments from the preceding year.] The fund may seek approval from the Commissioner to make initial refund payments from a claims or loss retention fund account remaining from any year which has been completed at least 24 months by submitting a written request to the Department of Insurance and Department of Community Affairs with appropriate documentation including, but not limited to, assessment, claims and expense detail; actuarial certification that the fund has an overall surplus for that fiscal year; and such other information that the

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Commissioner may require. The initial and any subsequent refund for any year from a claim or loss retention trust account may be in any amount subject to the limitation that after the refund, the remaining net current surplus must exceed 35 percent of unpaid claims for that fiscal year. Claims must be undiscounted, and the IBNR reserve must be certified by an actuary. The fund may seek approval as above for subsequent refund payments at 12 month intervals from a claims or loss retention fund account remaining from any year which has been completed for at least 36 months. A full and final refund of net current surplus will not be allowed until all case reserves are closed.

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

(e) The fund may seek approval from the Commissioner to make interyear fund transfers at 12 month intervals from a claims or loss retention trust account from any year which has been completed for at least 12 months by submitting a written request to the Department of Insurance and Department of Community Affairs with appropriate documentation as set forth in (b) above. The interyear fund transfer may be in any amount subject to the limitation that after the refund, the remaining net current surplus must exceed 35 percent of unpaid claims for that fiscal year. Claims must be undiscounted, the IBNR reserve must be certified by an actuary and the membership for each fiscal year involving interyear fund transfers must be identical between fiscal years.

LABOR

(a)

BOARD OF REVIEW

Proposed Readoption with Amendments: N.J.A.C. 12:20

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 43:21-6(d) and (e), 43:21-10 and 43:21-17.

Proposal Number: PRN 1989-286.

Submit comments by July 5, 1989 to:

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

The agency proposal follows:

Summary

N.J.A.C. 12:20-1 through 5 set forth the rules of the Board of Review and Appeal Tribunal. Pursuant to Executive Order No. 66 (1978), N.J.A.C. 12:20-1 through 5 expire on November 5, 1989. The Department of Labor (Department) has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated by the Executive Order.

The Board of Review and Appeal Tribunal were established pursuant to the Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

The Board of Review conducts reviews of employer and employee appeals of unemployment benefit determinations made by an Appeal Tribunal (see N.J.S.A. 43:21-6(e)). An Appeal Tribunal conducts hearings and decides employer and employee appeals of unemployment benefit determinations made at the local office level (see N.J.S.A. 43:21-6(d)).

N.J.A.C. 12:20-1 sets forth the organization of the Board of Review. N.J.A.C. 12:20-2 sets forth the organization of the Appeal Tribunals. N.J.A.C. 12:20-3 sets forth the procedures for appeals to an Appeal Tribunal. N.J.A.C. 12:20-4 sets forth the procedures for appeals to the Board of Review. Finally, N.J.A.C. 12:20-5 sets forth general rules applicable for appeals to the Board of Review and the Appeal Tribunals.

N.J.A.C. 12:20-5.4 contains technical and editorial changes. Under this section, a nonattorney is now permitted to represent a claimant at Board of Review or Appeal Tribunal hearings.

The Department is proposing minor technical and editorial amendments to the existing rules. The amendments are as follows.

N.J.A.C. 12:20-1.1 has been amended to reflect recent changes in the Civil Service Law.

N.J.A.C. 12:20-1.3(d) and (e) contain editorial amendments.
N.J.A.C. 12:20-2.1(a) and (b) contain technical amendments that reflect recent changes in the Civil Service and Unemployment Laws.
N.J.A.C. 12:20-2.2 contains an editorial change.
N.J.A.C. 12:20-2.3 and 2.4 contain changes that reflect recent amendments to the Unemployment Law.
N.J.A.C. 12:20-2.5, now 12:20-2.3 contains editorial amendments.
N.J.A.C. 12:20-3.1 contains technical and editorial changes.
N.J.A.C. 12:20-3.2 and 3.3 contain editorial changes.
N.J.A.C. 12:20-3.4, 4.3 and 4.5 contain editorial and technical changes that reflect recent amendments to the Unemployment Law.

Social Impact

The proposed readoption with amendments benefits employers and claimants in that they provide procedures to follow for appeals before the Board of Review or Appeal Tribunal. Appeal procedures provide employers and claimants with an equal opportunity to pursue their case.

The proposed readoption with amendments also benefits the Department in that it provides organization and efficiency for the Board of Review and Appeal Tribunal.

Economic Impact

The proposed readoption with amendments benefits employers and claimants in that it allows the parties to eliminate unnecessary steps in appealing a matter before the Board of Review or Appeal Tribunal. This in turn, will result in less time and money wasted by both parties.

The Department will benefit in that the rules will result in efficiency among the Board of Review and Appeal Tribunal members. This, in turn, will save time and money for the Department.

Regulatory Flexibility Statement

The proposed readoption with amendments do not require a regulatory flexibility analysis as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since it does not impose any requirements on small businesses. The rules proposed for readoption with amendments set forth procedural requirements for the Board of Review and appeal tribunals.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:20.

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

12:20-1.1 Membership

The Board of Review shall consist of three members appointed by the Director subject to the provisions of N.J.S.A. Title 11A [(Civil Service)], and the supplements and amendments thereto, from [Civil Service] **Department of Personnel** eligible lists.

12:20-1.3 Duties

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

(d) The **executive** secretary of the Board of Review shall keep a [stenographic] record of [all] proceedings at meetings of the Board of Review and shall prepare minutes to record all actions of the Board at each meeting. Said minutes shall be presented to the Board of Review for approval at its next meeting.

(e) The executive secretary may, with the consent of the Board of Review, issue subpoenas and shall sign all orders and other official documents issued in the name of the Board of Review and shall certify its decisions. [He] **The executive secretary** shall maintain the permanent file of the approved minutes of Board of Review meetings and shall be charged with the supervision of all administrative work of the Board of Review.

12:20-2.1 Membership

[(a)] Appeal tribunals shall consist [either] of a single member who shall be a salaried examiner appointed by the Director subject to the provisions of N.J.S.A. Title 11A [(Civil Service)], and the supplements and amendments thereto, from [Civil Service eligible] **Department of Personnel** lists; or].

[(b) A body consisting of three members, one of whom shall be selected in accordance with subsection (a) of this Section, who shall serve as chairman. Of the other members, one shall be a representative of employees, and the other a representative of employers.]

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12:20-2.2 Duties

It shall be the [duties] **duty** of the appeal tribunals to hear and decide disputed benefit claims, including appeals from determinations with respect to demands for refunds of benefits under [subsection] N.J.S.A. 42:21-16(d) of the Unemployment Compensation Law of New Jersey.

[12:20-2.3 Chairman

(a) The chairman of an appeal tribunal shall in all cases be a salaried examiner appointed by the Director in accordance with Section 2.1 (Membership) of this Chapter.

(b) It shall be the duty of the chairman to convoke and to preside at all meetings of the appeal tribunal, to preside at all hearings, and to issue all orders and subpoenas in cases appealed to the tribunal.]

[12:20-2.4 Appeals before three-member appeal tribunals

(a) The Board of Review may, in its discretion, order any case pending before an appeal tribunal to be heard by a three-member appeal tribunal and may designate two appeal tribunal members to sit with the chairman in such case.

(b) The chairman shall act alone in the absence or disqualification of any other member and his alternates.]

12:20-[2.5]2.3 Disqualification of members of appeal tribunals

(a) (No change.)

(b) Challenges to the interest of any member of an appeal tribunal [other than the chairman] may be heard and decided by the [chairman] **chief appeals examiner** of the appeal tribunal, or, in his or her discretion, referred to the Board of Review.

[(c) Challenges to the chairman shall be heard and decided by the Board of Review.]

12:20-3.1 Presentation of appealed claims

(a) Any written statement, filed within the time for appeal allowed by law, which sets forth the fact that a party to a determination made by the Division of Employment Security is aggrieved thereby or dissatisfied therewith shall be deemed to be an appeal. [When such appeal is not filed on Form BR-1W (Claimant's Appeal) or Form BR-1E (Employer's Appeal) the appellant shall forthwith be furnished with the proper form and shall be notified to complete and return said form. In the event that the appellant shall fail to complete and return the said form within ten days of the date of said notification, the appeal may be dismissed. Additional time for filing the said form may be granted by order of the Board of Review for good cause shown.]

[(b) Where such demand is deemed to be unnecessary the Board of Review may prepare the required form on behalf of the appellant.]

[(c)](b) Every appeal shall set forth the reasons alleged for disputing the determination or decision appealed from. The appellant shall not be required to use technical forms or language in setting forth the said reasons.

[(d)](c) In computing any period of time the day of the act or event after which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

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

[(f)](e) In cases involving a large number of claimants, a blanket notice of appeal may be filed on behalf of, or with respect to, such claimants, listing their full names and social security numbers, and the date of filing of such notice will be accepted as the date of filing of the individual appeals thereunder, provided, however, no case will be scheduled for hearing until an individual appeal on the prescribed appeal form has been filed with the [clerk of the] appeal tribunal. Following the filing of the blanket appeal, a reasonable time will be allowed for preparation of the individual appeals.

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

[(h)](g) Notice of appeal filed in the local office shall be transmitted immediately to [the clerk of] the appeal tribunal [and a copy shall be forwarded to the chief of unemployment benefits for his information]. If, after an appeal has been filed, it is found that the matter may be adjusted to the satisfaction of the parties without

further hearing, a request for dismissal of the appeal will be entertained and acted upon by the tribunal to which the case is referred.

12:20-3.2 Conduct of hearings

(a) The proceedings shall be fair and impartial and shall be conducted in such manner as may be best suited to determine the claimant's benefit rights. Hearings shall, in the absence of a showing of sufficient cause for a closed hearing, be open to the public. The examiner shall open the hearing by ascertaining and summarizing the issue or issues involved in the appeal. The parties, their attorneys or representatives may examine or cross-examine witnesses, inspect documents, and explain or rebut any evidence. An opportunity to present argument shall be afforded the parties, which argument shall be made part of the record. Where a party is not represented, the tribunal shall give [him] every assistance that does not interfere with the impartial discharge of its official duties. The tribunal may examine each party or witness to such extent as it deems necessary. All oral testimony shall be under oath or affirmation and shall be recorded [and kept].

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

12:20-3.3 Adjournment of hearing

(a) The [chairman of an] appeal tribunal shall use [his] **their** best judgment as to when adjournments of hearings shall be granted in order to secure all facts that are necessary and to be fair to the parties.

(b) (No change.)

12:20-3.4 Decisions of appeal tribunals

[(a) If the decision of an appeal tribunal is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision, which shall set forth the reasons why it fails to agree with the majority.]

[(b)](a) Copies of all decisions and the reasons therefor shall be mailed to the claimant and to all other parties to the appeal and shall [include or] be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

[(c)](b) The decision shall be in the following form:

1. The first section shall indicate the party appealing, the determination appealed [from], the date of the decision, and the date of the initiation of the appeal. The appearances shall be noted.

2.-3. (No change.)

4. The fourth section shall contain the "Decision." This shall be followed by the signature of the examiner. [In the event the case is heard by a three-member tribunal, the decision shall contain the signatures of all members.] Each decision shall also indicate the dates of hearing and [decision] **mailing**.

[(d)](c) Every decision of an appeal tribunal shall, immediately upon issuance, be transmitted to the Executive Secretary of the Board of Review, who shall present it to the Board of Review for consideration. The Board shall forthwith determine whether or not the decision shall be allowed to stand. The Board may, by majority vote, set aside any decision of an appeal tribunal and may either remand the case to **the same** or another appeal tribunal for new hearing and decision or withdraw the case to itself. A case so withdrawn may be decided by the Board on the basis of the appeal tribunal record or may be remanded to the same or another appeal tribunal for the taking of evidence upon which the Board may act. The Board of Review may also, if it so desires, hold a new hearing itself in any such case.

[(e)](d) Whenever an appeal is scheduled for a hearing before an appeals examiner and such appeal results in an order of dismissal for nonappearance of the appellant, the chief appeals examiner shall, upon application made by such appellant, within six months after the making of such order or dismissal, and for good cause shown, set aside the order of dismissal and shall reschedule such cause of hearing in the usual manner.

12:20-4.3 Presentation of appeals

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

[(h) Where one party appeals timely to the Board of Review from a decision of an appeal tribunal, and the Board of Review, without

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hearing, affirms the decision of the appeal tribunal on the record, no other party shall have a right to be heard on the issues unless such other party had also filed a timely appeal from the decision of the appeal tribunal.]

[(i)](h) Any party, including the appellant whose appeal resulted in any affirmation of the appeal tribunal decision on the record may by the appeal tribunal, may apply for reopening of the Board's decision. If such application is granted all parties will be notified [of the ensuing hearing] **if a new hearing is scheduled.**

12:20-4.5 Hearing appeals on own motion

(a) Within the legal time limit for appeal following a decision by an appeal tribunal and in the absence of the filing by any of the parties to the decision of the appeal tribunal of a notice of appeal, the Board of Review, on its own motion, may withdraw such decision to itself and may either decide the case on the record below or may **remand the decision to the appeal tribunal or may schedule a hearing before the Board of Review** or order the parties to appear before it for a hearing on the claim or any issue involved therein.

(b) (No change.)

12:20-5.1 Issuance of subpoenas

Subpoenas to compel the attendance of witnesses and the production of records for any hearing on an appeal may be directed to be issued by a member of the Board of Review in cases appealed to the Board of Review, or by the [chairman of an] appeal tribunal, in cases appealed to an appeal tribunal, only upon the showing of the necessity therefor by the party applying for the issuance for such subpoena.

12:20-5.4 Representation

(a) [Any individual may appear for himself in] **In any proceeding[s] before an appeal tribunal or before the Board of Review, the claimant or employer may appear pro se or employ an attorney or a nonattorney to represent him.**

[(b) Appearances for and on behalf of interest parties other than the division at formal hearings before the appeal tribunals and the Board of Review shall be limited to accredited members of the New Jersey bar and the third-year law students or graduates of approved law schools who are participating in a program supervised by a law school or legal aid of office and that has been approved by the New Jersey Supreme Court. This subsection, however, shall not apply to informal hearings, conferences or proceedings not subject to judicial review.]

[(c)](b) In any proceeding on an appeal before an appeal tribunal or the Board of Review, all fees for persons representing claimants [in accordance with subsection (b) of this section] shall be approved by the Board of Review.

[(d)](c) The amount of fees awarded to counsel shall be discretionary with the Board of Review.

[(e)](d) The Board of Review or any appeal tribunal, in its discretion, may refuse to allow to appear before it any person who misconducts himself at a hearing or who intentionally or repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey, the rules and regulations of the division, or the rules of the Board of Review.

(a)

**DIVISION OF EMPLOYMENT AND TRAINING
Job Training Partnership Act and New Jersey Jobs
Training Act Non-Criminal Complaint/Grievance,
Hearing and Review Procedures at the Employer,
SDA, State and Federal Level**

Proposed Amendments: N.J.A.C. 12:41

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 29 U.S.C.A. §1554

20, CFR §629.51 et seq., and N.J.S.A. 34:15B-26.

Proposal Number: PRN 1989-285.

Submit comments by July 5, 1989 to:

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

The agency proposal follows:

Summary

Effective January 17, 1989, the Department of Labor (Department) adopted new rules concerning Job Training Partnership Act Non-Criminal Complaint/Grievance, Hearing and Review Procedures at the Employer, Service Delivery Area, State and Federal Level (see 21 N.J.R. 168(a)).

Upon further consideration of the adopted new rules, the Department has determined that the procedures for obtaining a hearing under the New Jersey Jobs Training Act (NJJTA), N.J.S.A. 34:15B-11 et seq., are not clearly set forth. Under the current hearing procedures, the final review level is the Secretary of Labor, United States Department of Labor. The Federal review level would not be applicable to complainants under the New Jersey Jobs Training Act since a Federal agency would not have jurisdiction over a complaint arising under State law. The appropriate procedure to hear an administrative complaint arising under State law would be the one established pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Consequently, in order to clearly set forth the procedures for complaints arising under the New Jersey Jobs Training Act, the Department proposes amendments to the current hearing procedures.

The title, purpose, scope, definitions and grievance and hearing procedures at the employer and service delivery area have been amended to reflect the recognition that complaints may arise under the New Jersey Jobs Training Act. Specifically, N.J.A.C. 12:41-1.6(b)7, 1.7(f) and 1.8(f) have been amended to reflect that complaints arising under the New Jersey Jobs Training Act are appealable pursuant to the Administrative Procedure Act while complaints arising under the Job Training Partnership Act (JTPA) are appealable to the Secretary of Labor, United States Department of Labor.

Social Impact

The amendments will benefit JTPA and NJJTA participants who are aggrieved by their employers as they provide JTPA and NJJTA participants with procedures that can be used to address grievances. These amendments similarly benefit any other interested person, organization or agency who challenges the legality of State, SDA grant recipient or other subrecipient action under the JTPA and/or NJJTA.

The amendments will benefit employers, SDAs and the Department of Labor (Department) as they provide standards for conducting the required hearings and reviews under the JTPA and NJJTA.

Economic Impact

The amendments will benefit employers, SDAs and the State as they set forth standard procedures to be followed. Standard procedures will eliminate confusion concerning hearing and review procedures and result in greater efficiency at all levels.

Regulatory Flexibility Statement

Under N.J.A.C. 12:41-1.2(b), complaints under the NJJTA may be instituted by certain employers, some of whom may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No reporting, record keeping or compliance requirements are imposed on such businesses by these amendments, which provide clarification to the in-place JTPA and NJJTA hearing and review procedures.

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

CHAPTER 41

DIVISION OF EMPLOYMENT AND TRAINING

SUBCHAPTER 1. JOB TRAINING PARTNERSHIP ACT (JTPA) AND NEW JERSEY JOBS TRAINING ACT (NJJTA): NON-CRIMINAL COMPLAINT/GRIEVANCE, HEARING AND REVIEW PROCEDURES AT EMPLOYER, SDA, STATE AND FEDERAL LEVEL

12:41-1.1 Purpose

(a) The purpose of this subchapter is to set forth the grievance, hearing and review procedures required under the Job Training Partnership Act (JTPA) at 29 U.S.C.A. §1554 and the regulations that implement the JTPA at 20 CFR §629.51 et seq.

(b) **This subchapter also sets forth the grievance, hearing and review procedures for the New Jersey Jobs Training Act (NJJTA) as required by the Commissioner pursuant to N.J.S.A. 34:15B-26.**

12:41-1.2 Scope

(a) Employers of JTPA and/or NJJTA participants shall follow the grievance and hearing requirements set forth at N.J.A.C. 12:41-1.5. The employer grievance and hearing procedures shall apply to any JTPA and/or NJJTA participant aggrieved by his or her employer.

(b) Each SDA shall follow, at a minimum, the grievance and hearing requirements set forth at N.J.A.C. 12:41-1.6. The SDA grievance and hearing procedures shall apply to the following:

1. JTPA and/or NJJTA participant appeals from decisions at the employer level;
2. JTPA and/or NJJTA participant complaints;
3. Subgrantee complaints (schools; and employers with on-the-job training contracts; and consultants); and
4. Complaints from other interested persons.

(c) The State review procedures set forth at N.J.A.C. 12:41-1.7 shall apply to the following:

1. JTPA and/or NJJTA participant appeals from decisions at the SDA level;
2. Subgrantee appeals from decisions at the SDA level; and
3. Appeals by other interested persons from decisions at the SDA level.

(d)-(f) (No change.)

12:41-1.3 Definitions

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

...
 "Grantee/contractor/subrecipient" means any person or government department, agency or establishment (private-for-profit/non-profit) that receives Federal JTPA and/or NJJTA funds to carry out JTPA and/or NJJTA programs through a State or local government but does not include an individual who is a beneficiary of such a program.

"NJJTA" means New Jersey Jobs Training Act, N.J.S.A. 34:15B-11 et seq.

"Participant" means any individual who has been determined eligible for participation upon intake, and has started receiving employment, training, or services (except post-termination services) funded under the JTPA and/or NJJTA, following intake. Individuals who receive only outreach and/or intake and assessment services or postprogram followup are excluded.

...
 "SDA grant recipient" means the entity that receives JTPA and/or NJJTA funds for a SDA directly from the State.

12:41-1.4 (No change.)

12:41-1.5 Grievance and hearing procedures at the employer level

(a) Each employer, including private-for-profit employers under the JTPA and/or NJJTA, shall maintain a grievance and hearing

procedure relating to the terms and conditions of employment available to its participants.

1. (No change.)

(b) (No change.)

12:41-1.6 Grievance and hearing procedures at the SDA level

(a) Each SDA shall establish and maintain grievance and hearing procedures for grievances or complaints about its programs and activities from participants, subgrantees, subcontractors and other interested persons. The procedures shall include the resolution of complaints alleging a violation of the JTPA and/or NJJTA, regulations, grant or other agreements under the JTPA and/or NJJTA.

(b) The grievance and hearing procedures shall contain, at a minimum, the following requirements:

1. Upon enrollment into a JTPA and/or NJJTA program, the SDA shall provide participants with a written description of the grievance procedures which shall include the requirements set forth in (b) 4 through 7 below. The SDA shall also provide subcontractors and subgrantees with these procedures no later than the date of execution of the contract between the SDA and the subcontractor.

2. (No change.)

3. The grievance and hearing procedures shall provide that the identity of any person who has furnished information relating to, or assisting in, an investigation of a possible violation of the JTPA and/or NJJTA shall be kept confidential to the extent possible, consistent with a fair determination of the issues.

4-6. (No change.)

7. At a minimum, the SDA shall also provide participants and subcontractors with the following:

i.-xi. (No change.)

xii. Written notice that the complainant has a right to request a review by the Secretary for JTPA complaints and by the Commissioner pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. for NJJTA complaints if the State does not render a decision, and that the Federal review is confined to allegations of violations of law under the JTPA and/or NJJTA; and

xiii. (No change.)

8. (No change.)

12:41-1.7 Review procedures at the State level

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

(c) Upon filing the request for review, the complainant shall simultaneously submit the following:

1.-4. (No change.)

5. If applicable, citations to the provisions of the JTPA and/or NJJTA or other agreements under the Act believed to have been violated;

6.-7. (No change.)

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

(f) If the Director fails to issue a decision at the State level, the complainant or appellant may request a review at the Federal level for JTPA complaints or a hearing pursuant to the Administrative Procedure Act for NJJTA complaints.

12:41-1.8 Hearing procedures at the State level

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

(f) If the Commissioner fails to issue a written decision within 30 days of the hearing, the complainant or respondent may appeal to the Secretary utilizing the procedures set forth in N.J.A.C. 12:41-1.9 for JTPA complaints. For NJJTA complaints, the complainant may request a hearing pursuant to the Administrative Procedure Act.

(g) (No change.)

12:41-1.9 (No change.)

12:41-1.10 Protection of complainants

(a) [Pursuant to 29 U.S.C.A. §1574(g), no] No recipient shall discriminate against or unlawfully deny JTPA and/or NJJTA benefits to any participant or individual connected with the administration of the program who has filed a complaint or instituted or caused to be instituted any proceeding related to the JTPA and/or NJJTA, or has testified or is about to testify in any such proceeding or investigation under or related to the JTPA and/or NJJTA.

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(b) The Secretary or Commissioner shall, within 30 days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both.

(a)

**DIVISION OF WORKPLACE STANDARDS
Safety and Health Standards for Public Employees
Standards for Fire Fighters**

**Proposed New Rules: 12:100-10
Proposed Amendments: N.J.A.C. 12:100-4.2 and 17
Public Hearing**

Take notice that the Department of Labor will hold a public hearing for all interested parties to express their opinions on proposed new rules N.J.A.C. 12:100-10 and proposed amendments to N.J.A.C. 12:100-4.2 and 17 concerning Safety and Health Standards for Public Employees, Standards for Fire Fighters. The hearing will be held at:

Thursday, June 22, 1989 at 10:00 A.M.
Mary Roebing Building
Room 218
State & Warren Streets
Trenton, New Jersey 08625

The proposed new rule appeared in the May 1, 1989 New Jersey Register at 21 N.J.R. 1090(a).

Any individual desiring to testify must submit advance notice of this intention either in writing or by telephone to Alfred B. Vuocolo, Jr., Chief Legal Officer, New Jersey Department of Labor, CN 110, Trenton, New Jersey 08625-0110, (609) 984-9413.

A copy of written testimony must be submitted at least one week prior to the hearing to Mr. Vuocolo at the above address.

Oral testimony will be limited to a maximum of 10 minutes, if time permits.

Contact John Brennan at (609) 292-7614 if further information concerning the hearing is needed.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Enforcement Service

Proposed Repeals: N.J.A.C. 13:20-1

Authorized By: Glenn R. Paulsen, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, and P.L. 1983, c.403, §§1 and 45.

Proposal Number: PRN 1989-279.

Submit comments by July 5, 1989 to:

Glenn R. Paulsen, Director
Division of Motor Vehicles
25 South Montgomery Street
7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to repeal its enforcement officer rules, which contain disciplinary rules for Motor Vehicle Inspectors, since such positions no longer exist within the Division of Motor Vehicles. P.L. 1983, c.403, §45 repealed N.J.S.A. 39:2-6 to 39:2-9, inclusive, and P.L. 1983, c.403, §1 abolished the positions of chief inspector, deputy chief inspector, inspector and special inspector in the Division of Motor Vehicles. Since the Division of Motor Vehicles' Inspector Force has been statutorily abolished, the need for the enforcement officer rules no longer exists.

Social Impact

The proposed repeals will have a beneficial social impact in that the repeal of the Division of Motor Vehicles' enforcement officer rules will

reduce the potential for misunderstanding by the public of Division procedures.

Economic Impact

The proposed repeals have no economic impact on the State of New Jersey or its citizens.

Regulatory Flexibility Statement

The proposed repeals do not impose reporting, recordkeeping or other compliance requirements upon small businesses, as rules governing statutorily-abolished positions are simply being deleted. A regulatory flexibility analysis is, therefore, not required.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:20-1.

(c)

BOARD OF DENTISTRY

Resumption of Active Practice by Inactive Dental Hygienists

Proposed New Rule: N.J.A.C. 13:30-2.19

Authorized By: President, Board of Dentistry, Samuel Furman, D.D.S.

Authority: N.J.S.A. 45:6-3.

Proposal Number: PRN 1989-280.

Submit comments by July 5, 1989 to:

William Gutman, Executive Director
Board of Dentistry, Room 321
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Dentistry is proposing a new rule, N.J.A.C. 13:30-2.19, which specifies the minimum standards which must be met by dental hygienists who wish to return to active practice after having been on inactive status for five years or more. These requirements include either the satisfactory completion of a Board approved clinical refresher course provided by an institution accredited by the American Dental Association Commission on Dental Accreditation or a passing score on the Northeast Regional Board (N.E.R.B.) exam in dental hygiene. An individual who has not practiced for more than 10 years must pass the N.E.R.B. exam; the refresher course is not an option. In addition, the individual must pay the prescribed registration fee for active registration. If the individual is licensed and practicing in another state, a certification must be supplied by that state providing that the applicant's license is in good standing.

Social Impact

The effect of the proposed rule is to assure that the dental hygienists' skills are up to date. This is of clear benefit to the public since the hygienists' skills, recently refreshed in a Board-approved course or in preparation for the N.E.R.B. exam, must be demonstrated before a licensee who has been inactive for a number of years can resume practice.

Economic Impact

The proposed new rule affects all dental hygienists who have been in inactive status for a number of years. This rule will impose a biennial registration fee in order to obtain an active certificate of registration, as well as applicable examination and course fees, and out-of-State certification fees, if necessary.

Regulatory Flexibility Statement

The proposed new rule which applies only to dental hygienists does not affect small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Dental hygienists are not businesses themselves, but individuals who may only perform duties under the direct supervision of a licensed dentist, pursuant to N.J.A.C. 13:30-2.10. A regulatory flexibility analysis is, therefore, not required.

Full text of the proposal follows:

13:30-2.19 Resumption of active practice by inactive dental hygienists

(a) The minimum standards which must be met by applicants who have been on the inactive status list for five or more years and who want to resume the practice of dental hygiene are as follows:

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Interested Persons see Inside Front Cover

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1. The individual must apply to the Board for a current biennial certificate of registration and pay the prescribed registration fee.
2. An individual licensed and practicing in another state must furnish the Board with a certification from the other state that the license to practice dental hygiene is in good standing.
3. An individual who has not practiced for five or more years must:
 - i. Pass the Northeast Regional Board (N.E.R.B.) examination in dental hygiene; or
 - ii. Complete satisfactorily a Board approved clinical refresher course provided by an institution accredited by the American Dental Association Commission on Dental Accreditation.
4. An individual who has not practiced for more than 10 years must pass the N.E.R.B. examination in dental hygiene.

(a)

BOARD OF VETERINARY MEDICAL EXAMINERS
State Board of Veterinary Medical Examiners Rules
Proposed Readoption: N.J.A.C. 13:44

Authorized By: Board of Veterinary Medical Examiners,
 Michael J. Hennessy, D.V.M., President.
 Authority: N.J.S.A. 45:16-3.
 Proposal Number: PRN 1989-281.

Submit comments by July 5, 1989 to:
 Maurice W. McQuade, Executive Director
 Board of Veterinary Medical Examiners, Room 513
 1100 Raymond Boulevard
 Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:44 is scheduled to expire on August 20, 1989. The current rules have been reviewed pursuant to the Executive Order and the Board has found them to continue to be reasonable, necessary and effective for the purposes for which they were originally promulgated. Therefore, there will be no changes to the current text.

The current rules proposed for re-adoption have had an advantageous impact on the regulation and conduct of the veterinary medicine profession by enabling the Board to have in place procedures which serve and protect the public's best interests. This chapter contains six subchapters: subchapter 1 describes the procedures for licensure; subchapter 2 describes the general rules of practice; subchapter 4 contains a schedule which outlines board fees; subchapter 5 describes the methods of operation of the State Board of Veterinary Medical Examiners; and subchapters 3 and 6 are reserved.

Social Impact

The rules proposed for re-adoption provide various procedures for the orderly administration of the Board's operations and the conduct of examinations in order to ensure that truly qualified individuals are licensed in veterinary medicine.

Economic Impact

The re-adoption of the rules will have no unfavorable economic impact upon candidates or licensees, since the fees have been the same for several years. The fees set forth in N.J.A.C. 13:44-4.1 are reasonable. Due to the fact that funding of the Board's operation is partially attained by the fee structure now in place, failure to re-adopt would place the Board's operation in jeopardy.

Regulatory Flexibility Analysis

The Board of Veterinary Medical Examiners currently licenses 1,766 (1,270 active, 496 inactive) individuals. The specific number of small businesses is impossible to determine, since the Board licenses individuals and not entities. The rules proposed for re-adoption do contain reporting (N.J.A.C. 13:44-2.15), recordkeeping (N.J.A.C. 13:44-2.12) and compliance requirements relating to licensure and practice which may affect licensees who practice as small businesses. Because these rules seek to promote and protect the public health and welfare through regulation of practitioners of veterinary medicine, no differentiation in compliance based upon business size is provided.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:44.

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(b)

TRANSPORTATION OPERATIONS

Speed Limits

Routes N.J. 29 in Hunterdon County and U.S. 206 in Mercer County

Proposed Amendment: N.J.A.C. 16:28-1.72 and 1.77

Authorized By: John F. Dunn Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1989-182.

Submit comments by July 5, 1989 to:
 Charles L. Meyers
 Administrative Practice Officer
 Department of Transportation
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish a "15 miles per hour when flashing" school speed zone along Route N.J. 29 in Stockton Borough, Hunterdon County, and speed limit zones along Route U.S. 206 in Hamilton Township, Mercer County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safety of children when they are clearly visible from the roadway, or while going to or leaving school, during opening or closing hours.

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 a "15 miles per hour when flashing" school speed zone along Route N.J. 29 in Stockton Borough, Hunterdon County, and speed limit zones along Route U.S. 206 in Hamilton Township, Mercer County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.72 and 1.77 based upon the requests from the local government officials and the traffic investigations.

Social Impact

The proposed amendments will establish a "15 miles per hour when flashing" school speed zone along Route N.J. 29 in Stockton Borough, Hunterdon County, and speed limit zones along Route U.S. 206 in Hamilton Township, Mercer County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safety of children when they are clearly visible from the roadway or when 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 "15 miles per hour when flashing" and speed limit zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

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. The amended rules primarily affect the motoring public.

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

16:28-1.72 Route U.S. 206 including U.S. 206 and U.S. 130

(a) The rate of speed designated for the certain parts of Route U.S. 206 described in this subsection, shall be established and adopted as the maximum legal rate of speed.

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1. For both directions of traffic:

i. through ii. (No change.)

iii. In Mercer County:

(I) Hamilton Township:

(A) Zone 1: 45 miles per hour between the northerly end of the bridge over the Crosswicks Creek and Whitehorse Avenue (mileposts 38.45 to 38.88); thence

(B) Zone 2: 35 miles per hour between Whitehorse Avenue and Cedar Lane except with a "25 mph when flashing" school speed zone within the Holy Angels Catholic School zone (mileposts 38.88 to 40.71); thence

[(b) The rate of speed designated for the certain parts of State highway Route U.S. 206 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. 35 miles per hour from Cedar Lane to Park Avenue in Hamilton Township; thence

ii. 40 miles per hour to the Routes U.S. 206-37 and White Horse Avenue traffic circle; thence

iii. 45 miles per hour to the junction with Route U.S. 130-206 in Bordentown Township;

v. The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.]

Redesignate (c) through (e) as (b) through (d) (No change in text.)

16:28-1.77 Route 29

(a) The rate of speed for the certain parts of State highway Route 29 described in this section shall be established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i. through xi. (No change.)

xii. Zone 12: 25 mph in Stockton Borough to Route 523 (milepost 19.2); thence

(1) "15 mph when flashing" school speed zone within the Stockton Elementary School Zone.

xiii. through xiv. (No change.)

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF AVIATION

Airport Improvement Safety Aid

Proposed New Rules: N.J.A.C. 16:56

Authorized By: Robert A. Innocenzi, Deputy Commissioner,
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29, 6:1-44 and the
Airport Safety Act of 1983, N.J.S.A. 6:1-89 et seq.

Proposal Number: PRN 1989-265.

Submit comments by July 5, 1989 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66 (1978), N.J.A.C. 16:56, Airport Safety Improvement Aid, expired on June 4, 1989. The Office of Aviation has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose of which they were originally promulgated. Pursuant to N.J.A.C. 1:30-4.4, the Department is proposing the adoption of this chapter, as it currently appears in the New Jersey Administrative Code, as new rules.

These rules were proposed to implement provisions and purposes of the Airport Safety Act of 1983, N.J.S.A. 6:1-89 et seq., approved July 11, 1983. The Act recognizes that the State has an interest in the safety and viability of its air transportation resources. The Legislature mandated the creation of an Airport Safety Fund, which is a fund created by revenues derived from aviation fuel taxes and fees, and which is disbursed

back to the aviation industry for the improvement of air safety and the air transportation infrastructure.

The provisions of this chapter make available State grants to assist in matching Federal funds, grants or loans to publicly owned and private unrestricted public use airports for safety projects, and grants or loans to publicly owned airports or counties or municipalities to acquire airports and lands or rights in lands needed for airports. Safeguards are incorporated in the rules to insure the protection of monies disbursed from the fund.

The rules are divided into subchapters, summarized as follows:

N.J.A.C. 16:56-1 provides definitions for the words and terms used within the chapter.

N.J.A.C. 16:56-2 outlines the purpose and general policy concerning the rules.

N.J.A.C. 16:56-3 outlines the airports and projects which meet the eligibility requirements of the Act.

N.J.A.C. 16:56-4 provides the classification of State Aid.

N.J.A.C. 16:56-5 establishes the procedure to be followed in applying for the receipt of State grants for matching Federal funds.

N.J.A.C. 16:56-6 provides guidelines in the application process for receipt of State Airport Safety Improvement loans.

N.J.A.C. 16:56-7 provides guidelines to be followed in applying for Airport Safety improvement grants.

N.J.A.C. 16:56-8 provides guidelines to be followed in applying for emergency or special State Airport Safety Aid.

N.J.A.C. 16:56-9 establishes the deadlines for application for State Aid.

N.J.A.C. 16:56-10 outlines the selection process and criteria used in the granting of funds for Airport Safety Improvement projects.

N.J.A.C. 16:56-11 depicts the Commissioner's power in the selection of airport aid projects.

N.J.A.C. 16:56-12 provides for the establishment of standards, methods, techniques, designs and dimensional criteria acceptable in State funded airport aid projects.

N.J.A.C. 16:56-13 authorizes the Commissioner to specify special conditions or performance criteria other than those outlined in the chapter on a site specific or project specific basis.

N.J.A.C. 16:56-14 provides the criteria and standards in audit and recordkeeping requirements for State funded projects.

N.J.A.C. 16:56-15 establishes the authority to inspect airport aid projects.

N.J.A.C. 16:56-16 outlines the performance requirements for persons receiving State Airport Safety Improvement Aid.

N.J.A.C. 16:56-17 establishes the payment procedure of funds under the airport safety improvement program.

N.J.A.C. 16:56-18 establishes liability and penalties for those failing to meet the conditions or performance criteria under an airport aid project.

N.J.A.C. 16:56-19 provides the listing of the fuels subject to taxation.

Social Impact

The proposed new rules will continue the favorability of the expired rules in the improvement of the economic climate of the State by improved transportation resources. The participation of Safety Fund resources in the affected projects helps to ensure a better coordinated implementation of projects, whereas prior coordination and planning mechanisms were largely voluntary in their design. An impact will be felt by the incremental improvement in mobility resources available to the citizens of the State.

Economic Impact

These rules will continue to have a highly favorable economic impact, in that they will enhance air safety and qualitative improvements to air transportation facilities. The enhancements strengthen the position of the State to attract and retain enterprises which rely on air transportation and commerce. Direct employment will result as a consequence of the projects stimulated by these rules and the products of these projects will serve as a catalyst for improved movement of economically significant goods and people.

Regulatory Flexibility Analysis

The rules proposed for re-adoption provide for a State aid program to aeronautical facilities for safety improvement. Some of the eligible facilities may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for re-adoption impose reporting requirements in the aid application process, record keeping requirements (see N.J.A.C. 16:54-14) and various compliance requirements for applicants for and recipients of aid. The costs

of compliance with these requirements will vary for each applicant/recipient based upon the entity's internal resources and the nature of the project for which aid is sought. In order to comply with the intent of the Airport Safety Act of 1983; to allow for the most safety-effective use of funds available as aid; and pursuant to the mandates of the Single Audit Policy, which requires an annual audit of all grant recipients, the Department is unable to provide differing requirements based upon business size.

Full text of the proposed re Adoption appears in the New Jersey Administrative Code at N.J.A.C. 16:56.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

State Health Benefits Program Effective Dates; Coverage

Proposed Repeals and New Rules: N.J.A.C. 17:9-2.6 and 2.7

Authorized By: State Health Benefits Commission,

Patricia Mastrocola, Acting Secretary.

Authority: N.J.S.A. 52:14-17.27.

Proposal Number: PRN 1989-268.

Submit comments by July 5, 1989 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed repeals and new rules will permit all participants within the State Health Benefits Program to have coverage immediately following two months of employment. The current rules allow bi-weekly employees to have coverage sooner than monthly employees. Under the current rules, some monthly employees must wait until 85 days have passed before coverage is effective. These new rules will allow all employees to obtain coverage within a two month period.

Social Impact

These proposed new rules will benefit all current and future participants within the State Health Benefits Program by allowing coverage under the Program in a shorter period of time.

Economic Impact

Although the proposed new rules may result in some increased costs within the State Health Benefits Program, such costs are not so significant as to have an adverse effect on the Program. Individuals affected by the sooner coverage allowance will benefit through the presence of such coverage at an earlier time than permitted at present.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses. Since the rules of the Division of Pensions only impact upon public employers and/or employees, the new rules will not have any adverse effect upon small business or private industry in general.

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

17:9-2.6 Effective date; State employees and dependents

[(a) In the case of employees of the State, coverage shall become effective for the employee on the first day of the second coverage period following the payroll period in which the first charge payment shall be made by the State on behalf of any employee enrolled in a sub-group which reports on a bi-weekly basis, or on the first day of the month next following the month in which the first charge payment shall be made by the State on behalf of any employee

enrolled in a sub-group which reports on a monthly basis, and for whom an enrollment form has been filed with the Division of Pensions.

(b) For any dependent whom an employee shall have enrolled for coverage, coverage shall become effective on the first day of the second coverage period following the payroll period in respect to which the charge payment shall be made by the State on behalf of such dependents in the case of any dependent enrolled in a sub-group which reports on a bi-weekly basis, or on the first day of the month next following the month in which the first charge payment shall be made by the State on behalf of any dependent enrolled in a sub-group which reports on a monthly basis, or the first day of the second coverage period or the month next following the month in which a deduction is made from the employee's salary if all or any part of such charge for dependents is required by the State, and for whom an enrollment form has been filed with the Division of Pensions.] For State employees and their dependents for whom an enrollment application has been filed with the Division of Pensions, coverage is effective on the first day of the fifth payroll period of employment for a sub-group which reports on a bi-weekly basis, or the first day following the completion of two months of continuous service for a sub-group which reports on a monthly basis. If employee deductions are required for HMO coverage, deductions begin on the first day of the third payroll period of employment for bi-weekly sub-groups and approximately one month prior to the effective date of coverage for monthly sub-groups.

17:9-2.7 Effective date; local employees and dependents

[(a) In the case of employees of a local employer, coverage shall become effective for the employee on the first day of the month next following the month in which the first charge payment shall be made by the local employer on behalf of any employee for whom an enrollment form has been filed with the Division of Pensions.

(b) For any dependent whom an employee shall have enrolled for coverage, coverage shall become effective on the first day of the month next following the month in which the first deduction is made from the employee's salary on the payroll, if all or any part of such charge for dependents is required by the local employer or the first charge payment shall be made by the local employer on behalf of any employee's dependents for whom an enrollment form has been filed with the Division of Pensions.] For local employees and their dependents for whom an enrollment application has been filed with the Division of Pensions, coverage is effective on the first day following the completion of two months of continuous service. If employee deductions are required for HMO or dependent coverage, deductions begin approximately one month prior to the effective date of coverage.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Corporation Business Tax Refunds

Proposed Amendments: N.J.A.C. 18:7-11.8 and 13.3 Proposed Repeal and New Rule: N.J.A.C. 18:7-13.8

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1989-284.

Submit comments by July 5, 1989 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, New Jersey 08646

The agency proposal follows:

Summary

Refund procedures under the Corporation Business Tax Act (1945), N.J.S.A. 54:10A-1 et seq. are governed by the State Tax Uniform

Procedure Law, N.J.S.A. 54:49-14. In addition, the courts have decided a number of cases which cast light upon the meaning of this provision, including *Vicoa, Inc. v. Director, Div. of Taxation*, 166 N.J. Super. 496 (App. Div. 1979), *Olin Mathieson Chemical Corp. v. Kingsley*, 119 N.J. Super. 102 (App. Div. 1972), *Bristol-Myers Co. v. Taxation Division Director*, 3 N.J. Tax 451 (Tax Ct. 1981) *aff'd* 9 N.J. Tax 88 (App. Div. 1986) *certif. den.* 107 N.J. 121 (1987), *U.S. Home Corp., Inc. v. Director, Division of Taxation*, Docket No. 11-11-0368-87CB, and *Peoples Express Company, Inc., v. Director, Division of Taxation*, Docket No. 07-14-1035-88CB. The Attorney General has also supplied advice on this subject.

The purpose of these proposed amendments and new rule is to set forth for the general public, and taxpayers and their accountants and advisers, the manner in which the refund procedure is administered in light of the statutory and judicial authority. The corporation business tax is a self-assessing tax. If a taxpayer discovers an error in its return, it has two years to claim a refund. The purpose of the two year limitation in the refund statute is to provide a point in time after which the State need not refund its tax revenues and is justified by the need for predictability of revenues by public agencies. Tax matter filing deadlines are jurisdictional and, if not complied with, an otherwise eligible taxpayer waives its entitlement to any refund. *Pantasote, Inc. v. Director, Division of Taxation*, 8 N.J. Tax 160 (Tax Ct. 1985).

The statutory language suggests that two conditions must be met before the two year statute of limitations can commence to run: there must be an assessment or an additional assessment and the tax must be paid. A tax is paid when a taxpayer remits its check or other form of tax payment to the Division. In the case of a self-assessed tax, the assessment is made when a taxpayer files its return for the year or makes an additional self-assessment by filing an amended return.

In general, the amendments and new rule codify the applicable law and practice with respect to time limits for refunds. They also supply examples to illustrate the application of the refund rules and the interaction of refund claims with disputed assessments.

N.J.A.C. 18:7-13.3 is amended to bring its terminology and content into conformity with amendments to N.J.S.A. 54:10A-19.2.

N.J.A.C. 18:7-11.8 is amended to update the manner in which changes to Federal taxable income are made in certain circumstances and provides for corresponding treatment of the allocation factor by taxpayers and the Division of Taxation. Provisions relating to other changes, such as renegotiation of government contracts, for example, which are deleted from the rule as amended, continue to be found in the statutory law at N.J.S.A. 54:10A-13.

Social Impact

The proposed amendments and new rule will have a constructive social impact in that they clearly set forth the manner in which the taxpayer would file a timely application for refund. Adoption of these amendments and new rule will benefit the public by providing a systematic statement and clarification of existing law found in decisional and statutory law.

Economic Impact

The proposed amendments and new rule eliminate points of possible confusion to taxpayers and their advisers by compiling applicable legal principles in one location so that references to case law will be required less frequently. Thus, the cost to taxpayers of compliance with applicable law on the subject will be diminished since the source is more readily available and is more clear. Since the Division of Taxation has already implemented the policy contained in this proposed rulemaking, no revenue impact to the State will result from the adoption of the amendments and rule.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these amendments and new rule do not impose mandatory reporting, recordkeeping or other compliance requirements on small businesses. Application for a refund of tax is a voluntary procedure applicable to all taxpayers regardless of size. The amendments and new rule are simply a codification of existing law and practice for the convenience of taxpayers and do not impose new, different, or additional burdens on taxpayers or their advisers.

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

18:7-11.8 Time to report change or correction in Federal net income

(a) [The report of a change or correction in Federal taxable income or the results of a renegotiation of a contract or subcontract with the United States resulting in a change in Federal taxable income, or a computation or recomputation of the Federal tax as a result of a recovery of war loss, must be made to the Division of Taxation.

1. Within 90 days after the final determination of such change or renegotiation or recomputation of tax; or

2. On its next return; or

3. As otherwise required by the Director.] **The report of change or correction in Federal taxable income as the result of an Internal Revenue Service audit must be reported to the Division of Taxation within 90 days of its issuance.**

(b) (No change.)

(c) After the filing of a report of change or correction [or an amended return] **on an IRA-100**, the Director may, within the time prescribed by law, [reaudit] **audit** the return and [recompute] **compute** and [reassess] **assess** the tax **based upon the issue or issues set forth in the revenue agent report**, but [without changing] **neither the Director nor the taxpayer may change** the allocation of entire net income and entire net worth within and without New Jersey as theretofore computed.

18:7-13.3 Appeal [; stay of enforcement]

(a) Any aggrieved taxpayer may, within [three months] **90 days** after any **final** decision, order, finding, assessment or action of the Director made pursuant to the provisions of the Act, appeal **therefrom** to the [Division of Tax Appeals by filing a petition of appeal with that Division in the manner and form prescribed, and on giving security approved by the Director of the Division of Taxation, conditioned to pay the tax as levied (if it remains unpaid) with interest and cost] **Tax Court in accordance with pertinent provisions of the State Tax Uniform Procedure Law** (see N.J.S.A. 54:51A-13 et seq.).

[(b) No appeal shall stay the collection of any tax or its enforcement by entry as a judgement, unless by the order of the Division of Tax Appeals after security approved by that Division has been furnished to the Director.

(c) The judgement or order of the Division of Tax Appeals respecting any matter arising under the provisions of the Act may be reviewed by a proceeding in lieu of prerogative writ in the same manner as other judgements of the Division.]

18:7-13.8 Claims for refund; when allowed

(a) [Any taxpayer at any time within two years after the payment of an original or additional tax assessed against it may file with the Director a claim for refund in the form of a statement under oath setting forth, in detail, the grounds therefor and outlining, in detail, all pertinent circumstances relating thereto.] **The two year statute of limitations period for filing a claim for refund commences to run from the later of the payment of tax for the taxable year or from the filing of the final return for the taxable year. The due date of the return is deemed the payment date if filing and payment are made prior to the due date. A claim for refund is considered filed on the date it is received by the Division of Taxation** (see N.J.A.C. 18:7-11.7(b)).

(b) [But no claim for refund shall be required or permitted to be filed with respect to a tax paid, after protest has been filed with the Director or after proceedings on appeal have been commenced, until such protest or appeal has been finally determined.] **The two year period for filing a claim for refund relating to an amended return ("additional self-assessment") commences on the later of payment of the additional self-assessment or the filing of an amended return reflecting the additional self-assessment.**

(c) **For purposes of the application of this rule only:**

1. **A Tentative Return and Application for Extension of Time to File New Jersey Corporation Business Tax Return (CBT-200T) and an installment voucher are not returns;**

2. **A Corporation Business Tax Return (CBT-100) is a return; and**

3. **A Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA-100) is an amended return.**

(d) **Where a taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service pursuant to**

PROPOSALS

Interested Persons see Inside Front Cover

OTHER AGENCIES

N.J.A.C. 18:7-11.8(a) that results in a diminution of entire net income for any year, the two year limitation period for filing a claim for refund based on that diminution for the return year at issue begins on the date that the timely filed Form IRA-100 is filed with the Division. A copy of refund Form A-3730 may accompany such form. Unless the IRA-100 is filed in timely fashion under N.J.A.C. 18:7-11.8(a), the refund claim will not be considered.

(e) Where a taxpayer files an amended return with the United States Treasury Department (Form 1120X) and files an amended return with the State of New Jersey within 90 days pursuant to N.J.A.C. 18:7-11.8(b), to be considered a timely refund claim such claim must be filed with the Division of Taxation within two years of the later of filing or payment of the original return self assessment.

(f) Where the Director makes an assessment and taxpayer properly protests the assessment pursuant to N.J.A.C. 18:7-13.2, taxpayer may establish that it made an erroneous overpayment based upon a different issue for a period covered by the assessment. The Director upon audit and verification will credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of the deficiency assessment pursuant to N.J.S.A. 54:49-16. After a final determination has been issued, taxpayer has 90 days in which to appeal to the Tax Court if it is dissatisfied with the determination. The offset procedure is not considered a refund action pursuant to N.J.S.A. 54:49-14.

(g) Where the Director assesses additional tax by way of a deficiency assessment or final determination and the taxpayer pays the deficiency, the taxpayer may not convert an assessment proceeding into a refund action by filing a refund claim within two years of the date of the payment of the deficiency assessment or final determination. In such case, taxpayer's remedy is to contest the assessment in a timely fashion by filing a complaint with the New Jersey Tax Court within 90 days of the action of the Director to be reviewed. This is in accordance with N.J.S.A. 54:10A-19.2, N.J.S.A. 54:51A-14a. and R.8:4-1(b).

(h) If taxpayer believes that it is entitled to relief pursuant to N.J.S.A. 54:10A-8, and it believes that a remedy based upon the rationale explicitly addressed by N.J.A.C. 18:7-8.3(b) is not adequate, such relief request is deemed a refund claim. The taxpayer is required to file its return and pay its tax in accordance with the statute, plainly noting on the filed return its claim for "Section 8 relief" and supplying supporting materials in accordance with N.J.A.C. 18:7-10.1. In addition, a copy of form A-3730, Claim for Refund, must accompany the return as filed. This application constitutes a refund claim and is subject in any event to the same period of limitations as any other claim for refund.

(i) Unless these rules provide otherwise, the claim for refund required to be filed with the Director is made on Form A-3730 (Claim for Refund) and is addressed to:

Audit Adjustment Branch
50 Barrack Street, CN 019
Trenton, NJ 08646-0019

Example 1: Taxpayer is delinquent in filing its final return. However, the installment payments of estimated tax were sufficient to pay the tax appearing on the return. If taxpayer subsequently learns that the amount shown on the delinquent final return as filed was in excess of its true liability, a claim for refund of such overpayment is considered timely if filed within two years of the filing of the delinquent CBT-100. A penalty for late filing of the CBT-100 may be imposed under N.J.S.A. 54:49-4.

Example 2: One year after filing a CBT-100 and paying the tax liability shown thereon, a taxpayer discovers an error in its payroll figures and thereupon files a Form 1120X with the Internal Revenue Service reflecting a larger expense deduction. Within 90 days of filing the Form 1120X, taxpayer files an amended CBT-100 claiming a refund for an overpayment of tax. Upon audit and verification the refund will be granted. If the refund application had been received after the two year limitation period had expired, it would not have been granted even if the taxpayer had complied with the proper 90 day notification period and even if the time for filing an 1120X Federally had not elapsed. The two year statute is controlling. The application, however, will remain on file and be applicable to any offset procedures pursuant to N.J.S.A. 54:49-16.

Example 3: Taxpayer receives a deficiency assessment with which it disagrees. It does not contest the assessment with the Division or in Tax Court. It pays the assessment and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the State. It files a claim for refund within two years of having made its payment of the assessment. Since it did not contest its assessment in a timely fashion in accordance with N.J.S.A. 54:10A-19.2, the claim must be rejected. The assessment proceeding is not converted to a refund action by filing a refund claim.

Example 4: Taxpayer did not contest an estimated tax assessment. More than two years after having paid it, the taxpayer concludes that it was erroneous. Subsequently, taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA-100) relating to the same tax year and upon which additional tax is due. Taxpayer may no longer claim a refund of any portion of the tax paid on the estimated tax assessment, nor have such funds applied to the self-assessment arising out of changes by the Internal Revenue Service to its income for that year.

Example 5: Taxpayer files a return in 1980. In 1984 the Director makes an assessment for underpayment of tax. Taxpayer protests within 30 days and an informal hearing is held pursuant to N.J.A.C. 18:7-13.2. At the hearing within the time a deficiency assessment may be made, taxpayer establishes that it made an erroneous overpayment based upon a different issue for a period covered by the assessment. The Director will credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of the deficiency assessment. N.J.S.A. 54:49-16. However, if the offset had exceeded the assessment, no credit for return years not part of the audit period or for a deficiency of another state tax and no refund of the excess amount to the taxpayer is available, since the taxpayer failed to make a timely refund application. After a final determination is issued pursuant to the informal hearing, taxpayer has 90 days in which to appeal the decision to the Tax Court.

OTHER AGENCIES**(a)****PUBLIC EMPLOYMENT RELATIONS COMMISSION****Petitions for Rulemaking by Interested Persons****Proposed New Rule: N.J.A.C. 19:10-6.1**

Authorized By: Public Employment Relations Commission,
James W. Mastriani, Chairman.

Authority: N.J.S.A. 34:13A-5.9, 52:14B-4(f) and N.J.A.C.
1:30-3.6.

Proposal Number: PRN 1989-273.

Submit comments by July 5, 1989 to:

James W. Mastriani, Chairman
Public Employment Relations Commission
CN 429
495 W. State Street
Trenton, NJ 08625-0429

The agency proposal follows:

Summary

N.J.S.A. 52:14B-4(f) entitles interested persons to petition administrative agencies to make, amend or repeal any rule. That section further requires agencies to prescribe the form for the petition and the procedure for the submission, consideration and disposition of the petition (see also N.J.A.C. 1:30-3.6). The Commission proposes this rule to comply with N.J.S.A. 52:14B-4(f).

Social Impact

The proposed new rule is intended to facilitate, for the public, the process of petitioning for a Commission rule and, for the Commission, setting forth the procedures and requirements for both parties. Individuals interested in submitting a petition to the Commission to promulgate, amend or repeal any Commission rule will benefit from this rule, as they shall now have a concise set of guidelines to follow. The Commission will also benefit from this rule as it too shall have a concise

set of guidelines to follow when receiving and filing notice of a petition. Ultimately, this rule will save the interested individuals and the Commission time and confusion, by providing clear instructions for the petition procedure, eliminating the need to rectify petitions submitted or filed inaccurately.

Economic Impact

The proposed rule will not have any economic impact on the Commission or other entities of State government. Consideration of a petition will occur in the normal course of Commission business.

No economic impact is expected on the public, as no costs are foreseen to be involved in the mechanics of filing a petition for rulemaking.

Regulatory Flexibility Statement

The proposed new rule imposes no reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., beyond the practical requirements of petition context set forth at proposal N.J.A.C. 19:10-6.1(b). The preparation and filing of a rulemaking petition are completely voluntary acts which should not cause capital costs to be incurred or professional services engaged by the petitioner. As the petition requirements reflect the minimum required under N.J.A.C. 1:30-3.6, no requirement differentiation due to a business petitioner's size is possible or necessary.

Full text of the proposal follows:

SUBCHAPTER 6 RULEMAKING PETITIONS FILED BY INTERESTED PERSONS

19:10-6.1 Rulemaking petition procedures

(a) Any interested person may petition the Commission to make, amend or repeal any rule. The petition must be written and signed by the petitioner.

(b) The petition shall state the following clearly and concisely:

1. The name of the person making the request;
2. That person's interest in the request, including any relevant organizational affiliation;
3. The substance or nature of the rulemaking requested;
4. The proposed text of the rule;
5. The reasons for the request;
6. The statutory authority for the Commission to take the requested action; and
7. Any existing State or Federal law or regulation which may be pertinent.

(c) Requests shall be addressed to:

Chairman
Public Employment Relations Commission
CN 429
495 West State Street
Trenton, NJ 08625-0429

(d) Within 15 days of receiving the petition, the Commission shall file with the Office of Administrative Law the notice of petition required by N.J.A.C. 1:30-3.6(a).

(e) The petition shall be provided to the Commission at the next monthly meeting after filing.

(f) Within 30 days of receiving that petition, the Commission shall mail to the petitioner, and file with the Office of Administrative Law for publication, the notice of action on the petition required by N.J.S.A. 52:14B-4(f) and by N.J.A.C. 1:30-3.6(b) and (c).

(a)

CASINO CONTROL COMMISSION Accounting and Internal Controls Licensee's System of Internal Controls Proposed Amendment: N.J.A.C. 19:45-1.3

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary
Authority: N.J.S.A. 5:12-63(c), 99(a) and 99(b).
Proposal Number: PRN 1989-261.

Submit comments by July 5, 1989 to:
Deno R. Marino
Deputy Director—Operations
Casino Control Commission
Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:45-1.3 requires the casino licensee to submit to the Commission and Division a description of its accounting and internal control procedures at least 120 days rather than 90 days before gaming operations commence. Furthermore, the proposed amendment requires the Commission to respond to a revision related to a casino licensee's 99 Submission within 90 days of receipt. If there is no determination or agreement to extend the determination period, then the submission shall be deemed to be approved. This amendment is necessary due to a change in the Casino Control Act.

Social Impact

Casino licensees may benefit from a planning perspective through the proposed amendment's provision regarding a 90 day response from the Commission to the licensee's 99 Submission. The Commission anticipates no detrimental social impact on either itself or licensees from the amendment.

Economic Impact

Licensees may derive some economic benefit in their planning process through the proposed 90 day Commission response provision. The Commission anticipates no other economic impact on either itself or licensees from the amendment.

Regulatory Flexibility Statement

This proposed amendment will only affect the operation of New Jersey casino licensees, and therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.3 Licensee's system of internal control

(a) Each casino licensee shall submit to the Commission and Division a description of its system of internal procedures and administrative and accounting controls as part of the requirement of Section 99 of the Casino Control Act. Such submission shall be made at least [90] **120** days before gaming operations are to commence, unless otherwise directed by the Commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the licensee.

(b) (No change.)

(c) Each casino licensee shall submit to the Commission and the Division any changes to the system of internal procedures and administrative and accounting controls previously determined by the Commission in (b) above to be adequate in all respects at least 90 days before the changes are to become effective, unless otherwise directed by the Commission. The proposed changes shall be submitted to the Commission and such changes may be approved or disapproved by the Chairman unless any Commissioner indicates the changes should be considered by the entire Commission in which case such changes shall be so considered. No casino licensee shall alter its internal controls unless and until such changes are approved. **However, the Commission shall make a determination concerning a submission for changes in previously submitted control plans no later than 90 days following receipt of the submission unless the Commission and the casino licensee agree to extend the period for making such a determination. If there is no determination made within 90 days and there is no agreement to extend the period for making such a determination, then the submission shall be deemed to be approved.**

(d) (No change.)

(a)

**CASINO CONTROL COMMISSION
Equal Employment Opportunity
Quarterly Reporting of Casino Business with
Minority and Women's Business Enterprises
Proposed New Rule: N.J.A.C. 19:53-2.7**

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69 and 190.

Proposal Number: PRN 1989-262.

Submit comments by July 5, 1989 to:

Luis A. Fuentes, Director
Affirmative Action and Planning
Casino Control Commission
1300 Atlantic Avenue
Citicenter Building, 4th Floor
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

On February 23, 1989, the Casino Control Commission adopted new rules (effective March 20, 1989; see 21 N.J.R. 781(b)) which implement the provisions of Article 13 of the Casino Control Act, N.J.S.A. 5:12-184 et seq. (the Act), concerning set-aside goals for casino licensee business with minority business enterprises (MBEs) and women's business enterprises (WBEs). As a result of various critical comments which were received, however, the Commission did not adopt the proposed rule which would have required casino licensees to report purchases of goods and services by reference to 11 major purchasing categories which were identified therein.

By way of the instant proposal, the Commission is now proposing a new periodic reporting obligation for casino licensee business with certified MBEs and WBEs. The proposed new rule, N.J.A.C. 19:53-2.7, requires each casino licensee to submit a quarterly report which will enable the casino licensee and the Commission to track the licensee's good faith efforts to utilize the services of certified MBEs and WBEs. The proposed rule has eliminated, however, the requirement that purchases of goods and services be reported by categories.

Social Impact

The proposed new rule should assist the Commission in its responsibility to implement the provisions of Article 13 of the Act in a manner which will help fulfill the legislative policy of creating opportunity for full minority and women's business enterprise participation in the casino industry so that social and economic parity may be obtained by minority and women business persons and so that the economy of Atlantic City can be stimulated as contemplated by the Casino Control Act (see N.J.S.A. 5:12-184).

Economic Impact

The proposed new rule should result in some additional administrative costs being incurred by casino licensees in the generation and filing of the quarterly reports which will be required. These costs will vary depending upon the amount of internal recordkeeping currently being maintained by each casino licensee for its own benefit. It is not anticipated, however, that these costs will be significant. Any costs incurred will be justified by the substantial benefit received by the Commission and the casino licensees in being able to monitor the good faith efforts of licensees to utilize certified MBEs and WBEs. Neither the Division of Gaming Enforcement nor the Commission are anticipated to incur any significant costs as a result of this proposed rule.

Regulatory Flexibility Statement

The proposed new rule will only apply to casino licensees, none of which qualify as a small business within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows:

19:53-2.7 Quarterly expenditure reports

(a) Each casino licensee shall submit to the Commission and the Division a quarterly report on its purchases of goods and services, excluding bus business, listing:

1. The total dollar value of all disbursements for goods and services made by the casino licensee during the quarter and the year to date, recorded in accordance with the requirements of N.J.A.C. 19:53-2.4;

2. The name of each certified MBE or WBE with whom the casino licensee did business during the quarter, as well as:

- i. The certification status of the enterprise (MBE or WBE);
- ii. The total dollars disbursed to the enterprise; and
- iii. The total amount of dollars, if any, which were disbursed to the certified MBE or WBE by a contractor pursuant to an agreement authorized by N.J.S.A. 5:12-186c;

3. The total dollar amount of disbursements made to certified MBEs and WBEs during the quarter and the year to date by either the casino licensee or its contractors, listed by MBEs, WBEs and combined total, and the percentage of the total disbursements reported pursuant to (a)1 above that each listed amount represents; and

4. The total dollar amount of disbursements made during the quarter and the year to date to certified MBEs and WBEs by contractors pursuant to agreements authorized by N.J.S.A. 5:12-186c.

(b) Each casino licensee shall submit to the Commission and the Division a quarterly report listing for each category of bus business identified in N.J.A.C. 19:53-2.6 the following:

1. The total dollar value of all disbursements in the category made by the casino licensee during the quarter and the year to date, recorded in accordance with the requirements of N.J.A.C. 19:53-2.6;

2. The name of each certified MBE or WBE with whom the casino licensee did bus business during the quarter, as well as the information required by (a)2i and ii above; and

3. The total dollar value of disbursements made to certified MBEs and WBEs during the quarter and the year to date by the casino licensee, listed by MBEs, WBEs and combined total, and the percentage of the total disbursements reported pursuant to (b)1 above that each listed amount represents.

(c) Each quarterly report required pursuant to (b) above shall also include:

1. The total dollar amount of disbursements in both categories of bus business combined made by the casino licensee during the quarter and the year to date; and

2. The total dollar amount of disbursements in both categories of bus business combined made to certified MBEs and WBEs during the quarter and the year to date by the casino licensee, listed by MBEs, WBEs and combined total, and the percentage of the total disbursements reported pursuant to (c)1 above that each listed amount represents.

(d) The quarterly reports required by this section shall be filed with the Commission and the Division within 15 days of the expiration of the quarter. Casino licensees operating under a calendar year compliance period pursuant to N.J.A.C. 19:53-2.3 and 19:53-2.5 shall file reports on a calendar quarter basis. All other casino licensees shall file quarterly reports in accordance with a schedule approved by the Commission.

(b)

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Subpoena for Witnesses

Proposed Amendment: N.J.A.C. 19:61-3.2

Authorized By: Executive Commission on Ethical Standards,
John G. Donnelly, Executive Director.

Authority: N.J.S.A. 52:13D-12 et seq. and 52:13D-21(f).

Proposal Number: PRN 1989-282.

Submit comments by July 5, 1989 to:

John G. Donnelly, Executive Director
Executive Commission on Ethical Standards
28 West State Street, Room 1407
CN 082
Trenton, New Jersey 08625

OTHER AGENCIES

PROPOSALS

The agency proposal follows:

Summary

The purpose of this proposed amendment is to clarify that the Chairman of the Commission or, in his or her absence, the next-senior member, may determine to issue a subpoena on behalf of the Commission. The approval of this amendment can expedite the investigation process, and facilitate the completion of a case more efficiently. Expressly granting the Chairman or the next-senior member of the Commission this authority will formalize the current practice, as has been exclusively interpreted under existing rules.

Social Impact

The social impact of this amendment shall be the expediency of investigations mirroring the intent of N.J.S.A. 52:13D-12 et seq., the New Jersey Conflicts of Interest Law.

Economic Impact

While no direct economic impact is foreseen from this amendment, the allowance for greater investigative expediency it allows may provide cost benefits on a situational basis.

Regulatory Flexibility Statement

The proposed amendment, as it relates to delegation of subpoena authority within the Commission, imposes no reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not necessary.

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

19:61-3.2 Subpoena for witnesses

(a) If the Commission shall determine that the testimony of any person or persons is required, it may issue a subpoena in the name of the Commission requiring such person or persons to appear and testify before the Commission, **Commission member, or Administrative staff member** thereof, from day to day until the examination of such person or persons shall be completed. **The Chairman or, in his or her absence, the next-senior member, may make the determination, on behalf of the Commission, to issue a subpoena.**

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

(a)

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Procedures for Rulemaking Petitions

Proposed New Rule: N.J.A.C. 19:61-5.5

Authorized By: Executive Commission on Ethical Standards,

John G. Donnelly, Executive Director.

Authority: N.J.S.A. 52:13D-12 et seq., 52:14B-4(f), and N.J.A.C. 1:30-3.6.

Proposal Number: PRN 1989-283.

Submit comments by July 5, 1989 to:

John G. Donnelly, Executive Director
Executive Commission on Ethical Standards
28 West State Street, Rm. 1407
CN 082
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule is based on N.J.S.A. 52:14B-3, which states that each agency shall adopt a rule which describes its organization and method of operation, and N.J.S.A. 52:14B-4(f) which requires each agency to prescribe the form and procedure for the submission, consideration and disposition of a petition from an interested person or persons. N.J.A.C. 1:30-3.6 outlines procedural requirements which agencies must follow upon receipt of such petitions and requires that each agency prescribe by rule the form of the petition and the procedures for its submission to the agency and to the OAL for publication. The purpose of this rule is to provide a guideline for the public on the proper procedures for petitioning the Executive Commission on Ethical Stan-

dards ("the Commission") to promulgate, amend or repeal any rule, and to provide a guideline for the Commission on such procedures as well. This rule reflects the Commission's necessity for a standard format to be followed when being petitioned, in order to make clear what is required of the public, when petitioning the Commission, or of the Commission, when filing notice of the petition, with the Office of Administrative Law.

Social Impact

The proposed new rule is intended to facilitate, for the public, the process of petitioning for a Commission rule and, for the Commission, setting forth the procedures and requirements for both parties. Individuals interested in submitting a petition to the Commission to promulgate, amend or repeal any Commission rule will benefit from this rule, as they shall now have a concise set of guidelines to follow. The Commission will also benefit from this rule as it too shall have a concise set of guidelines to follow when receiving and filing notice of a petition. Ultimately, this rule will save the interested individuals and the Commission time and confusion, by providing clear instructions for the petition procedure, eliminating the need to rectify petitions submitted or filed inaccurately.

Economic Impact

The proposed rule will not have any economic impact on the Commission or other entities of State government. Consideration of a petition will occur in the normal course of Commission business.

No economic impact is expected on the public, as no costs are foreseen to be involved in the mechanics of filing a petition for rulemaking.

Regulatory Flexibility Statement

The proposed new rule imposes no reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., beyond the practical requirements of petition context set forth at proposal N.J.A.C. 19:61-5.5(a). The preparation and filing of a rulemaking petition are completely voluntary acts which should not cause capital costs to be incurred or professional services engaged by the petitioner. As the petition requirements are the minimum required under N.J.A.C. 1:30-3.6, no requirement differentiation due to a business petitioner's size is possible or necessary.

Full text of the proposal follows:

19:61-5.5 Procedures for rulemaking petitions

(a) N.J.S.A. 52:14B-4(f) maintains that, "An interested person may petition an agency to promulgate, amend or repeal any rule." Such petition shall clearly and precisely state the following:

1. The petitioner's name;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request and the petitioner's interest in the request; and
4. References to the authority of the Commission to take the requested action.

(b) Within 15 days after receipt of a petition, the Commission shall file a notice with the Office of Administrative Law, for publication in the next available New Jersey Register. The notice of petition shall include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received by the Commission.

(c) Within 30 days of receiving the petition, the Commission shall mail to the petitioner, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition which shall include:

1. The name of the petitioner;
2. The New Jersey Register citation for the notice of petition, if that notice appeared in a previous Register;
3. Certification by the Commission head that the petition was duly considered pursuant to law;
4. The nature or substance of the Commission action upon the petition; and
5. A brief statement of the reasons for the Commission action.

(d) Commission action on a petition may include:

1. Denying the petition;

- 2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
- 3. Referring the matter for further deliberation, the nature of which shall conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.

Recodify existing 19:61-5.5 as 5.6 (No change in text.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Emergency Shelters for the Homeless Visitation Rights; Facilities with Children

Proposed Amendments: N.J.A.C. 5:15-3.1 and 3.4

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

Authority: N.J.S.A. 55:13C-5.

Proposal Number: PRN 1989-263.

Submit comments by July 5, 1989 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

These proposed amendments set forth the right of residents in emergency shelters for the homeless to have visitors in Class I and Class III facilities under certain conditions during reasonable hours. They also prohibit the use of Class II facilities by children and require an area outside the sleeping area, in family facilities, where families may socialize.

Social Impact

The proposed amendments will have a positive social impact because the right of residents to have visitors must be reasonably balanced against the right of other residents not to be disturbed. Restricting children from Class II facilities is necessary for their protection since these are shelters designed for adults only that provide shelter only during nighttime hours.

Economic Impact

There will be no apparent economic impact as a result of these amendments.

Regulatory Flexibility Analysis

The facilities which might be affected by the proposed amendments are all owned and operated by public or private nonprofit entities. Some of the latter entities may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no reporting or recordkeeping requirements on such entities. The compliance requirements regarding the right to visitors and the family socialization area follow for substantial licensee discretion in compliance. The Department does not foresee the need for any costs to be incurred in compliance. The "no children" requirement for Class II facilities also imposes no licensee cost, and is provided for the protection of children. Under these circumstances, the Department does not consider a lessening of compliance for small business entities as necessary or desirable.

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

5:15-3.1 Enumeration of rights

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

(c) At a minimum, the facility must afford each resident the following rights and protections which shall be set forth in the resident rules. The residents shall be permitted to exercise these rights without fear of reprisal.

1. (No change.)

2. [(Reserved)] **To receive visitors in designated areas of the facility during reasonable hours and under such conditions as the licensee shall specify in the resident rules;**

3.-13. (No change.)

5:15-3.4 Resident services; facilities with children

(a) In all emergency shelters wherein children reside, the following services shall be provided as a minimum:

1. **Sleeping area and an area outside of the sleeping area where families may socialize;**

2.-4. (No change.)

(b) **Children shall not be permitted to reside in Class II facilities.**

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Sales of Projects Owned by Nonprofit Corporation to Limited Partnerships

Use of DCE and CDE for Development of Housing

Proposed New Rule: N.J.A.C. 5:80-6.8

Proposed Amendments: N.J.A.C. 5:80-6.1, 6.5 and 6.6

Authorized By: New Jersey Housing and Mortgage Finance
Agency, James L. Logue III, Executive Director/Secretary.

Authority: N.J.S.A. 55:14K-5g.

Proposal Number: PRN 1989-266.

Submit comments by July 5, 1989 to:

Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Rd.
CN 18550
Trenton, NJ 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency serves as an advocate for promoting the supply, construction, rehabilitation and improvement of adequate and affordable housing in the State. To fulfill its objective, the Agency acts as a mortgage lender to housing sponsors who wish to construct, rehabilitate or improve housing projects.

As provided by these amended and new rules, if a nonprofit sponsor sells their project to a for profit sponsor, the for profit sponsor is required to establish and maintain a Development Cost Escrow (DCE) and a Community Development Escrow (CDE) account. These accounts are to be used to fund any operating deficits of the project, to fund improvements and repairs at the project and to fund desirable community service activities.

In addition to the current uses of the DCE/CDE accounts, as provided by these rules, the Agency proposes to amend the rules by permitting additional uses. The amendments would permit the use of DCE/CDE funds, to the extent they are not needed for the projects, to be used for the development of additional housing.

Social Impact

The amended and new rules will enable the Agency to further its statutory objectives which include: (1) stimulating the construction, rehabilitation and improvement of adequate and affordable housing in the State in order to increase the number of housing units available to New Jersey residents; (2) enhancing the production capacity of the private sector toward meeting the housing needs of the State; (3) assisting in the revitalization of the State's urban areas; and (4) providing housing for those of low and moderate income.

Economic Impact

The amended and new rules will permit existing sponsors and new sponsors to use an existing source of funds totaling several million dollars for the development of additional housing. This will impact economically in the areas of housing construction and in providing housing for residents of low- and moderate-income.

Regulatory Flexibility Analysis

The proposed amendments and new rules allow housing sponsors, most of which are small businesses as that term is defined under the Regulatory

Flexibility Act, N.J.S.A. 52:14B-16 et seq., to utilize the DCE and CDE account funds they are now required to maintain, for development of additional housing, to the extent those funds are not needed for existing housing projects. No reporting or record keeping requirements are imposed by the amendments and new rule. As to compliance requirements, a sponsor desiring to use its funds for additional housing must obtain Agency approval under criteria set forth at N.J.A.C. 5:80-6.8(a). The Agency foresees no increase in capital costs or the need for professional services in meeting this requirement. Given the predominance of small businesses among subject housing sponsors, the minimal nature of the compliance requirement and the benefits to sponsors which may arise from the amendments and new rule, no differentiation in the compliance requirement based upon business size is proposed.

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

5:80-6.1 Definitions

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

...
 "Multi-Family Rental Investment Program" means the program funded through the use of Agency administrative funds and through payments as provided by N.J.A.C. 5:80-6.4 for the purpose of providing loans to rental projects meeting low and moderate income housing needs.

...
 "Portfolio Reserve Account" (PRA) means that fund established [pursuant to 5:80-6.4(a)3 intended primarily for financial support for any development financed] by the Agency for the primary purpose of funding debt service arrearages, and other operating deficits or capital improvements of any project financed by the Agency that cannot fund these items from normal project income. Funds deposited in the PRA and the investment income earned thereon will be available for use by the Agency for the aforesaid purposes.

...
 "Surplus cash" means funds, including funds in the DCE and CDE accounts, available after payment of equity distributions, project expenses, operating deficits, including the full funding of all required reserve accounts and proposed capital improvements plus:

1. Two to six months of the annual budgeted project expense for senior citizen projects; or
2. Four to 12 months of the annual budgeted project expense for family projects.

5:80-6.5 Use of funds with regard to [developments] projects subsidized under Section 8.

(a) While the primary reason for permitting the sale and syndication of Section 8 [developments] projects is to insure financial viability of the [development] project, a large portion of the proceeds will be available to the nonprofit to finance community activities. Accordingly, after payment of the amounts required under N.J.A.C. 5:80-6.4, the proceeds of the transaction shall be disbursed in the following manner:

1. There shall be deposited into a Development Cost Escrow (DCE) for the project those funds remaining after transaction costs are deducted from 60 percent of the cash proceeds or the stated equity amount whichever is greater. With the approval of the Agency, the DCE shall be used to fund debt service arrearages and other operating deficits at the project including appropriate funding of required reserve accounts, as determined by the Agency, and for such other purposes as may be approved by the Agency as will improve the financial viability or physical structure of the project, or increase tenant safety and comfort.
2. (No change.)

5:80-6.6 Use of funds with regard to projects subsidized under Section 236 Interest Reduction Program

- (a) (No change.)
- (b) All cash proceeds received on the sale of a development subsidized under Section 236 shall, after payments [of the fees] required by N.J.A.C. 5:80-6.4, be deposited into a Project Subsidy

Reserve (PSR). The income and principal on the PSR may be utilized in the following manner:

1.-3. (No change.)

4. After the nonprofit has demonstrated, based on information required under N.J.A.C. 5:80-6.4(a)6, that the funds in the PSR are not required for any of the purposes listed in (b)1-3 above and will not be required for the foreseeable future, it may request that a portion of these funds or the investment income on these funds be deposited into a CDE as described in N.J.A.C. 5:80-6.5.

5:80-6.8 Use of DCE and CDE for development of housing

(a) In addition to uses permitted under N.J.A.C. 5:80-6.5, 6.6, and 6.7, housing sponsors, or the authorized entity with the housing sponsor's organizational structure with financial control over the DCE/CDE accounts, may, with Agency approval, use DCE and CDE funds, and interest thereon, for the development, operation, maintenance, construction, rehabilitation or improvement of or investment in additional housing within the community or in other communities. DCE and CDE funds may only be used for such purposes if the Agency determines that DCE and CDE funds are not needed to insure the financial viability or physical structure of the project. This includes, but is not limited to, a finding by the Agency that the project has surplus cash and that DCE and CDE funds are not needed for providing an additional source of operating revenue to assist in financing any other aspect of the current or future operations of the project.

(b) Housing sponsor's, or the authorized entity within the housing sponsor's organizational structure with financial control over the DCE/CDE accounts, may use DCE and CDE funds as specified in (a) above or may deposit DCE and CDE funds with the Agency to be used by the Agency or by the Agency in conjunction with other developers for the purposes and under the conditions outlined in (a) above.

5:80-[6.8 to 6.11] 6.9 to 6.12 (No change in text.)

(a)

OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Ombudsman Practice and Procedure Public Notice Requirements

Proposed Repeal and New Rules: N.J.A.C. 5:100

Authorized By: Hector M. Rodriguez, Ombudsman for the Institutionalized Elderly.

Authority: N.J.S.A. 52:27G-1 et seq.

Proposal Number: PRN 1989-264.

Submit comments by July 5, 1989 to:

Steele R. Chadwell, General Counsel
 Office of the Ombudsman for the
 Institutionalized Elderly
 28 West State Street, Room 305
 CN 808
 Trenton, New Jersey 08625-0808

The agency proposal follows:

Summary

On January 27, 1983, the Legislature charged the Office of the Ombudsman for the Institutionalized Elderly (the "Office") with the responsibility of administering N.J.S.A. 52:27G-7.1 et seq. That statute basically requires persons employed as health care providers in facilities within the Office's jurisdiction to report abuse and exploitation of elderly patients, residents and clients of such facilities to the Office.

In 1985 and again in 1987, the New Jersey Supreme Court interpreted N.J.S.A. 52:27G-7.1 et seq. to establish an audit role for the Office regarding decisions to forego life-sustaining treatment for institutionalized patients, residents and clients age 60 and older. In response to numerous inquiries during the ensuing years, the Office has used a variety of public information media to advise persons about its role and about the obligation to make related reports to the Office. One of these informational methods was sending annual, descriptive letters to nursing home administrators.

The most recent such letter was dated August 30, 1988. Like the similar letters sent in 1986 and 1987, the 1988 letter was authorized by law (N.J.S.A. 52:27G-9g, 11b, 11c and 11d), but was not meant itself, as a letter, to be binding or authoritative. Only a properly promulgated administrative rule can have the force of law.

Accordingly, to give an interpretation (not merely a description) of the law requiring certain reporting to the Office, the following comprehensively revised administrative rules are being proposed to replace those now in effect. The proposed new rules also more comprehensively describe the Office's interaction with the public in matters besides abuse and exploitation.

The new rules clarify when and how required reports must be made to the Office, in accordance with statute. They also clarify the receipt, handling and disposition by the Office of optional reports and complaints, whether about abuse or exploitation or otherwise about the health, safety and welfare, the human or civil rights of elderly patients, residents and clients.

Social Impact

The persons benefiting from the Office's advocacy function are the approximately 100,000 patients, residents and clients, aged 60 and older, of approximately 800 different health care facilities throughout New Jersey. These include, but are not limited to, nursing homes, psychiatric hospitals, residential health care facilities, and adult medical day care programs. These facilities are licensed by the New Jersey Department of Health, the New Jersey Department of Human Services and/or the New Jersey Department of Community Affairs. Some are public institutions; more are private.

The State of New Jersey has recognized that institutionalized elderly persons are peculiarly vulnerable, have special needs and problems and are generally isolated from other, non-institutionalized members of the community. The Office was created in response to such needs and problems, as an advocate for the State's institutionalized elderly patients, residents and clients. The Legislature declared as the public policy of the State that the Office secure, preserve and promote the health, safety and welfare of the State's institutionalized elderly and to ensure that its institutionalized elderly are able to enjoy the same civil and human rights guaranteed to all New Jerseyans.

The proposed new rules will assist the institutionalized elderly and others concerned with their welfare by facilitating access to and comprehension of the Office's legal advocacy mandate. The revised rules therefore elucidate means of contacting the Office, its investigative procedures and methods of taking action, and its availability for community service.

These new rules will assist the institutionalized elderly and others concerned for their welfare, particularly regarding the directives of the New Jersey Supreme Court. These directives are interpretations of the Office's advocacy mandate, in the area of withdrawing and withholding necessary life-sustaining medical treatment. The rules will also specify for caregivers (who are employed by facilities to provide health-related services) and physicians and facility administrators their statutory reporting responsibilities imposed by law.

The proposed new rules are based on the Office's expertise and experience. Without being unduly burdensome, they eliminate some uncertainties about the Office's protective role for the institutionalized elderly and better specify how the Office functions.

The new rules place no new requirements upon the elderly themselves, their caregivers, physicians or facility administrators. Because the rules provide specific guidance in a difficult area, while at the same time providing comprehensive protection for New Jersey's institutionalized elderly, the rules should assist and benefit all those affected.

Economic Impact

The proposed new rules simply clarify what is already expressly provided by statute or court decision. Therefore, the rules themselves will not have an economic impact on affected parties.

There is no tax, fee, charge or other economic cost to the institutionalized elderly who are benefited by the Office's protective and advocacy role described and structured by these rules. Those who report or complain to the Office about any condition affecting the institutionalized elderly incur no cost if they use the Office's toll free "hotline" telephone number available within the 609 and 201 telephone area codes. Any cost of reporting or complaining to the Office is either voluntarily incurred—if the report or complaint is optional—or mandatorily incurred if the report is required under N.J.S.A. 52:27G-7.1 and 7.2. At most, any

such economic cost would be that of a letter and postage and/or of telephone toll charges. Any costs are likely to be minimal.

Any costs of the procedures described in the rules already exist as a result of N.J.S.A. 52:27G-1 et seq. and the requirements imposed by the New Jersey Supreme Court. In fact, because they clarify the reporting responsibility already interpreted by the New Jersey Supreme Court under the mandatory abuse and exploitation reporting statute (N.J.S.A. 52:27G-7.1 and 7.2), the new rules could reduce the economic costs associated with unnecessary over-reporting to the Office.

The extent—if any—to which the aggregate minimal costs of reporting as mandated by law increase as a result of these rules' reducing uncertainty about reporting obligations cannot be reliably foreseen. One would expect that any such possible increase in reporting (and, hence, in the minimal associated direct costs) would be offset by a decline in the unnecessary over-reporting of cases to the Office.

Regulatory Flexibility Statement

Making complaints to the Office regarding violations of rights or about the care of elderly institutionalized patients, residents or clients is generally optional, not mandatory. Where reporting to the Office is mandatory, it is mandated by law (N.J.S.A. 52:27G-7.1 and 7.2), as interpreted by the New Jersey Supreme Court. Moreover, where such reporting is mandatory, it is not mandatory for any public or private facility, institution or business. The reporting requirement—where it exists—only makes reporting incumbent on natural persons, facility administrators, physicians, nurses, aides, physical therapists, speech therapists, social workers and other professional persons (not businesses) rendering care or employed to render care to the institutionalized elderly. Therefore, these rules have no impact—including capital expenditure impact—on any small business in New Jersey.

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

Full text of the proposed new rules follows:

CHAPTER 100 OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY: PRACTICE AND PROCEDURE

SUBCHAPTER 1. GENERAL PROVISIONS

5:100-1.1 Purposes and objectives of the Office of the Ombudsman

The basic objective of the Office of the Ombudsman for the Institutionalized Elderly is of promoting, advocating and ensuring, as a whole and in particular cases, the adequacy of the care received, and the quality of life experienced, by elderly patients, residents and clients of facilities offering health or health-related services for the institutionalized elderly within New Jersey. The Office of the Ombudsman advocates for the health, safety and welfare, and the civil and human rights of the institutionalized elderly, age 60 or over, and takes such actions as are necessary, and within its jurisdiction, to secure same.

5:100-1.2 Definitions

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

"Abuse" means the willful infliction of physical pain, injury or mental anguish; unreasonable confinement; or the willful deprivation of services which are necessary to maintain a person's physical and mental health. However, no person shall be deemed to be abused for the sole reason he or she is being furnished non-medical remedial treatment by spiritual means through prayer alone, in accordance with a recognized religious method of healing, in lieu of medical treatment.

An "act" of any facility or government agency shall be deemed to include any failure or refusal to act by such facility or government agency.

"Administrator" means any person who is charged with the general administration or supervision of a facility, whether or not such person has an ownership interest in such facility, and whether or not such person's functions and duties are shared with one or more other persons.

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"Caretaker" means a person employed by a facility to provide care or services to an elderly person, and includes, but is not limited to, the administrator of a facility.

"Competent" means having a clear understanding of the nature of his or her illness and prognosis, and of the risks and benefits of the proposed treatment, and having the capacity to reason and make judgments about that information.

"Exploitation" means the act or process of using a person or his resources for another person's profit or advantage without legal entitlement to do so.

"Facility" means any facility or institution, whether public or private, offering health or health-related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. Facilities include, but are not limited to, nursing homes, skilled nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, residential health care facilities, special hospitals, veterans' hospitals, chronic disease hospitals, psychiatric hospitals, mental hospitals, mental retardation centers or facilities, day care facilities for the elderly, and medical day care centers.

"Fully informed" means, with respect to a particular life-sustaining treatment decision, knowing his or her prognosis, the alternative treatments available, and the risks involved.

"Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the State or to which the State is a party, or by any county or municipality, which is responsible for the regulation, visitation, inspection or supervision of facilities, or which provides services to patients, residents or clients of facilities.

"Institutionalized elderly," "elderly" or "elderly person" means any person 60 years of age or older, who is a patient, resident or client of any facility.

"Office" means the Office of the Ombudsman for the Institutionalized Elderly.

"Ombudsman" means the administrator and chief executive officer of the Office of the Ombudsman for the Institutionalized Elderly.

"Patient, resident or client" means any elderly person who is receiving treatment or care in any facility in all its aspects, including, but not limited to, admission, retention, confinement, commitment, period of residence, transfer, discharge and any instances directly related to such status.

5:100-1.3 Contact with the Office; information about rights and entitlements; communications

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

(b) The Office may be contacted by calling its toll-free telephone number, 24 hours per day, any day of the year; or by writing to: The Office of the Ombudsman for the Institutionalized Elderly, CN 808, Trenton, New Jersey 08625-0808.

(c) Any correspondence or written communication from any patient or client of a facility to the Office shall, if delivered to or received by the facility, be promptly forwarded, unopened, by the facility to the Office. Any correspondence or written communication from the Office to any patient, resident or client of a facility shall, if delivered to or received by the facility, be promptly forwarded, unopened, by the facility to such patient, resident or client.

(d) The Office shall prepare and distribute to each facility written notices which set forth the address and telephone number of the Office, a brief explanation of the function of the Office, the procedure to follow in filing a complaint, and other pertinent information.

(e) The administrator of each facility shall ensure that such written notice is given to every patient, resident or client or his or her guardian upon admission to the facility and to every person already in residence or his or her guardian. The administrator shall also post such written notice in a conspicuous, public place in the facility.

(f) The Office shall from time to time publicize its existence, function and activities by informing patients, residents and clients, their families and friends, facility staff and other caretakers, government agencies and representatives, private organizations and community groups, and the general public, about the Office and its function and

activities, through "in-service training" presentations at facilities and elsewhere, participation in seminars or other informational programs, contact with the press and other media, and direct communication, in person or in writing, including the submission for publication of scholarly and informational articles and other materials concerning the Office, its functions and activities.

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

5:100-1.4 Complaints

(a) The Office shall acknowledge all complaints.

(b) If the Office does not have jurisdiction, the Office shall advise the person making the complaint of this finding.

(c) If the Office has jurisdiction of the subject matter of the complaint, the Office, in appropriate cases, will utilize the following procedures:

1. If the Office discovers a deficiency in compliance with State or Federal laws or regulations or rules administered by any government agency, the Office shall refer the matter directly to the appropriate government agency for action.

2. If the Office discovers facts which the Office determines warrants the institution of civil proceedings by a government agency against any person or governmental agency, the matter shall be referred to the government agency with authority to institute such proceedings.

3. If the Office discovers information in relation to the misconduct or breach of duty of any officer or employee of a facility or a government agency, the matter shall be referred to the appropriate authorities for such action as may be necessary.

4. If the Office discovers information or facts indicating the commission of criminal offenses or violations of standards of professional conduct, it shall refer the matter, as appropriate, to the Attorney General, county prosecutor or any other law enforcement official who has jurisdiction to prosecute the crime, and to the relevant professional licensing board.

5. The government agency, prosecuting agency or professional licensing board, as the case may be, shall report to the Office on its findings and actions with respect to all such referrals within 30 days after receipt thereof and every 30 days thereafter until final action on each such referral. The Office may make disclosure of such information as appropriate and as may be necessary to resolve the matter referred.

6. In the event that the complaint of a patient, resident or client or class of patients, residents or clients of a facility or facilities, cannot be resolved satisfactorily through negotiation with the facility or the appropriate government agency, or that an act, practice, policy or procedure of a facility or government agency does or may adversely affect the health, safety, welfare or civil or human rights of a patient, resident or client, or class of patients, residents or clients, of a facility or facilities, the Office may recommend to the appropriate authorities civil litigation on behalf of such patient, resident or client, or class of patients, residents or clients, as it deems appropriate. The Office may also itself institute actions for injunctive relief or civil damages as it deems appropriate.

7. The Office shall notify the complainant of the specific action taken by the Office.

5:100-1.5 Investigations initiated by receipt of complaints

(a) In addition to the referral procedure described in N.J.A.C. 5:100-1.4, upon receiving a complaint, the Office may itself investigate any act, practice, policy or procedure of any facility or government agency that does or may adversely affect the health, safety, welfare or civil or human rights of any patient, resident or client of a facility.

(b) The Office need not investigate any complaint where it determines that:

1. The complaint is trivial, frivolous, vexatious or not made in good faith;

2. The complaint has been too long delayed to justify present investigation;

3. The resources available, considering the Office's established priorities, are insufficient for an adequate investigation; or

4. The matter complained of is not within the investigatory authority of the Office.

5:100-1.6 Investigation procedure

(a) During the course of any investigation conducted by the Office, the Office may:

1. Make the necessary inquiries and obtain such information as it deems necessary;

2. Hold private hearings or public hearings;

3. Enter, without notice, and after notifying the person in charge of its presence, inspect the premises of a facility or government agency and inspect there any books, files, medical records or other records that pertain to patients, residents, or clients which are required by law to be maintained by the facility or government agency;

4. Compel at a specific time and place, by subpoena, the appearance and sworn testimony of any person who the Office reasonably believes may be able to give information relating to a matter under investigation; and

5. Compel any person to produce at a specific time and place, by subpoena, any documents, books, records, papers, objects, or other evidence which the Office reasonably believes may relate to a matter under investigation.

5:100-1.7 Required reporting of suspected abuse or exploitation of institutionalized elderly persons; penalties for failure to make required report

(a) Any caretaker, social worker, physician, registered or licensed practical nurse, or other professional, who, as a result of information obtained in the course of his or her employment, has reasonable cause to suspect or believe that an institutionalized elderly person is being or has been abused or exploited, shall report such information to the Office within the time and in the manner required by N.J.A.C. 5:100-1.7(b) and (c).

(b) The individual reporting shall make a verbal report of the suspected abuse or exploitation in a timely manner by telephone to the Office.

(c) The individual reporting shall follow the verbal report within two business days with a written report, containing the following information:

1. The identity of the individual making the report;

2. The name, address and age of the elderly person who is the subject of the suspected abuse or exploitation, if known;

3. The name of the person accused of committing the alleged abuse or exploitation, if known;

4. The name and address of the facility involved;

5. A description of the nature of the suspected abuse or exploitation;

6. The date, time and specific location of the occurrence; and

7. The name and address of any witness to the suspected abuse or exploitation.

(d) Upon receipt of these reports, the Office shall follow the procedures for investigating the matter set forth in this subchapter.

(e) The name of any person who reports suspected abuse or exploitation pursuant to this section shall not be disclosed, unless the person who reported the abuse or exploitation specifically authorizes such disclosure or a judicial proceeding results from such report or disclosure is authorized under N.J.A.C. 5:100-1.10(a).

(f) Any person who reports suspected abuse or exploitation pursuant to this section or who testifies in any administrative or judicial proceeding arising from such report or testimony shall have immunity from civil or criminal liability on account of such report or testimony, unless such person has acted in bad faith or with malicious purpose.

(g) Pursuant to N.J.S.A. 52:27G-7.1(f), any person required to report suspected abuse or exploitation, as required herein, who fails to make the reports required by this section, may be fined up to \$5,000. Such penalty will be collected and enforced by the Office in a summary proceeding brought pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(h) Where the report pertains to withholding or withdrawing life-sustaining treatment from an elderly incompetent institutionalized patient, resident or client, reporting is governed by N.J.A.C. 5:100-2.

5:100-1.8 Investigations instituted by receipt of report of abuse or exploitation

(a) Any person having reasonable cause to suspect or believe that an elderly person is being or has been abused or exploited may report such information to the Office.

(b) Within 24 hours of receipt of a report of abuse or exploitation, the Office shall notify the Commissioner of Human Services and any other governmental agency which regulates or operates the facility that the report has been received.

(c) Upon receiving a report that an elderly person may be or may have been abused or exploited, the Office shall conduct a prompt investigation.

(d) The investigation shall include a visit with the elderly person and consultation with others who have knowledge of the particular case. When the investigation is completed, findings and recommended action shall be prepared in a written report and submitted to the Commissioner of Human Services.

(e) The person who reported the suspected abuse or exploitation shall be promptly notified that action is being taken.

(f) If a determination is made that an elderly person may have been criminally abused or exploited, the Ombudsman shall refer such findings, in writing, to the county prosecutor or any other appropriate prosecuting agency.

(g) The Office shall maintain a central registry of all reports of suspected abuse or exploitation and of all investigations, findings and recommended actions. No information received and compiled in such registries shall be construed as a public record.

(h) The name of any person who reports suspected abuse or exploitation pursuant to this subchapter shall not be disclosed, unless:

1. The person who reported the abuse or exploitation specifically requests such disclosure; or

2. A judicial proceeding results from such report; or

3. Disclosure is authorized under N.J.A.C. 5:100-1.10(a).

(i) Any person who reports suspected abuse or exploitation pursuant to this subchapter or who testifies in any administrative or judicial proceeding arising from such report or testimony shall have immunity for any civil or criminal liability on account of such report or testimony, unless such person has acted in bad faith or with malicious purpose.

5:100-1.9 Post-investigation procedures

(a) Following the completion of any investigation conducted by the Office, the Office shall take appropriate action, including, but not limited to, the following:

1. Reporting its opinions or recommendations to the appropriate agencies, facilities or persons;

2. Requesting the party affected by such opinions or recommendations to notify the Office within a specified time of any action taken by such party on the Office's recommendations;

3. Attempting to resolve the matter through negotiations;

4. Referring the Office's findings and recommendations to an appropriate person or agency; and/or

5. Instituting appropriate legal action.

5:100-1.10 Confidentiality of information; privileged communications

(a) The Office shall maintain confidentiality with respect to all matters in relation to any complaint or investigation, together with identities of the complainants, witnesses or patients, residents or clients involved, unless such persons authorize, in writing, the release of such information, except for such disclosures as the Ombudsman deems necessary to enable the Office to perform its duties and to support any opinions or recommendations that may result from a complaint or investigation. The investigatory files of the Office, including all complaints and responses of the Office to complaints, shall be maintained as confidential information. Release of pertinent records shall be at the discretion of the Ombudsman.

(b) Any statement or communication made by the Office relevant to a complaint received by, proceedings before, or investigative ac-

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PROPOSALS

tivities of, the Office, and any complaint or information made or provided in good faith by any person, shall be absolutely privileged and such privilege shall be a complete defense in any action which shall allege libel or slander.

5:100-1.11 Prohibition of discriminatory, disciplinary or retaliatory action

No discriminatory, disciplinary or retaliatory action shall be taken against any officer or employee of a facility or government agency by such facility or government agency, or against any patient, resident or client of a facility or guardian or family member thereof, or volunteer, for any communication by him or her with the Office or for any information given or disclosed by him or her in good faith to aid the Office in carrying out its duties and responsibilities.

5:100-1.12 Hindrance of Office or refusal to comply; penalties

Any person who willfully hinders the lawful actions of the Office or willfully refuses to comply with any of its lawful demands, including the demand of immediate entry into and inspection of a facility or government agency or the demand of immediate access to a patient, resident or client thereof, may be fined up to \$5,000. Such penalty shall be collected and enforced by the Office in a summary proceeding brought pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

SUBCHAPTER 2 REPORTING PROCEDURES REQUIRED PRIOR TO WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING TREATMENT FROM ELDERLY, INCOMPETENT INSTITUTIONALIZED PATIENTS, RESIDENTS AND CLIENTS

5:100-2.1 Purpose

The New Jersey Supreme Court has rendered a series of decisions in which the Court addressed many complex and highly sensitive issues surrounding decisions to withhold or withdraw life-sustaining treatment, specifically *Matter of Peter*, 108 N.J. 365 (1987); *Matter of Conroy*, 98 N.J. 321 (1985); *Matter of Farrell*, 108 N.J. 335 (1987); *Matter of Jobs*, 108 N.J. 394 (1987); *In re Quinlan*, 70 N.J. 10, cert. den. sub nom. Garger v. New Jersey, 429 U.S. 922, 97 S.Ct. 319, 50 L.Ed.2d 289 (1976). In these cases, the Court specifically prescribed an 'audit' role which the Office of the Ombudsman must play in reviewing these decisions for elderly, incompetent institutionalized patients, residents and clients. This is only an audit role. The Office does not make any decisions for the elderly. The purpose of this subchapter is to set forth the reporting procedures in detail so that all persons involved in these complex decisions will be fully apprised of their duties and responsibilities to report to the Office. The Office's audit role requires a review of the decisionmaking process to ensure the procedural regularity of decisions made by others.

5:100-2.2 Scope

(a) The procedures set forth in this subchapter shall apply to all reportable determinations as to whether life-sustaining treatment may be withheld or withdrawn from an elderly institutionalized patient, resident or client of a facility, who is incompetent to make the decision for himself or herself (hereinafter an incompetent patient, resident or client). The reporting procedures set forth in this subchapter do not apply if the decision is:

1. Voluntarily made by a fully informed, competent patient who has not been otherwise determined to lack legal authority to make such a decision;
2. Based on a physician's good faith determination that the life-sustaining treatment is not medically necessary; or
3. Being reviewed by, or has been reviewed favorably by, a court of competent jurisdiction.

5:100-2.3 Required reporting procedures

(a) Any caretaker, social worker, physician, registered or licensed practical nurse or other professional, who, as a result of information obtained in the course of his or her employment, has reasonable cause to suspect that life-sustaining treatment has been, or is about to be, withheld or withdrawn from an incompetent patient, resident or client without notice to the Office, shall report this information to

the Office within the time and in the manner required by (b) and (c) below.

(b) Any person required to report under (a) above and who knows of a proposal to withhold or withdraw life-sustaining treatment from an incompetent patient, resident or client shall immediately notify the Office of the Ombudsman of the proposal.

(c) The notification shall include the following information:

1. The identity of the person making the report;
2. The name, address and age of the incompetent patient;
3. The name and address of the facility involved;
4. If an incompetent patient, resident or client has designated a family member, another relative or a non-relative to make surrogate medical decisions, that person's name and address must be provided to the Ombudsman. If available, the names and addresses of all close family members (that is, a spouse, parents, adult children, or siblings) must also be provided to the Ombudsman; and
5. The name and address of the incompetent patient's guardian, if a guardian has been appointed.

(d) The Office's review shall proceed pursuant to the procedures set forth in N.J.A.C. 5:100-1.4 through 1.12. The Office's review may include, but is not limited to, the following information:

1. The report required by (b) and (c) above;
2. Evidence concerning the incompetent patient's, resident's or client's condition which must be provided to the Ombudsman by the incompetent patient's attending physicians, nurses and caretakers;
3. Medical opinions which confirm the incompetent patient's, resident's or client's medical condition, the medical alternatives available, the risks involved, the likely outcome if medical treatment is foregone and that there is no reasonable possibility of an incompetent patient, resident or client recovering from a terminal illness or to a cognitive, sapient state;
4. Evidence concerning the incompetent patient's wishes; and
5. Where the incompetent patient's wishes are not established by clear and convincing evidence, the assessment of the incompetent patient's designated decisionmaker, any close family member, any other relative or non-relative friend designated by the incompetent patient, resident or client or any guardian appointed by the court.

(e) At the conclusion of the review, the Office shall determine whether to defer to the proposal to withhold or withdraw life-sustaining treatment from an incompetent patient, resident or client.

(f) If the Office does not defer to the proposal, any party may then seek a judicial determination on the issue presented.

HUMAN SERVICES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Capital Funding Program for Community Based Substitute Care, General Social Service and Partial Care Facilities

Proposed Readoption with Amendments: N.J.A.C. 10:125

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12, P.L. 1980, c. 119 and P.L. 1984, c. 7.

DHS Docket Number: DYFS- 89-P-2.

Proposal Number: PRN 1989-269.

Submit comments by July 5, 1989 to:

Virginia Mastondrea
Capital Grants Unit
Division of Youth and Family Services
CN 711
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66 (1978), N.J.A.C. 10:125 expires on July 16, 1989. As required by the Executive Order, the Division of Youth and Family Services ("Division" or "DYFS") has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Division proposes to readopt this chapter with amendments to reflect the New Jersey Human Services Facilities Construction Bond Act of 1984.

The New Jersey Public Purpose Building Construction Bond Act of 1980 (P.L. 1980, c. 119) authorized the issuance of \$159 million in State bonds. Of this, \$3.5 million was allocated to the Division of Youth and Family Services for the improvement, rehabilitation, purchase and construction of community based facilities to benefit the Department of Human Services' clients. These rules were developed to prioritize and set requirements for programs under the authority of DYFS which require funding for capital expenditures which go beyond existing maintenance programs and support.

The New Jersey Human Services Facilities Construction Bond Act was passed in 1984 (P.L. 1984, c. 7) and authorized the issuance of \$33,199,000 in State bonds. The Division of Youth and Family Services was allocated \$5,630,000 for purposes essentially similar to those of the 1980 Bond Act. Of this fund, \$4,170,000 was set aside for community grants and \$1,460,000 was earmarked for capital improvements to DYFS-owned properties which provide community services.

These rules, which set priorities and program requirements for the 1980 bond act funds, were also used to establish the requirements for the 1984 bond act funds when they become available. The amendments reflect the applicability of these rules to expenditures under the 1984 Bond Act also.

Subchapter 1 sets forth the legal authority, applicability, scope, purpose and definitions for the program, as well as funding and program priorities. Subchapter 2 contains funding stipulations for eligible agencies. Subchapter 3 contains rules governing program requirements.

Social Impact

The rules proposed for readoption with amendments will minimally affect agencies which provide the services for the Division but will substantially affect the clients of the Division who benefit from such services. The physical upgrading of facilities for clients will ensure to the extent possible that agencies will be providing services in facilities according to State and local standards.

Economic Impact

The anticipated economic impact of the proposed readoption with amendments on the community agencies will be beneficial as it allows for the continued operation of services while at the same time it provides for ongoing services. The economic impact on the clients will be negligible.

Of the 1980 bond act fund, approximately \$175,000 remains to be paid out under existing contracts. It is anticipated that this will be accomplished by December, 1989. Of the 1984 bond act funds, the entire amount has been committed to social services agencies. Contracts totaling \$12,260,000 are still undergoing the Capital Facilities Approval, Unit review process. Complete disbursement of this fund is expected to take several more years.

Regulatory Flexibility Analysis

Twenty-two social service agencies have received funds under this program through the 1980 bond act, and it is estimated that 54 agencies (45 agencies approved to date, 19 pending approval) will receive funds through the 1984 bond act. These agencies are small businesses as that

term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

As a condition of their participation in this program, recipient agencies are required to establish a separate account for funds received through these grants, in accordance with generally accepted accounting principles. The agencies are asked to certify progress toward completion and report amount paid to contractors, as a condition of receiving periodic payments. The Division performs the final inspection upon being notified of the completion of the project. Agencies are required to comply with requirements for funding stipulations and filings of proposals, and to provide assurances of non-discrimination. Adequate, accessible records must be kept.

These requirements are in accordance with what are generally accepted sound business practices which any organization should follow. The Department does not anticipate that agencies will incur capital costs or need to engage professional services to comply with these rules. As the Department considers these rules to be the minimal requirements necessary for sound and efficient operation of the capital funding program, and because the agencies participating in the program have historically been small businesses, no differentiation in requirements based upon business size is provided.

Full text of the proposed readoption may found in the New Jersey Administrative Code at N.J.A.C. 10:125.

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

10:125-1.1 Legal authority, applicability, scope, purpose

(a) This chapter applies to State contracts for the renovation and construction of community based facilities. This chapter implements one portion of the New Jersey Public Purpose Buildings Construction Bond Act of 1980 **and one portion of the New Jersey Human Services Facilities Construction Bond Act of 1984** and complements N.J.A.C. 10:3-2. The purpose of the program is to utilize funds from the New Jersey Public Purpose Buildings Construction Bond Act of 1980 **and the New Jersey Human Services Facilities Construction Act of 1984** to assist in the renovation, purchase and construction of community based substitute care, general social service and partial care facilities which provide services to families and children under the auspices of the Division of Youth and Family Services. The scope of this program is limited to the purposes mentioned above for those who are either parties to or candidates for a service contract with the Division.

(b) In order to achieve the purposes of this chapter, the Department hereby delegates the responsibility for providing services and to regulate the provision of service to the Division.

10:125-3.5 Assurance of non-discrimination

The Division shall obtain assurance from each applicant that all portions and services of the entire facility for the construction of which or in connection with which aid under the New Jersey Public Purpose Buildings Construction Act of 1980 **or under the New Jersey Human Services Facilities Construction Bond Act of 1984** is sought shall be made available without discrimination on account of race, creed, color or national origin; and that no professionally qualified person shall be discriminated against on account of race, creed, color or national origin with respect to the privilege or professional practice in the facility.

RULE ADOPTIONS

BANKING

(a)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

Insurance Premium Finance Company Act Rules

Readoption with Amendment: N.J.A.C. 3:22

Proposed: March 20, 1989 at 21 N.J.R. 661(a).

Adopted: May 12, 1989 by Mary Little Parell, Commissioner, Department of Banking.

Filed: May 12, 1989 as R.1989 d.307, **without change**.

Authority: N.J.S.A. 17:16D-8.

Effective Dates: May 12, 1989, Readoption; June 5, 1989, Amendment.

Expiration Date: May 12, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:22.

Full text of amendment to the readoption follows.

CHAPTER 22

INSURANCE PREMIUM FINANCE COMPANY ACT

SUBCHAPTER 1. PREMIUM FINANCE AGREEMENT

3:22-1.1 Premium finance agreement

(a) There must be disclosure in the premium financing agreement of the key elements prior to the signature of the insured in accordance with the requirements set forth in N.J.S.A. 17:16D-9.

(b) A continuous payment agreement which authorizes renewable or continuing arrangements is prohibited.

(c) Separately signed premium finance agreements are required for each policy, renewal, addition or change, in order to disclose current conditions and provisions applicable to each loan.

(d) This rule shall apply to insurance premium finance companies doing business or authorized to do business in the State of New Jersey.

COMMUNITY AFFAIRS

(b)

OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Ombudsman Practice and Procedure and Public Notice Requirements

Readoption: N.J.A.C. 5:100

Proposed: February 21, 1989 at 21 N.J.R. 368(a).

Adopted: May 5, 1989 by Hector M. Rodriguez, Ombudsman for the Institutionalized Elderly.

Filed: May 5, 1989 as R.1989 d.295, **without change**.

Authority: N.J.S.A. 52:27G-5d.

Effective Date: May 5, 1989.

Expiration Date: May 5, 1994.

Summary of Public Comments and Agency Responses:

One comment on the proposed readoption was received by the Office of the Ombudsman for the Institutionalized Elderly (the "Office") on March 27, 1989, after expiration of the deadline for submission of comments, from the New Jersey State Nurses Association (the "Associa-

tion"). The Office therefore determined to extend the deadline for submission of comments until May 4, 1989. No additional comments were received, but the Office did consider the Association's comment.

The Association made the following comments: that the Office's manpower should be increased; that actions by health care workers undertaken with the consent of a patient, resident or client of a facility under the Office's jurisdiction ought not to be regarded as abuse or exploitation under the statutory definitions of those terms; that the rules to be readopted by the Office may not be fully adequate as currently constituted; that many health care workers and organizations are patient advocates, like the Office; that the Office may be unable to carry out its legal responsibilities without burdensomeness to some individuals; that patients, residents and clients should not necessarily be regarded as mentally incompetent solely by reason of the fact that they have been institutionalized; and that patients, residents and clients may at some times indeed suffer the violation of their civil and human rights.

After considering the single comment received, the Office determined to readopt the rules as proposed. Many of the items mentioned by the commenter were more in the way of observations than comments requiring a response. The Office appreciates the concern expressed, and will bear the observations in mind in promulgating new rules for this chapter (see notice of proposal published elsewhere in this issue of the New Jersey Register). Regarding the second item mentioned, the Office does not regard such actions by health care workers to be abuse or exploitation. Concerning the second-to-last item, the Office agrees and does not view institutionalization as the sole basis for an assessment of mental incompetency.

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

CORRECTIONS

THE COMMISSIONER

(c)

Classification Process

Exceptions; Time in Custody; Failure to Work

Adopted Amendments: N.J.A.C. 10A:9-1.3 and 5.2

Proposed: March 20, 1989 at 21 N.J.R. 664(a).

Adopted: May 4, 1989 by William H. Fauver, Commissioner, Department of Corrections.

Filed: May 9, 1989 as R.1989 d.299, **without change**.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: June 5, 1989.

Expiration Date: January 20, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received four comments which opposed the adoption of the proposed amendments.

COMMENT: A commenter suggested that a statement be added to the proposed amendments which would provide that gap time cannot nullify any earlier sentence, not just a mandatory minimum sentence. The commenter supplied an example in which the aggregation of two sentences, including the application of gap time credits, resulted in a reduced maximum sentence date, below that which had been ordered by the sentencing judge on the earlier sentence.

RESPONSE: The example offered by the commenter appeared to be a result anticipated, but not dealt with, by the Supreme Court in *Richardson v. Nickolopoulos*, 110 N.J. 241 (1988). Therein the Court recognized that if gap time was permitted only to reduce the aggregate term, it may serve in some cases to reduce the entire sentence in a manner which would benefit the defendant. The Court, however, has chosen to await a later case in which to consider this issue. In the interim, the Department of Corrections will apply the definition of gap time which the Court has apparently approved.

COMMENT: A commenter objected to the proposed language in the amendments on the grounds that the language conflicts with N.J.S.A. 2C:43-6.

ADOPTIONS

INSURANCE

RESPONSE: The proposed language is designed to ensure that the intent of the Legislature in drafting N.J.S.A. 2C:43-6 is in effect. N.J.S.A. 2C was promulgated September 1, 1979. N.J.S.A. 30:4-123.51, which provides that commutation and work credits shall not in any way reduce any judicial or statutory mandatory minimum term, was amended for this purpose in July, 1982. The intent of N.J.S.A. 30:4-123.51 is that the inmate shall serve the entire mandatory minimum term imposed by the Court, before any credits can be applied to reduce to overall time served.

COMMENT: A commenter asked whether the definition of gap time includes sentences from other states or Federal courts.

RESPONSE: It is the understanding of the Department of Corrections that the definition of gap time applies to sentences by any court of competent jurisdiction, whether in New Jersey or otherwise.

COMMENT: A commenter cited examples of how application of credits under these proposed amendments would create difficulties for defendants sentenced in accordance with plea bargains. The commenter suggested that a "Pandora's Box" situation would develop.

RESPONSE: The resolution of difficulties arising from the application of gap time credits must await a further court ruling because the implications of plea bargaining and other such issues were deferred in the Richardson case. In the interim, the Court suggested that judges may fashion their sentences in accordance with their knowledge of the problems involved and the objectives of the sentences to be imposed.

Full text of the adoption follows.

10A:9-1.3 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise.

...
 "Gap time credit" means the credit awarded by the sentencing court for the period of time between dates of sentence when a defendant, who has previously been sentenced to imprisonment, is subsequently sentenced to another term for an offense committed prior to the former sentence, other than an offense committed while in custody.
 ...

10A:9-5.2 Exceptions; time in custody; failure to work

- (a) (No change.)
- (b) In all cases where the sentence includes a mandatory minimum term of imprisonment, commutation time, work time, gap time and minimum credits may not be applied to the mandatory minimum term, but may only reduce the maximum term.
- (c) In no case may commutation time, work time, gap time and minimum credits be used to reduce a maximum sentence to a period of incarceration that is less than the judicial or statutory mandatory minimum term.

Recodify existing (c) through (d) as (d) through (e) (No change in text.)

(a)

Manual of Standards For Juvenile Detention Commitment Programs

Readoption with Amendments: N.J.A.C. 10A:33

Proposed: March 20, 1989 at 21 N.J.R. 667(a).
 Adopted: May 2, 1989 by William H. Fauver, Commissioner, Department of Corrections.
 Filed: May 2, 1989 as R.1989 d.286, **without change**.
 Authority: N.J.S.A. 2A:4A-1 et seq., specifically 2A:4A-43c(1) and (2), and 30:1B-10.
 Effective Date: May 2, 1989, Readoption; June 5, 1989, Amendments.
 Expiration Date: May 2, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10A:33-2.2 Legal authority of Department

(a) N.J.S.A. 2A:4A-43c(1) provides that, "If the county in which the juvenile has been adjudicated delinquent has a juvenile detention facility meeting the physical and program standards established pursuant to this subsection by the Department of Corrections, the court may, in addition to any of the dispositions not involving placement out of the home enumerated in this section, incarcerate the juvenile in the youth detention facility in that county for a term not to exceed 60 consecutive days. Counties which do not operate their own juvenile detention facilities may contract for the use of approved commitment programs with counties with which they have established agreements for the use of pre-disposition juvenile detention facilities. The Department of Corrections shall promulgate such rules and regulations from time to time as deemed necessary to establish minimum physical facility and program standards for the use of juvenile detention facilities pursuant to this subsection."

(b) N.J.S.A. 2A:4A-43c(2) provides that, "No juvenile may be incarcerated in any county detention facility unless the county has entered into an agreement with the Department of Corrections concerning the use of the facility for sentenced juveniles. Upon agreement with the county, the Department of Corrections shall certify detention facilities which may receive juveniles sentenced pursuant to this subsection and shall specify the capacity of the facility that may be made available to receive such juveniles; provided, however, that in no event shall the number of juveniles incarcerated pursuant to this subsection exceed 50% of the maximum capacity of the facility."

10A:33-3.1 County eligibility

Only those counties in which an approved juvenile detention facility is located and those counties that have a contract with another county that has an approved juvenile detention facility are eligible to participate in the Juvenile Detention Commitment Program.

INSURANCE

(b)

DIVISION OF ACTUARIAL SERVICES

Notice of Corrected Responses to Comments Reporting Financial Disclosure and Excess Profits Adopted New Rules: N.J.A.C. 11:3-20

Take notice that the Department of Insurance has discovered an error in its response to the fifth comment set forth in the Notice of Adoption of repeals and new rules pertaining to reporting financial disclosure and excess profits, published in the May 15, 1989 New Jersey Register at 21 N.J.R. 1335(a). The citation to N.J.S.A. 17:29A-5.5 is incorrect; the correct citation is N.J.S.A. 17:29A-5.8.

In addition, the response to the sixth comment at 21 N.J.R. 1337 also contains an erroneous citation. Instead of N.J.S.A. 17:29A-5.6(b), the response should have cited N.J.S.A. 17:29A-5.7(b).

(c)

DIVISION OF ACTUARIAL SERVICES

Standard Limiting Effect of Negative Excess Investment Income in the Computation of Excess Profits

Adopted New Rule: N.J.A.C. 11:3-20A

Proposed: April 3, 1989 at 21 N.J.R. 842(a).
 Adopted: May 12, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance.
 Filed: May 12, 1989 as R.1989 d.306, **without change**.
 Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29A-5.8.
 Effective Date: June 5, 1989.
 Expiration Date: January 6, 1991.

INSURANCE

ADOPTIONS

Summary of Public Comments and Agency Responses:

COMMENT: Two commenters stated that the use of the current AAA bond rate of nine percent does not necessarily reflect the AAA bond rate for the three year period prescribed.

Furthermore, one of the commenters stated that the current bond rate is not indicative of what may transpire in the future and in a rising interest rate market, past investments do not reflect current investment strategy.

The commenters recommended that the rate be calculated for each year as this would be more indicative of what an insurer should be able to receive on its investments if it invests prudently.

RESPONSE: The Department disagrees. The interest rate set forth is indicative of the rates of return for the three years used in the calculation of excess profits. Furthermore, nine percent is one of the lowest amounts that the AAA bond rate has been. If the rate were calculated for each year, the rate could be higher than nine percent.

Regarding what may transpire in the future, the commenter's point is not relevant. This standard only applies to the excess profits report to be filed by July 1, 1989. A new standard indicative of current market conditions will be promulgated each year.

COMMENT: Several commenters stated that the use of corporate long term bond rates is not indicative of an insurer's total investment portfolio. Insurers invest their funds primarily in tax exempt securities, many of which do not provide nine percent taxable equivalent returns.

One of the commenters stated that utilizing a standard AAA bond rate does not allow a mix of various portfolio investments.

Another of the commenters stated that the nine percent rate is higher than the industry average rate of seven percent underlying the Insurance Services Office (ISO) rates. The commenter stated that the seven percent rate is based on an insurer's entire investment portfolio and is used to derive anticipated investment income for the excess investment income calculation.

RESPONSE: The Department disagrees. The rate is not intended to reflect an insurer's actual portfolio. The interest rate set forth in the proposed new rule is indicative of a conservative return on investment of policyholder-supplied funds. The Department believes that nine percent is an appropriate standard.

Regarding the use of the interest rate underlying the ISO rates, as one of the commenters stated, this rate is used to derive anticipated investment income. The proposed standard is used to determine actual investment income for the excess investment income calculation. Therefore, no change to the proposed rule is warranted.

COMMENT: Two commenters stated that the nine percent standard reflects the rate on long term bonds even though private passenger automobile business develops over a relatively short period of time. The commenters recommended utilizing an AAA bond rate of short term instruments as this would better reflect the investment needs of insurers.

One of the commenters recommended that the 52 week treasury bill rate be utilized as this rate is more consistent with the time required for automobile claims to develop and is a more suitable risk-free rate of return.

RESPONSE: The Department disagrees. The standard is not intended to reflect the investment needs of an insurer or reflect an insurer's actual investment portfolio. It should be noted that the proposed rule is not intended to dictate the mix of an insurer's investment portfolio. The rule sets forth a standard indicative of a conservative return on investments.

COMMENT: One commenter stated that if an insurer earns a higher rate of return than the proposed standard, it should be compensated for taking the risk since the insured is already guaranteed the risk free rate of return under New Jersey laws.

RESPONSE: The Department disagrees. N.J.S.A. 17:29A-5.8 provides that excess investment income is to be included in the computation of excess profits. It also provides that the effect of negative excess investment income may be limited pursuant to a standard promulgated by the Commissioner. The rule implements this statute. There is no basis in the statute to limit the effect of positive excess investment income as the commenter suggested. Therefore, no change is warranted.

COMMENT: One commenter stated that the corporate bond rate may not be indicative of the current market conditions due to the decreasing perceived value of corporate AAA bonds. The commenter stated that due to the large amount of takeovers and increase in the amount of "junk bonds" in the market, a rate based on Government security indices would be a better basis for the standard.

RESPONSE: The Department disagrees. The AAA bond rate is indicative of a high quality conservative investment.

COMMENT: Several commenters stated that a lower standard should be utilized.

One of the commenters stated that this would more accurately reflect the insurer's total investment portfolio.

Another of the commenters recommended using the IRS discount rate of seven percent or the average of the actual investment income rate of return from the Annual Statements of all automobile insurers in New Jersey.

RESPONSE: The Department disagrees. The standard is not intended to reflect an insurer's actual portfolio. The proposed rule sets forth a conservative minimum rate of return that an insurer should be able to receive. The Department believes that this standard is reasonable. Therefore, no change is warranted.

COMMENT: Several commenters stated that N.J.S.A. 17:29A-5.8 confines the Commissioner's authority to limit the effect of negative excess investment income to instances where the excess investment income is negative. The commenters stated that by applying the nine percent standard to all insurers, including insurers with a calculated investment yield of less than nine percent, the proposed rule would impact insurers with positive excess investment income.

One of the commenters also stated that the rule goes beyond statutory authority in that it eliminates excess investment income by setting a standard equal to the anticipated investment income ratio required in rate filings (the Internal Revenue Service (IRS) discount rate of seven percent plus two percent which equals nine percent).

For these reasons, the commenters recommended that the rule specify that the nine percent standard applies only when the calculated yield rate results in negative excess investment income.

In addition, one of the commenters recommended that there be no limitation on negative excess investment income because it could force some insurers to have operating results less than those contained in their approved rate filings. It would also force insurers' returns below the level allowed by the existing Clifford formula which during periods of higher inflation and interest rates, produces an inadequate return.

RESPONSE: The Department disagrees. The statute authorizes the Commissioner to limit the effect of negative excess investment income. In order to limit negative excess investment income, it must first be determined. Excess investment income is defined in the statute as actual investment income minus anticipated investment income. This amount may be negative. In order to limit the effect of negative excess investment income, a minimum amount of actual investment income permitted must be set forth. The proposed rule accomplishes this purpose and, therefore, is consistent with the statute.

Furthermore, the proposed standard is derived from the current AAA bond rate and is independent of the anticipated investment ratio required in an insurer's rate filings. Also, the proposed standard of nine percent does not necessarily eliminate negative excess investment income. A company could have used a rate of return on its investments higher than nine percent in its rate filing.

Finally, the effect of negative excess investment income is limited because the investment rate of return used in insurers' rate filings may not reflect the investment return available during the three years contained in the excess profits report. The effect of the rule will not cause a lower rate of return because the actual rate of return may be higher than the rate anticipated in the insurers' rate filings.

COMMENT: Two commenters stated that the standard should not be based on the current AAA bond rate. The excess profits calculation is a measurement of investment income earned during the previous three calendar years. Also, investment yields are a function of investments owned by insurers rather than rates currently available on new bonds. Therefore, the commenters recommended that the standard should be based on investments owned by insurers during the 1986, 1987 and 1988 calendar years.

One of the commenters also stated that this type of measurement would be consistent with the derivation of the yield rate underlying the ISO rates which will be used in the calculation of anticipated investment income.

RESPONSE: The Department disagrees. The proposed rate is not intended to reflect the actual investments of insurers. The proposed rule sets forth a conservative rate of return that any insurer should be able to receive.

COMMENT: Several commenters stated that the proposed rule is not timely for the excess profits reports due in 1989. N.J.S.A. 17:29A-5.8 requires that the limitation of negative excess investment income in the computation of excess profits be pursuant to a standard promulgated not later than April 1 of the year in which the excess profits report is due.

One of the commenters stated that even if proposal of the rule satisfies the requirement of promulgation, the April 1 deadline has not been met.

RESPONSE: The Department disagrees. The statute directed the Department to act but this statute did not suspend the operation of the laws which govern the procedures for the formal proposal and adoption of rules. The Department moved promptly to develop and publish the proposed rule in accordance with these rules. The Department is now acting promptly to adopt the rule in accordance with the requirements for formal adoption. Furthermore, the notice of proposal was published in the April 3 issue of the New Jersey Register. This was the first business day after April 1 which fell on a Saturday. No change is being made to the proposed rule. Therefore, insurers have had notice of the proposed standard since the first business day after the April 1 deadline. Therefore, the proposed standard will apply to the excess profits reports to be filed by July 1, 1989.

COMMENT: One commenter stated that including the year of enactment and the years prior thereto in the calculation of excess profits is unconstitutional unless it works to the benefit of the insurer.

RESPONSE: The Department disagrees. The argument provided by the commenter is not persuasive.

COMMENT: Two commenters stated that the rule must make adjustments for Federal income taxes payable on actual investment income from policyholder-supplied funds.

RESPONSE: The Department disagrees. Federal income tax requirements and impacts are independent of the excess profits requirements. Therefore, no change in the proposed rule is warranted.

COMMENT: One commenter stated that the proposed standard assumes that invested funds can automatically achieve the AAA bond rate. Many investments are locked into long-term securities with fixed interest rates which may be lower than the proposed standard. This creates the potential of causing a wrongful return of excess profits based upon an artificially high investment income level.

RESPONSE: The Department disagrees. The proposed standard does not create an artificially high investment income level. The standard is indicative of an appropriate rate of return for 1986, 1987 and 1988. The rate of return for long-term securities which may have been purchased in the past is not relevant to the excess profits calculation.

Full text of the adoption follows.

SUBCHAPTER 20A. STANDARD LIMITING EFFECT OF NEGATIVE EXCESS INVESTMENT INCOME IN THE COMPUTATION OF EXCESS PROFITS

11:3-20A.1 Standard on the investment of policyholder-supplied funds

To complete Item 7 of Exhibit Eight, Part One-A (see N.J.A.C. 11:3-20 Appendix), an insurer filing an excess profits report, in accordance with N.J.A.C. 11:3-20, shall use a ratio of .090, or the actual ratio calculated in Exhibit Eight, Part One-A, whichever is higher.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF ARCHITECTS

Single Family Exemption; Title Block; Sealing Documents; Impersonal Names; Restrictions in Titles

Adopted New Rules: N.J.A.C. 13:27-4.5, 4.6, 4.7, 4.8, 4.10, 4.12 and 4.13

Proposed: February 21, 1989 at 21 N.J.R. 433(b).

Adopted: April 8, 1984 by the New Jersey State Board of Architects, George C. Waters, R.A., President.

Filed: May 4, 1989 as R.1989 d.294, **without change**.

Authority: N.J.S.A. 45:3-3.

Effective Date: June 5, 1989.

Expiration Date: April 1, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

SUBCHAPTER 4. ARCHITECTURAL PRACTICE AND RESPONSIBILITY; EXEMPTIONS; TITLE BLOCKS

13:27-4.1 to 4.4 (Reserved)

13:27-4.5 Single family exemption

(a) In accord with N.J.S.A. 45:3-10, any person in this State may act as a designer of a detached dwelling and appurtenances thereto to be constructed by that person solely as a residence for that person or member of that person's immediate family.

(b) A person may design the dwelling and all appurtenances thereto, prepare the plans and file the plans with an affidavit indicating that that person drew the plans.

(c) In lieu of personally preparing the plans, a person may utilize pre-prepared (commercially published, available to the public) plans which bear a certification that they were originally drawn by an architect licensed in any United States' jurisdiction, provided these plans are reviewed, signed, sealed and adapted to the specific site by a New Jersey licensed architect. By signing and sealing these plans, the New Jersey licensed architect assumes full responsibility for said plans, just as if the plans were prepared under the architect's direct supervision.

(d) A person, in lieu of personally constructing the residence, may engage others to perform the work.

13:27-4.6 Title block on drawings; form; removal

(a) Every architect shall provide a title block on all drawings (except renderings) and similar information on the title page of all specifications which are prepared and sealed by the architect.

(b) Such title block shall be in such form as the Board may adopt or approve.

(c) Such title block shall be distinct and separate from any other title block, box, plaque or any similar device of illustration or lettering.

(d) The title block shall be lettered on the drawing in such a manner as to reproduce clearly on all prints and reproductions thereof.

(e) No person shall remove a title block from any print or reproduction.

(f) No non-licensed person's name, other than the owner or lessee, shall be within the title block.

13:27-4.7 Title block contents

(a) When the architect practices as an individual, the title block shall contain:

1. The name and location of the project;
2. The full name of the architect;
3. The title "architect";
4. The certificate number and handwritten signature of the architect; and
5. The date when signed.

(b) When two or more licensed architects practice architecture as a firm or partnership, the title block shall contain:

1. The name and location of the project;
2. The firm name;
3. The title "architects";
4. The full name and certificate number of each partner named in the title block;
5. The handwritten signature of at least one of the partners; and
6. The date when signed.

(c) When professionals practice architecture as a professional service corporation organized under N.J.S.A. 14A:17-1 et seq., the title block shall contain:

1. The name and location of the project;
2. The professional service corporation name;
3. The full name and certificate number of the architect of record;
4. The handwritten signature of the architect of record; and
5. The date when signed.

(d) A similar title block shall be provided on a site plan which shall be included in any set of drawings of a building project.

(e) The title block may contain the initials of the draftsmen or checker, and dates, drawing numbers, revision numbers and such similar incidental items as is customary in architects' offices; provided, however, the name of the architect, whether for an individual firm, partnership or corporation, shall be the major size lettering within the heavy borderline of the title block.

13:27-4.8 Submission of title block form for approval

Any architect may submit a proposed form of title block to the State Board of Architects for approval.

13:27-4.9 (Reserved)

13:27-4.10 Sealing documents

All working drawings and specifications prepared by the architect or under his or her supervision shall be signed on the original with the personal signature of the architect. Thereafter, all copies of such drawings and specifications shall be dated and sealed prior to submission to the client or filing with a public agency.

13:27-4.11 (Reserved)

13:27-4.12 Impersonal names

Names such as "Design Associates", "Technical Group", "The ABC Company" or any other impersonal name shall not be used by individuals, firms, partnerships, associations or any other entities unless they have formed a professional service corporation as set out in N.J.S.A. 14A:17-1 et seq.

13:27-4.13 Restrictions in titles

(a) The term "Associates" when used officially in a title must refer only to existing individuals, licensed in this State as architects, or in a related licensed profession.

(b) A sole proprietorship shall not be conducted under a title which designates or suggests the existence of more than a single principal.

(c) When any partner, shareholder, associate or other licensed professional whose name is used in the title ceases to be a member of a corporation, firm, partnership or association for any reason including death or disability, then the title shall be changed within two years of this disassociation.

(a)

OFFICE OF CONSUMER AFFAIRS

Notice of Administrative Correction
Motor Vehicle Advertising Practices
Definitions

Adopted New Rule: N.J.A.C. 13:45A-2.3.

Take notice that the Division of Consumer Affairs has discovered punctuation errors in the N.J.A.C. 13:45A-2.3 definition of open-end lease, and the presence of potentially misleading language in the definition of closed-end lease.

The potentially misleading portion of the closed end lease definition is, "but may have the option to pay additional amounts in order to purchase it at that time." As this language is present in this definition, but is not found in the definition of open-end lease, one might imply that such an option is not available on an open-end lease. Such an implication is not correct; in fact, such options to purchase are more common in open-end leases than in closed-end leases (see *Consumer Guide to Vehicle Leasing*, Federal Trade Commission et al., p. 10). As agreed to by the Office of Administrative Law, pursuant to N.J.A.C. 1:30-2.7(a)3, the Division of Consumer Affairs, by this notice, is deleting the above-quoted misleading language from the definition of closed end lease.

Full text of the corrected rule follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

13:45A-2.3 Definitions

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

...

"Open-end lease" means a lease in which the lessee may owe additional amounts, that is, a "balloon" payment, depending on the value of the motor vehicle at the end of the lease term.

"Closed-end lease" means a lease in which the lessee is not responsible for the value of the motor vehicle at the end of the lease term unless there is excessive damage, wear and tear, or mileage[, but may have the option to pay additional amounts in order to purchase it at that time].

...

TRANSPORTATION

(b)

LOCAL AID

Notice of Administrative Correction
Federal and Urban System Substitution Program
Eligible Costs

N.J.A.C. 16:20A-2.1 and 16:20A Appendix I

Take notice that the Office of Administrative Law (OAL) has discovered an error in the text of N.J.A.C. 16:20A-2.1, Eligible costs, and 16:20A Appendix I as published in notices of proposal and adoption in the New Jersey Register (see 21 N.J.R. 623(a) and 1140(c), respectively). In N.J.A.C. 16:20A-2.1(a), the word "and" between the words county and municipality appears in the pre-adoption rule and in the proposal and adoption filings from the Department of Transportation to the OAL as "or". In N.J.A.C. 16:20A Appendix I, the municipality of Sussex Borough in Sussex County, which now appears in the Appendix and was in the documents filed with OAL, was omitted from the Register-published text. This notice of correction is made pursuant to N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule and appendix follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

16:20A-2.1 Eligible costs

(a) Except as stated below, State participation in project cost shall be limited to 100 percent of the cost of construction including construction supervision, inspection and material testing. Except as hereinafter provided, the cost of design engineering and right-of-way acquisition shall be born totally by the county [and] or municipality.
1.-2. (No change.)

APPENDIX I

Municipalities Qualified for Depressed Rural Centers Aid

...	
Sussex	Hamburg Borough
Sussex	Sussex Borough
Union	Winfield Township
...	

TRANSPORTATION OPERATIONS

(c)

Speed Limits

Route N.J. 35 in Monmouth County

Adopted Amendment: N.J.A.C. 16:28-1.49

Proposed: March 20, 1989 at 21 N.J.R. 698(c).

Adopted: April 20, 1989 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: May 3, 1989 as R.1989 d.287, without change.

ADOPTIONS

TRANSPORTATION

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: June 5, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.49 Route 35 including Higgins Avenue, Route U.S. 9 and 35 and Route 35¹ and 71

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

(c) The rate of speed designated for the certain part of State highway Route 35—Route 35 and 71—Route 35 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. In Monmouth County:

i.-ii. (No change.)

iii. Zone three:

(1) Ocean Township:

(A) 50 mph between the Route N.J. 35-Route N.J. 66 traffic circle and the Eatontown Borough-Ocean Township line (mileposts 24.80 to 28.18); thence

(2) Eatontown Borough:

(A) 50 mph between the Ocean Township-Eatontown Borough line and Weston Place (mileposts 28.18 to 28.95); thence

(B) 45 mph between Weston Place and the Route N.J. 35-Route N.J. 36 traffic circle (mileposts 28.95 to 29.48); thence

iv. through x. (No change.)

(d) (No change.)

(a)

Speed Limits

Route N.J. 15 in Sussex County

Adopted Amendment: N.J.A.C. 16:28-1.76.

Proposed: March 20, 1989 at 21 N.J.R. 699(a).

Adopted: April 25, 1989 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: May 3, 1989 as R.1989 d.292, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: June 5, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.76 Route 15

(a) The rate of speed for the certain parts of State highway Route 15 described in this subsection shall be established and adopted as the maximum legal rate of speed.

1. For both directions of traffic in Morris County:

i. In the Town of Dover:

(A) Zone 1: 25 miles per hour from the southerly junction with Route 46 at Mt. Hope Avenue to Fairview Avenue (milepost 0.5); thence

(B) Zone 2: 40 miles per hour extending through Rockaway Township and into Wharton Borough to the Route I-80 interchange (milepost 2.0).

2. For northbound traffic in Morris County:

i. Zone 3: 55 miles per hour in Wharton Borough extending through Rockaway Township, Jefferson Township, Morris County, and into Sparta Township, Sussex County, to the northerly terminus of Route 181 (milepost 14.2).

3. For southbound traffic:

i. In Sussex County:

(A) (No change in text.)

ii. In Morris County:

(A) (No change in text.)

(1) (No change in text.)

(B) (No change in text.)

(1) (No change in text.)

(2) (No change in text.)

4. For both directions of traffic in Sussex County:

i. In Sparta Township:

(A) Zone 7: 50 miles per hour from the northerly terminus of Route 181 extending into Lafayette Township to 500 feet north of Limecrest Road—Route 94 (milepost 16.8); thence

ii. In Lafayette Township:

(A) Zone 8: 35 miles per hour between 500 feet north of Limecrest Road—Route N.J. 94 and 400 feet north of Stateville Quarry Road (mileposts 16.73 to 18.27); thence

iii. In Frankford Township:

(A) Zone 9: 50 miles per hour between 400 feet north of the Stateville Quarry Road and Route U.S. 206—County Road 565 (mileposts 18.27 to 19.52).

(b)

Restricted Parking and Stopping

Route N.J. 7 in Essex County

Adopted Amendment: N.J.A.C. 16:28A-1.6

Proposed: April 3, 1989 at 21 N.J.R. 883(a).

Adopted: May 4, 1989 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: May 8, 1989 as R.1989 d.296, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-197.5 and 39:4-199.

Effective Date: June 5, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.6 Route 7

(a) (No change.)

(b) The certain parts of State highway Route 7 described in this subsection shall be designated and established as restricted parking space for the use of persons who have been issued special vehicle identification cards by the Division of Motor Vehicles in accordance with N.J.S.A. 39:4-197.5. Under the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space.

1. Restricted parking in the Town of Belleville, Essex County:

i. Washington Avenue:

(1) (No change.)

(2) Along the east side:

(A) (No change.)

(B) 280 Washington Avenue—Beginning at a point 87 feet south of the southerly curb line of Holmes Street to a point 22 feet southerly therefrom.

(c) (No change.)

(a)

**Restricted Parking and Stopping
Routes U.S. 22 in Warren County; N.J. 35 in
Monmouth County; U.S. 130 in Gloucester County;
and N.J. 91 in Middlesex County**

**Adopted Amendments: N.J.A.C. 16:28A-1.13, 1.25
and 1.46**

Adopted New Rule: N.J.A.C. 16:28A-1.110

Proposed: April 3, 1989 at 21 N.J.R. 883(b).

Adopted: May 8, 1989 by John F. Dunn, Jr., Director, Division
of Traffic Engineering and Local Aid.

Filed: May 9, 1989 as R.1989 d.298, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, and 39:4-199.

Effective Date: June 5, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.13 Route U.S. 22

(a) The certain parts of State highway Route U.S. 22 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1. through 9. (No change.)

10. No stopping or standing in Lopatcong Township, Warren County:

i. Along both sides:

(1) For the entire length within the corporate limits including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

(b) (No change.)

16:28A-1.25 Route 35

(a) (No change.)

(b) The certain parts of State highway Route 35 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 bus stops:

1. through 12. (No change.)

13. Along the northbound (easterly) side in Eatontown Borough, Monmouth County:

i. Mid-block bus stop:

(1) Clinton Avenue—Beginning 585 feet south of the southerly curb line of Clinton Avenue and extending 135 feet southerly therefrom.

14. Along the southbound (westerly) side in Eatontown Borough, Monmouth County:

1. Mid-block bus stop:

(1) Clinton Avenue—Beginning 585 feet south of the southerly curb line of Clinton Avenue and extending 135 feet southerly therefrom.

ii. Far side bus stop:

(2) Industrial Way—Beginning at the southerly curb line of Industrial Way and extending 105 feet southerly therefrom.

(c) through (e) (No change.)

16:28A-1.46 Route U.S. 130

(a) The certain parts of State highway Route U.S. 130 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited.

1. through 2. (No change.)

3. No stopping or standing in Westville Borough, Gloucester County:

i. Along both sides:

(1) For the entire length within the corporate limits, including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

4. through 9. (No change.)

(b) through (c) (No change.)

16:28A-1.110 Route 91

(a) The certain parts of Route 91 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited.

1. No stopping or standing in North Brunswick Township, Middlesex County:

i. Along both sides:

(1) For the entire length within the corporate limits including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

(b)

**Restricted Parking and Stopping
Route N.J. 27 in Middlesex and Somerset Counties
Adopted Amendment: N.J.A.C. 16:28A-1.18**

Proposed: March 20, 1989 at 21 N.J.R. 700(a).

Adopted: April 20, 1989 by John F. Dunn, Jr., Director, Division
of Traffic Engineering and Local Aid.

Filed: May 3, 1989 as R.1989 d.288, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Effective Date: June 5, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.18 Route 27

(a) (No change.)

(b) The certain parts of State highway Route 27 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. through 4. (No change.)

5. Along the northbound (easterly) side in South Brunswick Township, Middlesex County:

i. Far side bus stops:

(1) Allston Road—Beginning at the northerly curb line of Allston Road and extending 130 feet north therefrom.

(2) Stanworth Road—Beginning at the northerly curb line of Stanworth Road and extending 125 feet north therefrom.

(3) Stillwell Road—Beginning at the northerly curb line of Stillwell Road and extending 170 feet north therefrom.

(4) Beekman Road—Beginning at the northerly curb line of Beekman Road and extending 130 feet north therefrom.

ii. Near side bus stops:

(1) Heathcote Road—Beginning at the southerly curb line of Heathcote Road and extending 105 feet southerly therefrom.

(2) Kingston Road—Beginning at the southerly curb line of Kingston Road and extending 105 feet southerly therefrom.

(3) Raymond Road—Beginning 1235 feet from the northerly curb line of Raymond Road and extending 135 feet north therefrom.

iii. Mid-block bus stops:

(1) Allston Road—Beginning 823 feet from the northerly curb line of Allston Road and extending 135 feet north therefrom.

(2) New Road—Beginning 186 feet from the southerly curb line of New Road and extending 135 feet southerly therefrom.

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- (3) Stanworth Road—Beginning 330 feet north of the northerly curb line of Stanworth Road and extending 135 feet north therefrom.
 - (4) Sand Hill Road—Beginning 186 feet from the northerly curb line of Sand Hill Road and extending 135 feet north therefrom.
 - (5) Henderson Road—Beginning 336 feet south of the southerly curb line of Henderson Road and extending 135 feet south therefrom.
 - 6. Along the southbound (westerly) side in Franklin Township, Somerset County:
 - i. Far side bus stops:
 - (1) Allston Road (105 feet);
 - (2) Bunker Hill Road (105 feet).
 - ii. Near side bus stops:
 - (1) through (3) (No change.)
 - iii. Mid-block bus stops:
 - (1) From a point 220 feet south of the southerly curb line of Henderson Road to a point 120 feet southerly therefrom.
 - (2) Beginning 800 feet north of the northerly curb line of Allston Road and extending 135 feet northerly therefrom.
- Recodify existing 8. through 24. as 7. through 23. (No change in text.)
24. All bus stops are to be the length specified in this subsection, measured from the curb line of the intersecting street or prolongation of the curb line of the street which intersects.
- (c)-(e) (No change.)

(a)

**Restricted Parking and Stopping
N.J. 45 in Salem County and U.S. 130 in Burlington
County**

**Adopted Amendments: N.J.A.C. 16:28A-1.31 and
1.46**

Proposed: March 20, 1989 at 21 N.J.R. 701(b).
 Adopted: April 20, 1989 by John F. Dunn, Jr., Director, Division
 of Traffic Engineering and Local Aid.
 Filed: May 3, 1989 as R.1989 d.289, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
 Effective Date: June 5, 1989.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 16:28A-1.31 Route 45
- (a) (No change.)
 - (b) The certain parts of the State highway Route 45 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. through 8. (No change.)
 - 9. Along the northbound (easterly) side in Mannington Township, Salem County:
 - i. (No change.)
 - ii. Mid-block bus stop:
 - (1) Between the driveway (Entrance/Exit) in front of the ARC Center parking lot.
- 16:28A-1.46 Route U.S. 130
- (a) (No change.)
 - (b) The certain parts of State highway Route U.S. 130 described in this subsection shall be established and designated 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. through 4. (No change.)
 - 5. Along the southbound (westerly) side in Delran Township, Burlington County:
 - i. Near side bus stops:
 - (1) Beginning at the prolongation of the northerly curb line of Tenby Chase Drive and extending 105 feet northerly therefrom.
 - (2) Chester Avenue—Beginning at the northerly curb line of Chester Avenue and extending 105 feet northerly therefrom.
 - ii. Far side bus stop:
 - (1) Haines Mill Road—Beginning at the southerly curb line of Haines Mill Road and extending 100 feet southerly therefrom.
6. Along the northbound (easterly) side in Delran Township, Burlington County:
 - i. Near side bus stops:
 - (1) Haines Mill Road—Beginning at the southerly curb line of Haines Mill Road and extending 105 feet southerly therefrom.
 - (2) Chester Avenue—Beginning at the southerly curb line of Chester Avenue and extending 105 feet southerly therefrom.
- Recodify existing 6. through 11. as 7. through 12. (No change in text.)
- (c) (No change.)

(b)

**Restricted Parking and Stopping
Routes N.J. 28 in Union County and N.J. 324 in
Gloucester County**

**Adopted Amendment: N.J.A.C. 16:28A-1.19
Adopted New Rule: N.J.A.C. 16:28A-1.109**

Proposed: March 20, 1989 at 21 N.J.R. 701(a).
 Adopted: April 25, 1989 by John F. Dunn, Jr., Director, Division
 of Traffic Engineering and Local Aid.
 Filed: May 3, 1989 as R.1989 d.290, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-197.5 and
 39:4-199.
 Effective Date: June 5, 1989.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 16:28A-1.19 Route 28
- (a)-(c) (No change.)
 - (d) The certain parts of the State highway Route 28 described in this subsection shall be designated and established as Restricted Parking Space, for the use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking spaces.
 - i. Restricted parking in the City of Elizabeth, Union County:
 - (1) (No change.)
 - (2) Handicapped parking at 262½ Westfield Avenue on the south side beginning 256 feet east of the prolongation of the easterly curbline of Magie Avenue and extending 24 feet easterly therefrom.
 - (e) (No change.)
- 16:28A-1.109 Route 324
- (a) The certain parts of State highway Route 324 described in this subsection shall be designated and established as "no stopping or standing" zones, where stopping or standing is prohibited at all times.
 - 1. No stopping or standing in Logan Township, Gloucester County:
 - i. Along both sides:
 - (1) For the entire length within the corporate limits of Logan Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated Bus Stops and Time Limit Parking areas. Signs to be posted only in areas where an official Township resolution has been submitted.

(a)

Turns

Route N.J. 27 in Middlesex County

Adopted New Rule: N.J.A.C. 16:31-1.26

Proposed: March 20, 1989 at 21 N.J.R. 702(a).
 Adopted: April 25, 1989 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
 Filed: May 3, 1989 as R.1989 d.291, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-193.6.
 Effective Date: June 5, 1989.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:31-1.26 Route 27

- (a) Turning movements of traffic on the certain parts of State highway Route 27 described in this section are regulated as follows:
1. In the Borough of Metuchen, Middlesex County:
 - i. No left turn from Route 27 (southbound) to Wakefield Avenue (eastbound).

(b)

Turns

Route N.J. 17 in Bergen County

Adopted New Rule: N.J.A.C. 16:31-127

Proposed: April 3, 1989 at 21 N.J.R. 884(a).
 Adopted: May 4, 1989 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
 Filed: May 8, 1989 as R.1989 d.297, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.
 Effective Date: June 5, 1989.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:31-1.27 Route 17

- (a) Turning movements of traffic on the parts of State highway Route 17 described in this subsection are regulated as follows:
1. In Rutherford Borough, Bergen County:
 - i. Between the hours of 4:00 P.M. and 6:00 P.M., except on Saturdays, Sundays and State holidays, no person shall make a right turn at any of the following locations:
 - (1) South on Route 17 (Ramp "T");
 - (A) West on Crane Avenue.
 - (B) West on Nevins Street.

(c)

TRANSPORTATION ASSISTANCE

Office of Regulatory Affairs

Zone of Rate Freedom

Readoption: N.J.A.C. 16:53D

Proposed: March 20, 1989 at 21 N.J.R. 703(a).
 Adopted: April 25, 1989 by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.
 Filed: May 3, 1989 as R.1989 d.293, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-20 through 2-25.
 Effective Date: May 3, 1989.
 Expiration Date: May 3, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:53D.

TREASURY-GENERAL

DIVISION OF PENSIONS

(d)

**Police and Firemen's Retirement System
 Outstanding Loans at Retirement**

Adopted Amendment: N.J.A.C. 17:4-6.4.

Proposed: March 6, 1989, at 21 N.J.R. 630(a).
 Adopted: April 24, 1989, by Board of Trustees, Police and Firemen's Retirement System, Anthony Ferrazza, Secretary.
 Filed: April 26, 1989, as R.1989 d.280, **without change**.
 Authority: N.J.S.A. 43:16A-13(7) and P.L. 1988, c.134.
 Effective Date: June 5, 1989.
 Expiration Date: July 1, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

17:4-6.4 Outstanding loan

- (a) A member who has an outstanding loan balance at the time of retirement may repay the loan balance, with interest, as follows:
1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:4-6.3; or
 2. By retention of retirement benefit payments, excluding authorized deductions, by the retirement system until the loan balance, with interest, is repaid.
 - i. Authorized deductions include Federal tax liens, health benefit premiums, and Federal income tax withholding. If the member does not request repayment in full, repayment is by retention of retirement benefits.
- (b) A member who retires on a disability pension or because of medical illness or disability as determined by the board of trustees with an outstanding loan balance may repay the balance as follows:
1. In the manner prescribed in (a) above; or
 2. By deductions from retirement benefit payments of the same monthly amount deducted from the member's compensation immediately preceding retirement until the loan balance, with interest, is repaid.
 - i. If a member who retires on a disability pension does not request another repayment option, repayment is by deductions in the same monthly amount deducted from the member's compensation immediately preceding retirement.
- (c) A member whose retirement is other than a disability retirement and who wants to establish that the retirement is necessitated by medical illness or disability shall submit an application acceptable to the retirement system together with a report of the member's personal or attending physician and all other physicians' reports, hospital records or other medical evidence which the member can supply pertaining to the illness or disability. The medical evidence shall be sufficient to show to the satisfaction of the board of trustees that the member is totally and permanently disabled and would qualify on a medical basis for ordinary disability retirement. The board may require the member to be examined by a physician designated by the retirement system, and may refer the medical evidence to the medical panel for its report on whether the member is totally and permanently disabled and retirement is necessitated by medical illness or disability.
- (d) If a retiree dies before the loan balance, with interest, is repaid, the remaining balance is paid first from the group life insurance proceeds, and then from the proceeds of any other benefits

payable on account of the retirant in the form of monthly payments that are due to the beneficiary or estate. If multiple beneficiaries are to receive these benefits, each beneficiary shares in repaying the remaining balance in the same proportion in which they are entitled to the benefits.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Casino Service Industries

Readoption with Amendments: N.J.A.C. 19:43

Proposed: March 20, 1989 at 21 N.J.R. 705(a).

Adopted: April 26, 1989 by the Casino Control Commission,
Walter N. Read, Chairman.

Filed: April 27, 1989 as R.1989 d.281, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69, 70(a) and (i), 92 and 94.

Effective Date: April 27, 1989, Readoption; June 5, 1989,
Amendments.

Expiration Date: April 27, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:43.

Full text of the amendments to the readoption follows.

19:43-1.2 License requirements

(a) No enterprise shall provide goods or services directly related to casino or gaming activity to, or otherwise transact business directly related to casino or gaming activity with, a casino applicant or licensee, its employees or agents unless licensed in accordance with subsections 92a and b of the Act; provided, however, that upon a showing of good cause by a casino applicant or licensee for each business transaction, the Commission may permit an applicant for a casino service industry license to conduct business transactions with such casino applicant or licensee prior to the licensure of the casino service industry license applicant pursuant to N.J.S.A. 5:12-92a.

1. The following enterprises shall be required to be licensed as casino service industry enterprises in accordance with subsections 92a and b of the Act:

i.-iii. (No change.)

iv. Any form of enterprise which provides such other goods or services determined by the Commission to be so utilized in or incident to gaming or casino activity as to require licensing in order to contribute to the integrity of the gaming industry in New Jersey.

(b) Unless otherwise licensed in accordance with (a) above, no enterprise shall, on a regular or continuing basis, provide goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility to a casino applicant or licensee, its employees or agents unless such enterprise is licensed or exempted in accordance with subsections 92c and d of the Act or authorized to do so pursuant to N.J.A.C. 19:41-11.3(g). In determining whether an enterprise is subject to the requirements of this subsection, it shall not matter whether the casino applicant or licensee is a party to any agreement pursuant to which said goods or services are being provided. Enterprises subject to the provisions of this subsection shall include, without limitation, suppliers of alcoholic beverages, food and nonalcoholic beverages, garbage handlers, vending machine providers, linen suppliers, maintenance companies, shopkeepers located within the approved hotel, limousine services and construction companies contracting with casino applicants or licensees or their employees or agents.

(c) In determining if a person or enterprise does or will, on a regular or continuing basis, provide goods or services regarding the realty, construction, maintenance, or business of a proposed or exist-

ing casino hotel or related facility to casino applicants or licensees, their employees or agents, the following factors shall be considered:

1.-7. (No change.)

(d) Notwithstanding the provisions of (c) above, persons and enterprises which provide, or imminently will provide, goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility to casino applicants or licensees, their employees or agents shall, unless otherwise determined by the Commission, be deemed to be transacting such business on a regular or continuing basis if:

1. The total dollar amount of such transactions with a single casino applicant or licensee, its employees or agents, is or will be equal to or greater than \$50,000 within any 12-month period; or

2. The total dollar amount of such transactions with casino applicants or licensees, their employees or agents, is or will be equal to or greater than \$150,000 within any 12-month period.

(e) (No change.)

19:43-1.3 Standards for qualification

(a) (No change.)

(b) Each applicant required to be licensed as a casino service industry in accordance with subsections 92a and b of the Act, except for gaming schools (see N.J.A.C. 19:44-3), shall, prior to the issuance of any casino service industry license, produce such information, documentation and assurances to establish by clear and convincing evidence:

1. (No change.)

2. The applicant's good character, honesty, and integrity;

3. (No change.)

4. That all owners, management and supervisory personnel, principal employees and sales representatives qualify under the standards except residency, established for qualification of a casino key employee under section 89 of the Act;

5. The integrity of all financial backers, investors, mortgagees, bondholders, and holders of indentures, notes or other evidences of indebtedness, either in effect or proposed, which bears any relationship to the enterprise; and

6. The integrity of all officers, directors, and trustees of the applicant.

(c) Each applicant required to be licensed as a casino service industry in accordance with subsections 92c and d of the Act shall, prior to the issuance of any casino service industry license, produce such information and documentation, including without limitation as to the generality of the foregoing its financial books and records, and assurances to establish by clear and convincing evidence its good character, honesty and integrity.

(d) Any enterprise directed to file an application for a casino service industry license pursuant to subsections 92(c) and (d) of the Act may request permission from the Commission to submit a modified form of such application. The Commission, in its discretion, may permit such modification if the enterprise can demonstrate to the Commission's satisfaction that securities issued by it are listed, or are approved for listing upon notice of issuance, on the New York Stock Exchange or the American Stock Exchange.

(e) (No change.)

19:43-1.8 Duration of licenses

(a) Licensure pursuant to N.J.S.A. 5:12-92a is granted for a term of one year for the initial license term and the first two successive renewals, and for a term of two years for all subsequent renewals; provided, however, that the Commission shall reconsider the granting of such a license at any time at the request of the Division. Licensure pursuant to N.J.S.A. 5:12-92c is granted for three years. An application for renewal of a license shall be filed no later than 120 days prior to the expiration of that license. The application for renewal of a license need contain only that information which represents or reflects changes, deletions, additions or modifications to the information previously filed with the Commission.

(b) (No change.)

19:43-1.9 Record keeping

(a) All casino service industry licensees shall maintain in a place secure from theft, loss or destruction, adequate records of business

operations which shall be made available to the Commission or Division upon request. These records shall include:

1. (No change.)
2. All correspondence concerning the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility.
- 3.-4. (No change.)
5. Financial records of all transactions concerning the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility.
 - (b) The records listed in (a) above shall be held for at least five years.

19:43-1.14 Casino service industry licenses

(a) No casino service industry license shall issue unless the individual qualifications of each of the following persons shall have first been established in accordance with all provisions, including those cited, of the Act and of the rules of the Commission.

1. In the case of casino service industry licenses issued in accordance with subsections 92a and b of the Act:
 - i. (No change.)
 - ii. If the enterprise is, or if it is to become a subsidiary, each holding company and each intermediary company which the Commission deems necessary in order to further the purposes of the Act;
 - iii.-x. (No change.)
2. In the case of casino service industry licenses issued in accordance with subsections 92c and d of the Act:
 - i. (No change.)
 - ii. If the enterprise is, or if it is to become a subsidiary, each holding company and each intermediary company which the Commission deems necessary to qualify or approve in order to further the purposes of the Act;
 - iii.-x. (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Coastal Permit Program Rules

Readoption: N.J.A.C. 7:7

Proposed: February 21, 1989 at 21 N.J.R. 369(a).

Adopted: May 11, 1989 by Christopher J. Daggett,

Commissioner, Department of Environmental Protection.

Filed: May 12, 1989 as R.1989 d.309, **without change**.

Authority: N.J.S.A. 12:5-3; 13:1D-1 et seq.; 13:9A-1 et seq.,

particularly 13:9A-2; and 13:19-1 et seq., particularly 13:19-17.

DEP Docket Number: 005-89-01.

Effective Date: May 12, 1989.

Operative Date: June 5, 1989.

Expiration Date: May 12, 1994.

Summary of Public Comments and Agency Responses:

The proposal to readopt the Coastal Permit Program Rules, N.J.A.C. 7:7, without change was published in the New Jersey Register on February 21, 1989 at 21 N.J.R. 369(a). A public hearing concerning the proposed readoption was held on March 15, 1989 at the offices of the New Jersey Department of Environmental Protection, Division of Coastal Resources, in Trenton, New Jersey. No members of the public attended the public hearing. The Department received one written comment during the public comment period ending March 23, 1989.

On April 7, 1989, the Department gave notice that it was extending the comment period for the proposed readoption until May 7, 1989. No additional written comments concerning the proposal were received by the Department during the extended comment period ending May 7, 1989.

Under the rules of the Office of Administrative Law (OAL), readoption of an unexpired rule is effective upon the filing of the adoption notice with the OAL. For these rules, the close of the extended comment period coincided with the expiration date of the chapter, and fell on a Sunday. Since the Department would not have been able to adopt the proposed

readoption on a Sunday, it appeared that the rules at N.J.A.C. 7:7 would expire before their readoption could be completed. Because of the extraordinarily environmentally sensitive nature of the coastal zone and the gravity of the subject matter covered by these rules, it was necessary for the Department to ensure that no lapse in these rules occurred. Therefore, on May 5, 1989 the Department obtained a Gubernatorial waiver under Executive Order No. 66(1978) which waived the five-year sunset provision for this chapter to the extent that the expiration date was extended for the period of May 7, 1989 through June 5, 1989 (see notice published elsewhere in this issue of the Register). In accordance with the extension granted in the Gubernatorial waiver, the Department is adopting the proposed readoption without change effective May 12, 1989 and operative June 5, 1989.

COMMENT: In order to increase public participation in the waterfront development permit program and afford adjacent property owners the same timely notice of pending application that they are afforded under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., at N.J.S.A. 40:55D-12, the Department should amend N.J.A.C. 7:7-4.2 to require that applicants submit to the Division of Coastal Resources evidence that notice of intent to file an application for a waterfront development permit has been given to adjacent property owners.

RESPONSE: Under the Municipal Land Use Law, at N.J.S.A. 40:55D-12, property owners proposing projects which necessitate municipal approvals for property subdivision or zoning variances are required to notify adjacent property owners of the nature of the proposal and of the public hearing to be held at the municipal level. Currently, if a project falling under the jurisdiction of the coastal permit program rules requires property subdivision or a zoning variance approved by a municipal board, the N.J.S.A. 40:55D-12 notice requirements apply. However, not all development governed by the coastal permit program rules involves a hearing before a local municipal board. For example, if an applicant wishes to build a house that conforms with applicable zoning, the applicant need only apply for a construction permit from the municipal code enforcement official, without a hearing before a local municipal board. In fact, the majority of new permit applications received by the Department under the upland amendment of the rule affecting the CAFRA area (see 21 N.J.R. 34(a), January 3, 1989) fall into this category.

Since the majority of projects requiring waterfront development permits thus do not involve notification of adjacent property owners regarding the nature of the proposed project, the commenter has suggested that it would be in keeping with the intent of the Municipal Land Use Law to expand this type of notification to all projects requiring waterfront development permits. The Department feels that such notice requirements would be burdensome and are unnecessary at this time. The procedures contained in the Municipal Land Use Law at N.J.S.A. 40:55D-12 are designed to encourage public participation in land use decisions which are likely to change the permissible land use patterns or the tax structure within a municipality. In cases where the proposed development will not require approval from a municipal planning board or municipal board of adjustment, adjacent property owners already have notice of the types of potential development that could occur on neighboring property. Therefore, the Department believes that the current coastal permit program notice requirements are sufficient to protect adjacent property owners' interests in development proposals on neighboring property. Requiring the applicant to provide expanded notice would not be justified at this time.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:7.

(a)

NEW JERSEY WATER SUPPLY AUTHORITY
Schedule of Rates, Charges and Debt Service
Assessments for the Sale of Water from the
Delaware and Raritan Canal-Spruce Run/Round
Valley Reservoirs System

Adopted Amendments: N.J.A.C. 7:11-2.1, 2.2, 2.3,
2.4, 2.5, 2.8, 2.9, 2.10, 2.11, 2.12, 2.13, 2.14

Proposed: January 17, 1989 at 21 N.J.R. 103(a).

Adopted: May 11, 1989 by Christopher J. Daggett, Chairman,
 New Jersey Water Supply Authority and Commissioner,
 Department of Environmental Protection.

Filed: May 12, 1989 as R.1989 d.310, **with substantive changes** not
 requiring additional public notice and comment (see N.J.A.C.
 1:30-4.3).

Authority: N.J.S.A. 58:1B-7.

DEP Docket Number: 048-88-12.

Effective Date: June 5, 1989.

Operative Date: July 1, 1989.

Expiration Date: May 13, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (hereafter "Authority") is adopting amendments to N.J.A.C. 7:11-2. In accordance with N.J.A.C. 7:11-2.11(a)4, Procedures for rate adjustments, the Authority held a pre-public hearing meeting with the Authority's contractual water customers to present and explain the proposed adjustment to the rate schedule embodied in the proposed amendments. This meeting was held on January 6, 1989 at the Authority's Administration Building conference room and was attended by representatives from the Elizabethtown Water Company, the Middlesex Water Company and the Township of East Brunswick. A representative from the Public Advocate, Division of Rate Counsel was invited as required by N.J.A.C. 7:11-2.11(a)4 but did not attend. Although the meeting was held prior to the start of the public comment period, the minutes from that meeting, prepared by Mr. Melvin H. Myers, P.E., Business Administrator for the Authority, have been filed with this adoption with the Office of Administrative Law.

A public hearing concerning these amendments was held on February 17, 1989 to provide interested persons the opportunity to present testimony. Notice of the public hearing was published in the Home News, Trenton Times, Lambertville Beacon, Courier News, Princeton Packet, and Hunterdon County Democrat. Approximately five individuals attended the hearing, four of whom presented comments. Five written comments were also received during the public comment period which closed on March 24, 1989. These written and oral comments are summarized below:

COMMENT: The effective date of the rate increase should be delayed by three months, that is, the Authority should implement the rate increase but collections should not start until October 1, 1989.

RESPONSE: The Authority does not agree that the rate increase should not be collected until October 1, 1989. However, it should be noted that even with an operative date for the rate increase of July 1, 1989, the first payments would not be made to the Authority until September 1, 1989. This is due to the fact that bills for July's water use are mailed to the water users in August and payment is due by September 1, 1988. As a result, the actual effect of the rate increase is not felt until September 1, 1989.

COMMENT: The settlement with Johns Manville provides the Authority with \$420,000. These revenues, if received by a regulated company, would be returned to the rate payers. The Water Users Association believes that the Authority should apply the \$420,000 by returning it to the ratepayers thereby deferring the proposed increased rate through substitution.

RESPONSE: On February 15, 1989 the Authority received the \$420,000 payment from Johns Manville. Robert Tuteur of Cohen Shapiro Polisher Shiekman & Cohen, bond counsel to the Authority, has advised the Authority that the Johns Manville settlement is not considered to be a "revenue" as defined in the water purchase contracts and the financing documents. Therefore, the Authority can use the \$420,000 in any fashion which it judges to be in its best business interests.

The Authority has determined that this money be appropriated to the self insurance reserve. Such a deposit would increase the balance in the self insurance reserve to approximately \$930,000. As opposed to the Association's proposed short term use of this money, the Authority has decided upon a use which provides longer term benefits for the ratepayers. The Authority's business judgement is that longer term benefits will accrue by depositing the \$420,000 into the self insurance reserve for future liability claims. These benefits result from:

1. Ability to increase the Authority's deductible from the current \$50,000 per occurrence to as much as \$250,000 per occurrence. This will result in lower premiums for the Authority's general liability insurance; and

2. Increased interest earnings each year on the \$930,000 in the self insurance reserve will flow into the revenue fund and thereby help to stabilize the Authority's future rates.

COMMENT: It is the unanimous opinion of the five water users that make up the Water Users Association and the Middlesex County Board of Chosen Freeholders that the budget surplus funds available (\$300,000 fund balance) and the \$420,000 Johns Manville settlement should be used to delay the impact of the rate increase.

RESPONSE: By resolution No. 455 adopted on April 3, 1989, the Commissioners of the New Jersey Water Supply Authority authorized the use of \$300,000 in projected Fiscal Year 1989 budget surplus funds to minimize the impact of the rate increase which is to become operative on July 1, 1989. It is anticipated that these funds will offset all increased charges during the first month of the new rate and 83 percent of the increased charges during the second month. In addition, the Authority Commissioners will review actual Fiscal Year 1989 budget surplus figures in August and will consider whether any balance greater than \$300,000 should be used to further offset the impact of the rate adjustment.

See the previous response for a discussion of the use of the \$420,000 Johns Manville settlement.

COMMENT: Customers are currently paying \$10.50 per million gallons for a debt rate stabilization fund component which results in a monthly income of \$48,430. They have indicated that the continued payment of this amount for three more months beyond the expiration of this rate component as set out in the proposed amendments will pay for a 25 day delay in the implementation of the effect of the new rate. Combining that revenue with the Johns Manville Settlement of \$420,000 results in the requested delay in the effect of the rate increase of 92 days.

RESPONSE: As shown in the summary of the proposed rate adjustments (page 9 of the Basis and Background Document), an increase in rates is also required for operations and maintenance in the amount of \$15.43/mg, a 1969 Debt Rate increase of \$0.09/mg and a 1981 Debt Rate increase of \$0.07/mg. The total of these three rate increases, amounting to \$15.59, is proposed to be partially offset by the elimination of the \$10.50/mg Debt Rate Stabilization component effective July 1, 1989. It should be noted that there is still the need to cover an overall net increase for the three stated components (O & M, 1969, & 1981 Debt) of \$5.09/mg starting on July 1, 1989. Continuation of the agreed upon one year Debt Rate Stabilization component alone (\$10.50) would contribute only a portion of the funds required to sustain operations for three months. That amount would not fully cover the items described above, nor would it pay for the debt service on the new 1988 bonds. The Authority must increase its rates in order to meet its statutory obligations to operate in a self-sustaining, business-like manner.

COMMENT: The Water Users Association referenced the need for the operations and maintenance reserve, which by the terms of the 1988 Bond Resolution must be maintained by the Authority at all times at a balance of no less than three months of operations and maintenance expenses. An analysis by the commenter draws the conclusion that on an annualized basis the Authority's revenues are running \$880,000 ahead of those projected in the current budget indicating a year end budget surplus which could be used to delay the effect of the rate increase for three to possibly six months. This extrapolation was made from information provided by the Authority for its first six months of the current fiscal year.

RESPONSE: It is incorrect to draw the conclusion that Authority revenues are running \$880,000 ahead of those projected for the current budget year. The revenues for the first six months of the current fiscal year cannot be multiplied by two to extrapolate the \$880,000. The first six months' revenues include the following amounts which will not be repeated during the second six months of the current budget year:

ENVIRONMENTAL PROTECTION

ADOPTIONS

1. City of New Brunswick overdraft	\$ 1,075.03
2. East Brunswick overdraft	4,588.25
3. Elizabethtown Water Co. overdraft	290,865.61
4. Payments by Johns Manville	30,611.76
	<u>Total \$327,140.65</u>

Therefore, the commenter's analysis that budget surplus could provide a three to six month delay in the effect of the rate increase is not correct. See an earlier response regarding the Authority's decision to utilize the projected Fiscal Year budget surplus of \$300,000.

COMMENT: The regulated utilities are to submit a petition to the Board of Public Utilities (BPU) requesting a rate modification to cover the increased Authority rates. This will take six to nine months. Therefore, with a July 1, 1989 effective date, the regulated utilities will be forced to pay higher water costs before receiving the approval of the BPU to pass the increased Authority cost onto their customers.

RESPONSE: Several years ago the Authority developed its rate making procedures with the input of the members of the water users. The procedures require a minimum official notice of at least six months for any proposed rate adjustment. In practice, an unofficial briefing and discussion on such a proposal takes place during the preceding fall for an effective date on the following July 1. Such a meeting with the water users took place on September 22, 1988, some nine months prior to the proposed effective date of July 1, 1989. In addition, official notice of the rate adjustment was provided to the water users on December 8, 1988. As a result, it is the Authority's belief that a more timely preparation of the BPU petition would have enabled the companies to have the additional revenues closer to the time when the Authority begins the collection of the higher rates with the first payment which is to be made in September 1989.

COMMENT: The Authority operates on a July 1 to June 30 fiscal year while the Authority's water customers operate on a calendar year as their fiscal year. This difference in fiscal years leads to difficulties since the water users must submit budgets and recommend rate increases to town councils and the like by the end of the calendar year for the ensuing year's rates. It would be helpful if there was some way to change the budget calendar so that the Authority's budget calendar could coincide with municipal utilities as well as with private utilities.

RESPONSE: In 1984, the Authority's water customers agreed to a schedule of events for the promulgation of rate adjustments which appears at N.J.A.C. 7:11-2.11. This procedure was adopted in cooperation with the municipal and private customers and results in initial notification of a rate adjustment in September for an effective date nine months later. By notifying these customers in September, the adjustments can be incorporated into municipal budgets which are proposed the following January. The September notification also allows the privately owned utilities to begin the process of preparing their proposal to the BPU in a timely manner.

COMMENT: How much of a reduction in the Authority's insurance premiums would take place if the Authority uses the Johns Manville settlement money (\$420,000) to increase the insurance reserve, thereby allowing the Authority to increase its deductible from \$50,000 to \$250,000?

RESPONSE: The annual premium savings associated with increasing the Authority's General Liability insurance Self Insured Retainer from \$50,000 to \$250,000 is \$149,400. This annual savings has enabled the Authority to reduce the Operations and Maintenance expense component from the \$110.07 per million gallons as originally proposed to \$102.78 per million gallons.

COMMENT: It was reported that the Water Supply personnel received an average salary and wage increase of 11 percent last year. The Water Users Association has expressed concern about the rapid increase in the salaries and wages portion of the Authority's budget. The Association wants to encourage the Authority to restrict salary increases and keep in line with the national average.

RESPONSE: The employees of the Authority belong to the same labor negotiation bargaining units as other State employees. Consequently, the Authority is bound to abide by any salary agreements which the State and the bargaining units enter into.

COMMENT: The rate increase is very substantial; probably about 30 percent.

RESPONSE: Approximately one-third of the proposed rate increase is for annual operations and maintenance costs and this is the first such increase in this rate component since July 1, 1986. The increase in the annual operations and maintenance expense amounts to less than nine percent over a three year period, or approximately three percent per year since this component was last adjusted in 1986. Approximately two-thirds

of the proposed rate increase is attributable to the new debt service assessment which is needed to repay \$32,405,000 in Water System Revenue Bonds, Series 1988, which were issued to finance a total of 30 capital improvement projects over a five year period. The completion of these capital improvement projects is necessary to ensure a continuing safe and dependable water supply for a significant part of the State's population living in the central and northeast regions.

Agency Initiated Changes

N.J.A.C. 7:11-2.2(b) and 2.9(a)1 and 2

Due to lower than projected insurance costs for Fiscal Year 1990, the projected operations and maintenance component of the rate schedule is changed in this adoption from \$110.07 as the charge per month set forth in the proposed amendments to \$102.78 per month, a savings of \$7.29 per million gallons withdrawn. This reduced rate is reflected both at N.J.A.C. 7:11-2.2(b) which actually sets forth the operations and maintenance rate itself, and at N.J.A.C. 7:11-2.9(a)1 and 2 which references N.J.A.C. 7:11-2.2 and sets forth the operations and maintenance charge for standby service users.

Full text of the adoption follows (additions indicated in boldface with asterisks *thus*; deletions indicated in brackets with asterisks *[thus]*):

7:11-2.1 General provisions

(a) This Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System (hereafter "the System") shall be known and may hereafter be referred to in this subchapter as "the Schedule".

(b) The rates, charges and debt service assessments listed below shall be paid for raw water diverted, withdrawn or allocated from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System. These rates, charges and debt service assessments set forth in this subchapter shall be incorporated in all water use agreements.

(c) The total rate charged under this Schedule shall include the General Rate Schedule for Operations and Maintenance set forth at N.J.A.C. 7:11-2.2, and the Debt Service Assessments set forth at N.J.A.C. 7:11-2.3 (See N.J.A.C. 7:11-2.12, Special user rates, for exception).

7:11-2.2 General Rate Schedule for Operations and Maintenance

(a) The General Rate Schedule for Operations and Maintenance per million gallons listed at (b) below is based on estimated annual operations and maintenance expenses consisting of all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the System, and minor additions or improvements thereof or thereto, or the performance of any water purchase contract, including, but not limited to, all of the following:

1. All routine repairs and ordinary replacements and reconstruction of the System; all wages, salaries and other personnel costs, including costs of pension, retirement, health and other employee benefit programs; all fuel, utilities, supplies and equipment; and all supervisory, engineering, accounting, auditing, legal and financial advisory services;

2. All taxes and payments in lieu of taxes;

3. All costs of insurance for the System, including any form of self insurance (or self insurance reserves) maintained by the Authority and payment of all claims not covered by the Authority's insurance;

4. All fees and expenses incurred in connection with any Credit Facility, Reserve Account Credit Facility, the issuance of any bonds or the issuance of any other indebtedness of the Authority, and all fees and expenses of counsel, fiduciaries and others in connection with any such Credit Facility, Reserve Account Credit Facility, bonds or other indebtedness of the Authority to the extent not required to be paid out of the proceeds of such bonds or other indebtedness;

5. All amounts required to be deposited into the Rebate Fund, at the time and in the manner set forth in any investment rebate instructions or otherwise in accordance with the Internal Revenue Code;

6. All amounts required to be paid into any reserve fund established for operation and maintenance expenses;

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7. Allowance for depreciation with respect to equipment and property having a depreciable life of greater than three years but less than 10 years; and

8. Any other current costs, expenses or obligations required to be paid by the Authority under the provision of any agreement or instrument relating to bonds, other indebtedness of the Authority or by law. The current sales base of 152.966 million gallons per day has been used in setting the rate listed at (b) below.

(b) General Rate Schedule for Operations and Maintenance:

Allocation	Rate/Million Gallons
Million gallons per day (MGD)	\$*[110.07]** 102.78*

7:11-2.3 Debt Service Assessments

(a) The Debt Service Assessment rate per million gallons shall be based on the amounts and schedules of payments required under a loan agreement between the Authority and the Treasurer of the State of New Jersey to pay for the bonds issued pursuant to the "Water Conservation Bond Act of 1969", P.L. 169, c.127 (the "1969 Water Conservation Bonds") for the construction of outlet pipeline and dam rehabilitation; and the bonds sold pursuant to the "Water Supply Bond Act of 1981", P.L. 1981, c. 261 (the "1981 Water Supply Bonds") for the Delaware and Raritan Canal Sediment Removal Project. It also includes the debt service on the 1988 Water System Revenue Bonds issued by the Authority.

(b) The debt service assessment rate for the 1969 Water Conservation Bonds shall be based on a sales base of 151.768 million gallons per day. This debt service assessment rate does not apply to Delaware and Raritan Canal customers in the Delaware River Basin.

1. 1969 Water Conservation Bond Funds:

Period	Allocation	Rate/Million Gallons
7/1/89	Million Gallons	\$13.92
to 6/30/2002	per Day (MGD)	

(c) 1981 Water Supply Bond funds were borrowed from the State Treasurer to retire the tax exempt commercial paper used for temporary financing of the Delaware and Raritan Canal sediment removal program. The following debt service assessment rate, based on a sales base of 152.926 million gallons per day, in addition to that included in (b) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallons
7/1/89	Million Gallons	\$33.22
to 10/30/2006	per Day (MGD)	

(d) The following Debt Service Assessment rate for the 1988 Water System Revenue Bonds, based on a sales base of 152.926 million gallons per day, in addition to that included in (b) and (c) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallons
7/1/89 to 6/30/90	Million Gallons per Day (MGD)	\$37.64
7/1/90 to 6/30/92	Million Gallons per Day (MGD)	\$44.79
7/1/92 to 6/30/93	Million Gallons per Day (MGD)	\$54.82
7/1/93 to 6/30/94	Million Gallons per Day (MGD)	\$56.65

7:11-2.4 Daily allotment charge

(a) Effective on the date of commencement of charges as specified in the water use agreement, and except for special use described in N.J.A.C. 7:11-2.12, the user shall pay a daily allotment charge amounting to 100 percent of the value of the quantity specified in the agreement for 24-hour withdrawal at the rates specified in this Schedule, as it may be amended from time to time.

1. The total charge shall include the General Rate Schedule for Operations and Maintenance described in N.J.A.C. 7:11-2.2 and the applicable Debt Service Assessment as described in N.J.A.C. 7:11-2.3.

2. (No change.)

7:11-2.5 Equivalent sustained supply: Spruce Run/Round Valley Reservoirs System

(a) In operating the Spruce Run/Round Valley Reservoirs System to augment natural stream flow during a period of low runoff, optimum dependable supply is attained at the confluence of the Millstone River where the combined flow from the tributaries to the Raritan River above that point becomes effective.

(b) Each application for the diversion, withdrawal or allocation of water from the Raritan River Basin is, therefore, to be evaluated, and differentiation in rates, charges and assessments shall be made, on the basis of quantities of water to be supplied, distance between the facility and point of diversion, the cost in making such water available, the place where the water is to be used, and the character of such use.

7:11-2.8 Standby service

(a) "Standby service" means the supply of water from the System, to the extent from time to time available, in excess of aggregate uninterruptible service, for certain occasional uses, such as fire protection or other emergencies, natural or otherwise, which a System water user is authorized to withdraw pursuant to a contract. Such user shall pay a monthly standby charge instead of a demand charge, but shall in all other respects comply with the rules for the use of water from the Delaware and Raritan Canal-Spruce Run Round Valley Reservoirs System.

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

7:11-2.9 Standby Charge

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-2.8 above, shall pay a monthly minimum charge based on the capacity of his withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly Standby Charge, based on charges as set forth under N.J.A.C. 7:11-2.2 and 2.3.

NOTE: MGD = million gallons daily; GPM = gallons per minute.

1. For Delaware and Raritan Canal Standby Contracts within the Delaware River Basin:

Maximum withdrawal capacity Each 1 MGD (700 GPM) or fraction thereof.	Charge per month *[\$110.07]** \$102.78* plus annual debt service assessment rate for 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.
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2. For Standby Contracts within the Raritan River Basin:

Maximum withdrawal capacity Each 1 MGD (700 GPM) or fraction thereof.	Charge per month *[\$110.07]** \$102.78* plus annual debt service assessment rates for 1969 Water Conservation Bonds, 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.
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7:11-2.10 Rate adjustment

(a) The New Jersey Water Supply Authority reserves the right to review and revise the Schedule from time to time by the establishment of a new Schedule promulgated pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and any rules promulgated pursuant thereto.

1.-2. (No change.)

3. Any contract for the sale of water shall be subject to any adjustment resulting from this review.

(b) The New Jersey Water Supply Authority reserves the right to review the sales bases from time to time to make adjustments, if necessary, in the Schedule. Any such adjustments shall be promulgated pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and any rules promulgated pursuant thereto.

1. If any adjustment is required, at least six months notice in advance of the effective date of such revision shall be provided to all purchasers pursuant to N.J.A.C. 7:11-2.11.

2. (No change.)

3. Any contract for the sale of water shall be subject to any adjustment resulting from this review.

(c) Contracts for new or additional water sales after July 1, 1983 shall contain provisions requiring the retroactive payment of a full

proportionate share of the total annual Debt Service Assessment payments made by the New Jersey Water Supply Authority to the State Treasurer for the 1958 Bonds, the 1969 Bonds and the 1981 Bonds during the period from July 1, 1983 to the effective date of any new contract.

1. The new contract shall require that the total retroactive amount is to be paid in equal monthly increments over at least a 10-year period, or until the scheduled date by which the Authority will have completed payments to the State Treasurer with respect to the 1981 Water Supply Bonds, whichever is longer.

2. (No change.)

(d) Contracts for new or additional water sales after July 1, 1989 shall also contain provisions requiring the retroactive payment of a full proportionate share of the total annual Debt Service Assessment payments made by the New Jersey Water Supply Authority to its bond holders during the period from July 1, 1989 to the effective date of any new contract.

1. The new contract shall require that the total retroactive amount is to be paid in equal monthly increments over at least a 10-year period, or until the scheduled date by which the Authority will have completed payments to its bond holders with respect to the 1988 Water System Revenue Bonds, whichever is longer.

2. For each year after the date of a new contract, the New Jersey Water Supply Authority will credit pre-existing users with a proportionate share of the annual retroactive amount paid by any new user.

7:11-2.11 Procedures for rate adjustments

(a) Prior to adopting an adjustment in the Schedule or the Sales Bases established in this subchapter, the Authority shall comply with the following ratemaking procedures and schedule:

1. Official notice: Official notice and an explanation outlining the need for the proposed adjustment to the Schedule or the Sales Bases shall be given to all contractual water customers; the Department of the Public Advocate, Division of Rate Counsel; and other interested parties at least six months prior to the proposed effective date.

2.-3. (No change.)

4. Meeting with contractual customers and the Public Advocate, Division of Rate Counsel: After sending official notice to the contractual water customers and the Public Advocate, Division of Rate Counsel, regarding the proposed rate adjustment, Authority staff shall schedule a meeting to occur within 45 days with representatives from the contractual water customers and the Public Advocate's office in order to present and explain the proposal.

i. (No change.)

ii. In order to be answered at the public hearing, such questions must be received by the Authority no later than 15 days prior to the public hearing. The Authority staff will make every reasonable effort to answer those questions received later than 15 days prior to the public hearing at the time of the hearing. All questions will be answered as part of the hearing record at the time of the hearing or as indicated at (a)5vi below.

5.-7. (No change.)

7:11-2.12 Special user rates: Spruce Run/Round Valley Reservoirs System

Where the water withdrawn within the Raritan River Basin, as supported by releases from Spruce Run and Round Valley Reservoirs, is returned to the stream channel at a point reasonably considered to be in the near vicinity of the point of withdrawal, substantially undiminished in quantity and not substantially degraded in quality, all as determined by the New Jersey Water Supply Authority, the purchaser shall only pay at the rate specified under the General Rate Schedule for Operations and Maintenance as set forth at N.J.A.C. 7:11-2.2, as applied to the daily allotment. The annual Demand Charge for such use shall be determined by multiplying the daily allotment charge by 365.

7:11-2.13 Short term user rate

"Short term service" means the supply of water from the System, to the extent from time to time available, in excess of aggregate uninterruptible service, for certain interim, interruptible, non-guaranteed or short-term uses, such as growing agricultural or horticultural

products or meeting extraordinary requirements in consumer demand for potable or industrial water, which a System water purchaser is authorized to withdraw pursuant to a contract. Such purchaser shall pay at the rate specified under the General Rate Schedule for Operations and Maintenance as set forth at N.J.A.C. 7:11-2.2 and the applicable Debt Service Assessments as set forth at N.J.A.C. 7:11-2.3, as applied to the total water actually diverted during any month.

7:11-2.14 Late payment interest charge

Payments are due within 30 days of the billing date. All payments for service which are not made by the due date therefor and any other sums required to be paid to the Authority pursuant to a contract shall bear interest at a per annum rate equal to the prime rate, as from time to time established by Citibank, N.A. as its prime rate (with any changes in such prime rate to be effective on any date that such rate is changed) plus two percent. The late payment charge is to be calculated from the date when the bill is payable until the actual date of payment.

(a)

DIVISION OF WATER RESOURCES

Water Pollution Control

Readoption with Amendments: N.J.A.C. 7:14

Proposed: February 21, 1989 at 21 N.J.R. 373(a).

Adopted: April 26, 1989 by Christopher J. Daggett,

Commissioner, Department of Environmental Protection.

Filed: April 27, 1989 as R. 1989 d. 282, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-9, 58:10A-1 et seq., 58:10A-21 et seq., 58:11-49 et seq., 58:11-64 et seq., 58:1A-1 et seq., P.L. 1988, c. 56, 57 and 63.

DEP Docket Number: 006-89-01.

Effective Date: April 27, 1989, Readoption;

June 5, 1989, Amendments

Expiration Date: April 27, 1994

Summary of Public Comments and Agency Responses:

A public hearing on this proposed readoption with amendments was held in the East Brunswick Public Library on March 8, 1989, at which nine members of the public attended, three of whom provided comments. Five additional commenters submitted written comments prior to the close of the comment period on March 23, 1989.

SUBCHAPTER 4. General Comments

COMMENT: Two commenters stated that the economic impact statement concerning N.J.A.C. 7:14-4 was incorrect, arguing that the impact of increased sludge quality reporting on users will be significant.

RESPONSE: As stated, the Department recognizes that the amendments to N.J.A.C. 7:14-4 will have an economic impact on all domestic, industrial and permit-by-rule treatment works required to comply with the sludge quality requirements. However, the Department has retained the provision for basing reporting frequency on the size of the treatment works and/or the potential for the sludge management practices of that treatment works to have an environmental impact. Therefore, the larger domestic treatment works (more users) are required to report more frequently than smaller domestic treatment works (less users). Accordingly, the cost increases for larger domestic treatment works will be distributed over a larger number of users thereby significantly reducing economic impacts.

The only testimony presented on actual costs indicated that the increased reporting would cost an additional \$600.00 per sample (Forms T-VWX-008 and T-VWX-009) and that the additional cost to the user on an annual basis (including the cost for an annual priority pollutant scan) would be about \$0.50 per user. In addition, sewerage agencies with more than one treatment plant have the option of restructuring user costs on a municipality wide basis, thus distributing costs more equitably for users of smaller domestic treatment works. Other user cost structures may be instituted which would reduce any burdens imposed on those users which are least able to pay. Therefore, the Department believes the economic impact statement as stated was correct.

COMMENT: One commenter on the economic impact statement stated that cost estimates for conventional pollutants are about 40 percent low. The commenter argued that prices indicated are for wastewater analysis and that sludge analysis would cost more and would have a greater economic impact than indicated.

RESPONSE: The estimated costs for analysis reflect the most recent cost information made available to the Department. No hard cost data was submitted to substantiate this comment.

COMMENT: One commenter stated that the time between the notice of the proposed rule in the New Jersey Register and the hearing date was too short.

RESPONSE: Pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-4, the agency must give at least 30 days' notice of its intended action prior to amending a rule. In addition, the agency is required to conduct a public hearing on the proposed rule and provide at least 15 days' notice of such hearing. The notice given did meet the requirements of the Administrative Procedure Act. The Department made it clear at the public hearing held on March 8, 1989, that comments would continue to be accepted until March 23, 1989.

COMMENT: One commenter requested that the comment period be extended.

RESPONSE: As discussed in the notice of proposal at 21 N.J.R. 373(a), N.J.A.C. 7:14 is set to expire on April 27, 1989, pursuant to Executive Order No. 66 (1978). Given the time constraints imposed by the expiration of the chapter, the Department had very little time to respond to comments and adopt the chapter before April 27, 1989. Extending the comment period by even 30 days would not allow the Department adequate time to respond to comments before the chapter's expiration.

COMMENT: One commenter stated that the rules as proposed would increase the demand for services from laboratories resulting in longer turn around times. This would affect the ability of permittees to report their sludge quality data in a timely fashion. In addition, Assembly Bill A-3831, drafted by Assemblyman Bennett, requires automatic fines for late reports.

RESPONSE: The rules allow two months from the end of a reporting period until submission of the required reports. In addition, the rules allow for the sampling of sludge at the beginning of a reporting month. Therefore, almost three months could be utilized to submit the required reports under most circumstances. Considering that most of the required holding times for constituents (with the exception of most metals) to be analyzed are less than three months, this amount of time to report should be sufficient. Nevertheless, the Department would anticipate that the laboratories would expand services to meet an increase in demand. Until Assembly Bill A-3831 becomes law, penalties for late sludge quality reports will continue to be assessed pursuant to N.J.A.C. 7:14-8.

COMMENT: One commenter stated that the Department should consider the budget cycles of public agencies when proposing new rules. The increased costs associated with the sludge sampling will require authorities to cut costs in other areas which may lead to permit violations.

RESPONSE: The Department disagrees with this comment. The Department, by imposing the sludge quality assurance requirements of N.J.A.C. 7:14-4 upon a large regulated community of domestic and industrial treatment works, is not always able to satisfy the individual budgetary timetable of those it regulates. The Department has determined that the amendments to N.J.A.C. 7:14-4 will have a positive environmental impact and that the reporting of sludge quality information should not be delayed. The Department expects authorities to operate their treatment works in a manner which does not lead to permit violations.

COMMENT: One commenter questioned the Department's basis for stating, in the proposal's social impact statement, that there was public demand for amendments to N.J.A.C. 7:14-4, increasing the scope of sludge quality reporting.

RESPONSE: Several comments on the Statewide Sludge Management Plan, adopted November 4, 1987, addressed the need for the evaluation of toxics or sources of toxics, in sludge. These comments included concerns over household chemicals which could be expected to be found in sludge for which there are no current limits. Furthermore, P.L. 1988, c. 56 (to be codified at N.J.S.A. 58:10A), passed by the New Jersey Legislature echoes these concerns and requires that all sludge generated in this State by municipal treatment works conform to land-based sludge management criteria by March 17, 1991.

COMMENT: One commenter indicated that since the United States Environmental Protection Agency ("USEPA") had provided municipal digested sludge standards for laboratories to assess digestion and extraction procedures to check recovery, the Department should establish these same standards.

RESPONSE: The Department disagrees because it does not have the laboratory facilities to establish these standards at this time. It is the responsibility of the laboratory to purchase the required standards and then make the necessary dilutions to the proper range. In addition, all of the required laboratory standards can be obtained commercially.

COMMENT: One commenter suggested that an instruction booklet for laboratories and permittees to accompany N.J.A.C. 7:14-4 would be of assistance to identify normal sludge quality ranges or experiences.

RESPONSE: Evaluations on the accuracy of data is more a question of historical sludge quality and knowledge of industrial contributions into the system rather than a question of an acceptable range. It is advised that treatment works look at their own historical sludge quality and knowledge of discharges into their sewer systems when evaluating reports. Department staff is available for assistance in this regard when needed.

N.J.A.C. 7:14-4.3 Definitions

COMMENT: One commenter suggested that CBOD (carboneous biochemical oxygen demand) should be among the definitions in N.J.A.C. 7:14-4.3.

RESPONSE: The Department disagrees. CBOD is not used in N.J.A.C. 7:14-4, so it has not been added.

COMMENT: One commenter questioned whether the definition for "industrial treatment works" requires all significant indirect user ("SIU") dischargers to have a licensed operator as required under N.J.S.A. 58:11-64 and N.J.A.C. 7:10-13.

RESPONSE: Licensed operator requirements are implemented pursuant to the above referenced statute and rules. SIU dischargers which operate an industrial wastewater treatment system and have an individual NJPDES permit regulated by the Department pursuant to the New Jersey Pollutant Discharge Elimination System permit program, N.J.A.C. 7:14A, are required to have a licensed operator.

COMMENT: One commenter wanted "permitted flow" omitted from the list of definitions under N.J.A.C. 7:14-4.3 because the State should not be limiting flow, but instead should be limiting total pollution loading.

RESPONSE: The Department does not agree. The rules do not attempt to limit flow nor loading. Permitted flow is used by the Department for establishing reporting categories only.

COMMENT: One commenter indicated that paragraph 8 under the "significant indirect user" ("SIU") definition should read "... pure, treated or diluted by groundwater. . . ."

RESPONSE: The Department agrees with this comment and has changed the definition in N.J.A.C. 7:14-4.

N.J.A.C. 7:14-4.4 Analytical procedures

COMMENT: One commenter requested that the listing of acceptable analytical procedures include "Analytical Methods for the National Sewage Sludge Survey," USEPA, Office of Water Regulations and Standards (WH-522), Industrial Technology Division, Washington, D.C., August 1988.

RESPONSE: N.J.A.C. 7:14-4.4(d) allows for the use of alternative test procedures upon written permission from the Department. The Department will review this request for an alternative test procedure and advise the commenter of its decision.

N.J.A.C. 7:14-4.6 Sampling procedures

COMMENT: Three comments were received objecting to the sampling and compositing procedures outlined in N.J.A.C. 7:14-4.6. It was recommended that the permittee be allowed to retain current sludge sampling procedures until a Department determination could be made to the contrary.

RESPONSE: The Department concurs. Under N.J.A.C. 7:14-4.6, the Department had intended to allow alternative sampling procedures. Therefore, N.J.A.C. 7:14-4.6(d) has been modified to allow existing sampling points and procedures to be retained by any permittee, until and unless otherwise directed by the Department, provided that permittee submits a written alternative sampling request by August 1, 1989.

COMMENT: Two comments were received objecting to the fact that there is no required response timeframe on the Department to respond to alternative sampling procedures.

RESPONSE: As previously stated, the Department has amended the rules to allow existing sampling points and procedures to be utilized provided that a written request to do so is made to the Department. The Department intends to evaluate each of these reports on a case-by-case basis and notify the permittee of the suitability of their alternative procedure.

COMMENT: One comment was received stating that sampling plans for digesters can be flexible without sacrificing representative sampling.

RESPONSE: The rules allow for alternative sampling as previously stated.

COMMENT: One comment was received indicating that the existing procedure of compositing over a month should be retained.

RESPONSE: The Department in amending N.J.A.C. 7:14-4 made the determination that requiring permittees to analyze monthly composites was decreasing the reliability of the sludge samples. The reason for the decrease in reliability is that for holding time limits for quality assurance and quality control, there is typically less than a month between taking the sample and preserving the sample (see Table 1). Therefore, a shorter compositing procedure was chosen and is required under N.J.A.C. 7:14-4.

COMMENT: One commenter indicated confusion over the sampling procedure required for the priority pollutant scan. It seems to require that samples be composited over a year. This would conflict with the required holding times.

RESPONSE: This is not the Department's intent. N.J.A.C. 7:14-4.6(c)8 specifies that a composite sample should be obtained using five samples spaced one day apart over the reporting period. The reporting period is specified as a particular month in N.J.A.C. 7:14-4.7. The samples may be obtained any time as required during the required reporting month. However, as previously discussed, it is recommended that samples be taken early during the required reporting month to allow more time for submission of the report to the Department.

COMMENT: One comment was submitted indicating that a footnote should be added to Table 1 to indicate that the preservative 0.008%, Na₂S₂O₃ is only required when Cl₂ residual is expected to be present.

RESPONSE: The Department concurs and has made this addition to Table 1.

COMMENT: One comment indicated that the USEPA (SW-846, "Test Methods for Evaluating Solid Waste—Physical and Chemical Methods, Revision 1, December 1987, Table 4-1) allows for extractable organic compounds in a sludge matrix to be extracted within 14 days and extracts held for 40 days rather than the seven and 30 days as specified in Table 1.

RESPONSE: The Department believes that as the extent of the allowable holding time is approached, some reliability is lost. Therefore, the Department has determined that it is necessary to require the shorter holding times.

COMMENT: One commenter stated that use of grab samples to collect a one month composite as specified under N.J.A.C. 7:14-4.21 would exceed the holding time specified in Table 1.

RESPONSE: As stated at the beginning of the proposed rule text, all deletions from the rule were shown in brackets. N.J.A.C. 7:14-4.21 was shown in brackets and thus was being deleted. N.J.A.C. 7:14-4.6 specifies the appropriate sampling procedures.

N.J.A.C. 7:14-4.7 Reporting requirements

COMMENT: Three comments were received objecting to the inclusion of the requirement to perform an annual priority pollutant scan and stating that the summary of the rule does not provide any technical basis or background to support why a full scan is required. The comments claimed that there is no evidence or showing of actual contamination levels which warrant this testing and that the scan would add very little knowledge at a very high additional cost.

RESPONSE: The Department does not agree. Information about the occurrence of priority pollutants in sludge is important in determining appropriate sludge limits and management practices and for developing a sludge quality data base for each facility. There is already sufficient documentation that demonstrates the potential presence of priority pollutants in sewage sludge. In addition, information is currently being gathered under a National Sewage Sludge Survey for 419 additional analytes for the specific purpose of developing sludge management based limits for selected compounds.

Data supporting this requirement can be derived from the Department's report entitled "The Occurrence and Fate of Toxic Substances in New Jersey Sewage Treatment Facilities," Office of Science and Research, September 1986, and from a USEPA report entitled "Fate of Priority Pollutants in Publicly Owned Treatment Works," USEPA, 1982, frequently referred to as the "40-city Study", as well as another report prepared for the USEPA entitled "A Comparison of Studies of Toxic Substances in POTW Sludges," Camp, Dresser and McKee, 1984. Additional references for the occurrence of priority pollutants in sludge are cited in Tables A-9 and A-10 from "Process Design Manual—Land Application of Municipal Sludge," USEPA, October 1983. The purpose

of requiring a priority pollutant scan under N.J.A.C. 7:14-4 is to determine the frequency of occurrence of the various constituents in New Jersey generated sludges. This information will then be utilized to determine if additional limits or regulatory requirements are necessary.

In addition, the USEPA has recommended in a recent guidance document that priority pollutant scans be performed to gather necessary data to determine potential public or environmental impacts of sludge use and management. The "Guidance Manual for Writing Interim Case-by-Case Permit Requirements for Municipal Sewage Sludge," was prepared by the USEPA's Permit Division to provide interim guidance for sludge use and management practices and will be covered by forthcoming technical regulations to be codified at 40 CFR 503. The technical regulations will, among other things, utilize data from the National Sewage Sludge Survey to set pollutant limits for a limited number of management practices.

Similarly, the New Jersey Legislature, with the passage of P.L. 1988, c. 56, requires that all sludge generated by municipal treatment works shall conform with land-based sludge management criteria by March 17, 1991. This legislation includes the requirement for compliance with any standard which may be adopted under 40 CFR 503. The Department, in order to meet this mandate, has determined that a broad database on all potential sludge contaminants is needed. The Department is also authorized to determine the degree of chemical contamination, including metals and organics, in sludge generated by industrial treatment works. For this reason, the Department has imposed similar requirements.

COMMENT: Three comments were received objecting to the additions of beryllium, iron, molybdenum, selenium, fluoride, chloride, purgeables, base/neutrals, and acids to the forms in Appendix B. Similarly, two comments were received objecting to the deletions of endrin, heptachlor epoxide, methoxychlor, mirex, pp'-DDE and pp'-TDE.

RESPONSE: The USEPA developed extensive risk analyses for aggregate impacts to the most exposed individuals nationwide. The results of these risk analyses were summarized in "Summary of Environmental Profiles and Hazard Indices for Constituents of Municipal Sludge: Methods and Results," USEPA, Office of Water Regulations and Standards, Washington, D.C. 20460, July 1985. Based on this report, 35 analytes were found to be a potential concern in sludge management activities. It is these 35 analytes which were put on the forms in Appendix B for routine monitoring by domestic treatment works. The additional 10 constituents found on the forms in Appendix B are made up of nutrients, for assessing land application rates, and chloride, for determining HCL production during incineration. Those constituents deleted were not identified to be of potential concern under the risk assessment. No new information was provided by any commenter to the Department to change the original determination that the constituents deleted could pose an environmental risk.

COMMENT: One comment was received stating that work done by the Volatile Organics Task Force has shown that volatile organics/purgeables are stripped at the treatment plant and do not end up in the plant effluent. If they strip out easily, they probably will not end up in the sludge to any great extent.

RESPONSE: The Department does not agree. The lack of volatiles in a treatment plant's effluent does not necessarily mean that they will not concentrate in a treatment plant's sludge. Very limited work has been done on the potential for these compounds to be removed during sludge treatment. As previously cited, work has been performed which does document their presence in domestic sewage sludge. If additional analyses or work confirms stripping is a major problem, the information will be utilized to develop appropriate rules under the Department's air program.

COMMENT: One comment was received requesting how or why the respective numbers of 15, 10 and 10 were selected for identification of the additional peaks.

RESPONSE: The additional peaks should have been written as 15 purgeable volatile organic peaks, 10 acid extractable peaks and 15, not 10, base/neutral extractable peaks, or commonly referred to as the priority pollutants "+40. The change has been made to the rules and is based on standard Department policy to identify additional compounds beyond the original list of priority pollutants. The respective numbers were chosen in relation to the respective number of compounds in each compound class that could be identified (for example, fewer acid extractable peaks are required because there are fewer compounds in this class). As previously discussed, the National Sewage Sludge Survey being conducted by the USEPA will focus on 419 analytes for possible regulation. This additional information is necessary to develop a database for each facility on all constituents which may be present.

COMMENT: One commenter objected to the inclusion of the requirement to perform a priority pollutant scan and the addition of beryllium,

iron, molybdenum, selenium, fluoride, purgerables, base/neutrals and acids on the forms in Appendix B on the basis that none of these additional parameters are in the Statewide Sludge Management Plan. The commenter argued that a filing for modification to the Statewide Plan should precede these rules.

RESPONSE: There is no requirement that the Statewide Sludge Management Plan (SSMP) be updated prior to amending N.J.A.C. 7:14-4. The adoption deadline of April 27, 1989, for N.J.A.C. 7:14 did not allow readoption to occur after the required biennial update of the SSMP, scheduled for the end of 1989. The biennial update will incorporate any changes which need to be made to the criteria as set forth in the SSMP. However, it must be recognized that the intended purpose of N.J.A.C. 7:14-4 is to determine the extent of chemical contamination of sludge generated and then to use this information in the development of environmentally sound sludge management programs.

COMMENT: One commenter argued that sludge incinerated in the State of New Jersey should only be analyzed for arsenic, cadmium, nickel, chromium, mercury, and lead.

RESPONSE: The Department disagrees. The Department has determined that limiting the number of constituents analyzed for sludge incineration to the above mentioned constituents would not be protective of human health or the environment. The Department's decision rests upon USEPA's "Summary of Environmental Profiles and Hazard Indices for Constituents of Municipal Sludge: Methods and Results" which identifies 20 analytes of concern for incineration. It is also the experience of the Department that during non-operating periods sludge generators often switch management methods. If additional sludge quality information is not available, generators would not be readily able to utilize alternatives. In addition, the lack of data on several pollutants precludes proposing additional numerical limits at this time. Thus, it can be expected that numerical limits for additional constituents concerning incineration will be established as information is made available.

COMMENT: Two comments were received addressing N.J.A.C. 7:14-4.7(e) which requires industrial treatment works to analyze the sludge generated for any compound in Appendix B of N.J.A.C. 7:14A which are processed, handled, manufactured, formed, repackaged, used, disposed, or stored in the facility served by the industrial treatment works. One of the comments questioned whether a laboratory which operates under a plan approved by the Resource Conservation and Recovery Act of 1976, ("RCRA"), 42 U.S.C. 6901 et seq., is required to analyze their sludge for all the constituents used at the laboratory, where none of the constituents would be put down the drain. The second comment was more general citing the argument that a single industry may have several chemicals stored on shelves in small quantities that will never have a chance of entering sludge, but they still must be analyzed for.

RESPONSE: The Department would have to examine each particular circumstance on a case-by-case basis. Both examples as cited could meet the reduction or exemption criteria under N.J.A.C. 7:14-4.11(b). Therefore, the Department requires that a formal request for reduction or exemption be made, pursuant to N.J.A.C. 7:14-4.11(b), for those constituents not expected to be present in the sludge.

COMMENT: Two comments were received requesting that all the constituents listed in Appendix B of N.J.A.C. 7:14A, and all the chemicals and storet codes required to be reported on form T-VWX-010B, be included with the revisions to N.J.A.C. 7:14-4.

RESPONSE: All storet codes for the indicated parameters will be transmitted to all treatment works required to report under these rules along with the appropriate forms from Appendix B of these rules. The Department has decided to reference the list of constituents in Appendix B of N.J.A.C. 7:14A, rather than include the list of constituents in N.J.A.C. 7:14-4.

COMMENT: Two comments were received regarding small industrial treatment works which produce small sludge volumes. As a result, sludge may not be hauled more than twice a year. It was proposed that the frequency of analysis be reduced to match the frequency of off-site deliveries.

RESPONSE: Any small industrial treatment works may apply for a reduction in reporting pursuant to the procedures in N.J.A.C. 7:14-4.11(b).

N.J.A.C. 7:14-4.11 Exemptions and reductions in reporting requirements

COMMENT: One commenter stated that if a domestic treatment works performs a scan on its influent and the results indicate only de minimus quantities of the priority pollutants, then the domestic treatment

works should be allowed to avoid the monitoring of its sludge for the priority pollutants.

RESPONSE: The Department does not agree. Influent concentrations do not necessarily reflect the amount of contaminants which could concentrate in the sludge produced. As a rule, the higher the level of treatment provided, the higher the concentrations of contaminants in sludge regardless of the size of the treatment plant.

COMMENT: One comment indicated that the reduced reporting options available to industrial treatment works should also be made available to domestic treatment works, defined as 100 users or less by the commenter.

RESPONSE: The rules are written requiring all industrial treatment works to report on a monthly basis (the maximum required under these rules). Therefore, reductions were provided to allow reduced reporting for smaller generators or in other circumstances where it could be justified. However, N.J.A.C. 7:14-4.7 only requires small domestic treatment works to report on an annual basis (the minimum reporting frequency). There would be no justification to allow over a year's time between sampling events. Without sludge quality data, determinations on sludge management suitability cannot be made.

COMMENT: Two comments were received requesting that exemptions and reductions in reporting requirements for domestic treatment works be maintained under N.J.A.C. 7:14-4.11 on a case-by-case basis.

RESPONSE: The Department does allow a reduction for domestic treatment works under N.J.A.C. 7:14-4.11(a) for performance of an annual priority pollutant scan, if justified, to once in a permit term. However, the Department made the determination that there was no circumstance in which a reduction would be granted for performing the analyses required on form T-VWX-008 and form T-VWX-009 identified in Appendix B of these rules. Based on P.L. 1988, c. 56, which requires all "municipal" treatment works to conform with land-based sludge management criteria by March 17, 1991, the Department has identified the constituents which are currently of the greatest concern with sludge management activities and needs to establish the frequency of occurrence for these constituents at each domestic treatment works. The scaled approach in reporting (larger domestic treatment works must report more frequently) was also a factor in this determination.

COMMENT: Two comments were received requesting that the rules provide for a specific time period for decision by the Department for reduction or exemption requests in order to reduce analytical costs and allow realistic budgeting for these costs.

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:14-4.11 establishes a procedure for requesting reductions or exemptions from reporting requirements and the Department will respond to these requests as expeditiously as possible. The Department has determined that the reporting requirements are reasonable and that requests for exemptions or reductions must only be allowed after sufficient review by the Department.

COMMENT: One comment was received requesting an exemption be granted for wastewater sludges which are not destined for ultimate management, but are hauled to a commercial wastewater treatment plant for further processing and treatment prior to management/disposal.

RESPONSE: The Department's policy as stated in the Statewide Sludge Management Plan mandated by State statute under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and as adopted November 4, 1987, does not allow the mixing of higher quality sludge with contaminated sludge for the purpose of reducing pollutant concentrations. In addition, a discharge in this manner could be subject to pretreatment rules. Therefore, sludge quality information is required for each wastewater sludge produced.

COMMENT: One comment was received requesting that an exemption be granted to any industrial treatment works that produces a sludge classified as a hazardous waste, and thus is regulated under RCRA.

RESPONSE: Part of the intended scope of these rules is to track the quantity of sludge generated by both industrial treatment works and municipal treatment works. Requiring industrial treatment works which produce a hazardous sludge to track production is within the scope of these rules. However, the Department has determined that such industrial treatment works would meet the requirements for analytical exemption (form T-VWX-010B) as provided for in N.J.A.C. 7:14-4.11(b). Therefore, the Department would require a formal request for exemption be submitted pursuant to N.J.A.C. 7:14-4.11(b). The Department has established a procedure to expedite these requests.

COMMENT: One comment objected to the elimination of the requirement under N.J.A.C. 7:14-4.11 for the Department to issue an annual

report on a "Catalog of Domestic and Industrial Treatment Works". It was argued that the required published report was never seen. It would seem appropriate for the Department to justify further expansion of the sludge quality assurance program by means of demonstrating the success of the present program through a report of the State's findings since inception of the program in October 1979.

RESPONSE: The Department never prepared a printed catalog of the domestic and industrial treatment works, but all information submitted since inception of the program is available from the Department. The Department prepared a catalog of all domestic treatment works when the Statewide Sludge Management Plan was adopted. This plan is to be updated on a biennial basis and is available from the Department. A catalog of industrial treatment works reporting under N.J.A.C. 7:14-4 can be obtained by requesting a printout. Although the above mentioned catalogs of treatment works are not the compiled annual catalog required by N.J.A.C. 7:14-4.11, computer printouts of the catalogs may be obtained by making such request to the Department.

USEPA's findings in the above cited "Summary of Environmental Profiles and Hazard Indices for constituents of Municipal Sludge: Methods and Results" has identified additional parameters which are of concern for sludge management and use. The initial reports submitted under the program were found to be unreliable due to a lack of standardized testing, quality control procedures or operator errors. It was for this reason that the Department established a procedure for checking the validity of all reports in 1985. Any reports which in the Department's judgment are incomplete or unreliable are immediately returned to the sludge generator. The data which has been collected is used every day by the Department to assess compliance with existing criteria for the management of sewage sludge. As the programs continue to be developed for both industrial and domestic treatment works and quality information is gathered, changes will have to be made to address potential impacts.

SUBCHAPTER 8.

N.J.A.C. 7:14-8.3 Procedures for assessment, payment and settlement of civil administrative penalties

COMMENT: One commenter stated that the amendments improve the procedure with which the Department may use its judgment to assess civil administrative penalties and reduce the severity of the fine when a technical violation at a sewage treatment plant does not result in any pollution. The commenter gave an example of a flood event where inflow into the sewer system results in the discharge of suspended solids or other pollutants into a stream which also has a dramatic increase in flow and thus there is really no pollution in the stream. The commenter stated that permits based upon the seven-day low flow with a 10 year re-occurrence is equivalent to an occurrence that happens less than .2 percent of the time; that plants are held to a standard which more than 99.8 percent of the time is unnecessary and that 99.8 percent of the time the plant can discharge more suspended solids and not cause any harm. The commenter concluded that if the Department plans to recognize mitigating or extenuating circumstances when assessing penalties for unreasonably strict standards, then the Department is taking a proper step.

RESPONSE: The Department will use the settlement procedures in N.J.A.C. 7:14-8.3 to consider mitigating and extenuating circumstances surrounding a violation, the violator's pollution prevention measures and any measures to reverse or repair the environmental damage caused by the violation. The Department may also, pursuant to N.J.A.C. 7:14-8.5, consider the seriousness of the violator's conduct and the harm to human health and the environment when determining the amount of the civil administrative penalty to be assessed. On the other hand, the commenter's concern with the use of the seven-day low flow with a 10 year re-occurrence as a standard in the permit is not relevant to this rulemaking. A permittee is afforded the opportunity to challenge the terms and conditions of a permit in accordance with the procedures in N.J.A.C. 7:14A.

N.J.A.C. 7:14-8.5 Civil administrative penalty determination

COMMENT: One commenter requested that the Department provide a better definition of a serious violation in N.J.A.C. 7:14-8.5 and suggested that violations be statistically derived. The commenter suggested that a serious violation should be based on a permit violation occurring more than five percent of the time, that fine should be calculated based upon violation frequencies above five percent and that permits should be modified to include statistically based effluent requirements.

RESPONSE: The Department disagrees with this comment. The impact of a civil administrative penalty as a deterrent is an important and legitimate goal of the Water Pollution Control Act. Limiting a finding

of a serious violation to those permit violations which occur more than five percent of the time would serve to defeat this goal as well as severely inhibit the Department's enforcement program. Only using statistical limits for determining the seriousness of a violation would not enable the Department to incorporate the effect of the violation on human health and the environment. For example, the Department would be precluded from categorizing a permit violation which occurred with a frequency of less than five percent as a serious violation, even if the effect of the violation caused serious harm to human health or the environment. With regard to the incorporation of statistically based effluent limitations, this rulemaking does not address the procedures pertaining to effluent limitations or permit modifications (see N.J.A.C. 7:14A).

COMMENT: One commenter asked at what level does a parameter become a pollutant. The commenter also stated that the word pollutant is overbroad. The commenter stated that a permittee or the Department may not, in good faith, include an unknown parameter in the permit and questioned whether a violation would occur if a pollutant was found that measured below any surface water quality base effluent limitation or ground water limitation.

RESPONSE: For the purposes of N.J.A.C. 7:14-8.5, the Department's policy is that each unpermitted discharge of a pollutant constitutes an additional, separate and distinct violation. When there is an unpermitted discharge of a pollutant, even a de minimus quantity will constitute a violation. The definition of a pollutant in N.J.A.C. 7:14A-1.9 is broadly defined so that the Department may assess penalties for unpermitted discharges. A violation of N.J.A.C. 7:14A-1.2(c) would occur if a person even in good faith discharged a pollutant, which is clearly defined in N.J.A.C. 7:14A-1.9, without a permit to discharge the pollutant irrespective of the surface water quality base effluent limitation or ground water limitation.

COMMENT: One commenter criticized the Department's use of a vague category of violations which have "the potential to cause serious harm to human health or the environment." The commenter stated that the language does not declare who will determine what the potential is or where one would object to the determination of potential harm and that being fined for a potential violation is analogous to being jailed without a determination of guilt. The commenter gave examples of short term violations of effluent permits which have no effect on the receiving stream but have the potential and violations of dissolved oxygen limitations in the winter where there is no effect on the receiving stream.

RESPONSE: The Department disagrees with this comment. The Department has not included this language to facilitate any arbitrary determinations of the occurrence of a violation. The Department is obligated to assess the situation surrounding a violation and consider all attending circumstances, extenuating and mitigating alike. The circumstances of a violation will include the violation's potential to cause harm to human health and the environment. As discussed in the notice of proposal in the February 21, 1989 New Jersey Register, 21 N.J.R. 373(a), 375, the Department is not always able to assess the actual harm of a violation to human health or the environment. In determining the violation's potential harm to human health or the environment, the Department will consider the nature and amount of the discharged pollutant, the quality of the receiving waters and the routes of exposure to the various biotic communities. A violator may use the procedures in N.J.A.C. 7:14-8.4 to request an adjudicatory hearing to contest the Department's determination of the potential harm.

COMMENT: One commenter stated that the Department, when determining the seriousness of a violation and assessing a fine, should consider the fact that publicly operated treatment plants do not budget for fines and that the fine moneys will come out of operation and maintenance budgets. The commenter recommended that the Department recognize that where an upset causes no pollution in the receiving stream, the fine should be reduced to allow the money to be spent on repairs at the treatment plant rather than taking the repair and maintenance moneys away thereby causing greater pollution in the future.

RESPONSE: The Department disagrees with this comment. The Department has designed the civil administrative penalty rules with an emphasis on deterring non-compliance. The Department's procedure for calculating administrative penalties does not include either the violator's ability to pay penalties, the budgetary balance between fines and maintenance or the violator's budgetary timeframes. Since the Department believes that the deterrent effect of civil administrative penalties will encourage compliance, public entities must design their budgets with an emphasis on complying with all permit conditions.

Appendices

COMMENT: One comment requested the Department adopt methods detailing digestion and extraction procedures for all parameters on form T-VWX-008 and form T-VWX-009.

RESPONSE: The Department intends to adopt methods for all parameters. However, it was determined to be inappropriate to delay implementation of existing methods while awaiting development of additional methods.

COMMENT: One comment requested that the sludge quality criteria be included on the forms in Appendix B for comparison.

RESPONSE: The Department does not agree. The criteria for the various management methods are outlined in the Statewide Sludge Management Plan and are incorporated in the respective permits to operate. The purpose of the standardized reporting forms is to simplify reporting and the review of data. Considering that most sludge management criteria are based on site specific information, inclusion of these criteria on the forms would not be practical.

COMMENT: One comment questioned the source of the volatile solids reduction equation on form T-VWX-007.

RESPONSE: The source for the stated equation is "Operations Manual, Anaerobic Sludge Digestion," USEPA, Municipal Operations Branch, Office of Water Program Operations, Washington, D.C. 20460. No alternative methods for calculation were provided. However, requests for use of alternative equations may be made at any time as stated on the form provided.

COMMENT: One comment was received requesting to use a digestion apparatus provided with an autoanalyzer (Technicon Continuous Distillation Module) in place of the apparatus in Figure 1.

RESPONSE: Requests for alternative laboratory procedures are provided for under N.J.A.C. 7:14-4.4(d). The information submitted with this request has been submitted to the Office of Quality Assurance for a formal Department determination.

COMMENT: One comment stated that it would be helpful to tabulate required sample containers, preservatives, maximum holding times and minimum sample volumes for Appendix A methods similar to that in Table 1.

RESPONSE: Regulatory time frames did not allow such a determination. However, this request has been taken into consideration for future amendments.

Agency-Initiated Changes

1. Editorial changes which do not alter the meaning of the text have been made to clarify the rules.

2. The Department, in N.J.A.C. 7:14-4.3, has included the definition of a "publicly owned treatment works" used in N.J.A.C. 7:14A-1.9. The Department has amended the definition of a "treatment works" in order to be consistent with the definitions in the New Jersey Pollutant Discharge Elimination System in N.J.A.C. 7:14A and the statutory definition in the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

3. The Department has replaced the term "hazardous determinations" with the appropriate terminology of "formal waste classifications" in N.J.A.C. 7:14-4.4(e), 4.6(c)8, 4.7(d)4 and 4.7(e)6.

4. N.J.A.C. 7:14-4.7(d)3 has been modified to require POTW's with an approved industrial pretreatment program to perform their priority pollutant scans for sludge during the same period as when they perform their influent priority pollutant scan required in their NJPDES permit. The purpose of this requirement is to correlate the timeframes for priority pollutant testing of the influent with priority pollutant testing of the sludge, so that the scans will be performed during the same reporting period.

5. In N.J.A.C. 7:14-4.7(d)4 and 4.7(e)6, the citation referring to N.J.A.C. 7:14-4.6(e) was not correct and was changed to the correct reference of N.J.A.C. 7:14-4.4(e).

6. The language in N.J.A.C. 7:14-8.5(g) and 8.9(d), which allows for the adjustment of civil administrative penalties in a range based on various factors involving the specific violation, has been included in N.J.A.C. 7:14-8.6 and 8.7. The Department's policy when assessing a penalty within a range is to begin at the midpoint of the range and then, if necessary, adjust the penalty based on the various factors.

7. In N.J.A.C. 7:14-8.10, language has been deleted to clarify the Department's policy to assess a penalty for the failure to pay a fee, rather than the failure to pay only a permit fee. Under the New Jersey Underground Storage of Hazardous Substances Act, the fee is referred to as a registration fee rather than a permit fee.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:14.

Full text of the changes between the proposal and adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 4. SLUDGE QUALITY ASSURANCE

7:14-4.1 Scope

The following shall constitute the rules for sludge quality assurance reporting required of all domestic and industrial treatment works. The rules prescribe the method and frequency for reporting on the quantity, quality and management method of sludge generated by such treatment works.

7:14-4.2 Purpose

(a) The rules in this subchapter are promulgated for the following purposes:

1. To determine the degree of chemical contamination, including metals and organic compounds present in sludge produced by domestic and industrial treatment works;

2. To establish a data system providing information for a program to reduce the discharge of toxic levels of pollutants into the waters of the State; and

3. To establish a data system providing information for environmentally sound sludge management.

7:14-4.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. Unless otherwise specified below, all words and terms shall be as defined in "The New Jersey Pollutant Discharge Elimination System", N.J.A.C. 7:14A.

"BOD" (biochemical oxygen demand) means the quantity of dissolved oxygen (in milligrams per liter) required during stabilization of decomposable organic matter by aerobic biochemical action as determined by analytical procedures set forth in the "Manual of Methods for Chemical Analysis of Water and Wastes", USEPA, Office of Technology Transfer, Washington, D.C., March 1983.

"COD" (chemical oxygen demand) means the quantity of dissolved oxygen (in milligrams per liter) required to oxidize the organic matter in a waste sample under specific conditions of oxidizing agent, temperature and time as determined by analytical procedures set forth in the "Manual of Methods for Chemical Analysis of Water and Wastes", USEPA, Office of Technology Transfer, Washington, D.C., March 1983.

"Domestic pollutant" means a pollutant which results from the discharge of household, commercial or other wastes from bathrooms, toilet facilities, home laundries and kitchens which are predominantly the result of natural human waste elimination associated with bodily function and food preparation.

"Domestic treatment works" (DTW) means all publicly owned treatment works as well as any privately owned treatment works processing primarily domestic wastewater and pollutants together with any ground water, surface water, storm water or process wastewater that may be present.

"Domestic wastewater" means the liquid waste or liquid borne wastes discharged into a domestic treatment works.

"Domestic wastewater sludge" means the solid residue and associated liquids resulting from the physical, chemical or biological treatment of domestic wastewaters by a domestic treatment works.

"Effluent" means the treated liquids which are discharged by a domestic or industrial treatment works.

"Industrial treatment works" means a treatment works which treats primarily process wastewater and/or industrial pollutants as determined by the percentage of process wastewater, or mass loading of BOD, COD or suspended solids in the wastewater flow. Industrial treatment works shall also include any treatment works whether publicly or privately owned which treats primarily wastewater or leachate from a municipal solid waste facility or a potable water treatment plant. This definition shall also encompass SIU pretreatment works.

"MGD" means million gallons per day.

"Permit-by-rule discharger" means an indirect discharger regulated pursuant to N.J.A.C. 7:14A-13.5.

"Permitted flow" means a treatment work's maximum allowable flow (in MGD) as stated in the facility's NJPDES Permit.

"Pretreatment" means applications of physical, chemical and/or biological processes to reduce the amount of pollutants in, or alter the nature of the polluting properties of a process wastewater prior to discharging such wastewater into the domestic treatment works.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

"Process wastewater sludge" means the solid residue and associated liquid resulting from the physical, chemical and/or biological treatment of process wastewaters by an industrial treatment works.

"Publicly owned treatment works" ("POTW") means any device or system used in the treatment (including recycling and reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. However, despite public ownership of potable water treatment plants and solid waste facilities which may provide for treatment and/or discharge of pollutants, treatment works associated with potable water treatment and solid waste facilities shall be considered industrial treatment works for the purpose of this chapter.*

"Significant indirect user" ("SIU") means, solely for the purposes of this subchapter, any user, excluding municipal collection systems, who discharges on any one day wastewater into a domestic treatment works where:

1. The volume of process wastewater exceeds 25,000 gallons per day;
2. The amount of BOD, COD or suspended solids in the process wastewater discharge exceeds the mass equivalent of 25,000 gallons per day of the domestic waste of the affected domestic treatment works;
3. The volume of process wastewater in the discharge exceeds five percent or more of the average daily flow of the domestic treatment works;
4. The discharge of process wastewater contributes, prior to any pretreatment, five percent or more of the daily mass loading of any of the pollutants listed in N.J.A.C. 7:14A, Appendix B Tables II-IV;
5. The user of a domestic treatment works is determined to be a hazardous waste facility under N.J.A.C. 7:26-12 and meets the requirements of N.J.A.C. 7:14A-4.2(b)1;
6. The user is determined to be an industrial waste management facility under N.J.A.C. 7:14A-4;
7. The user has been found by the Department to be in violation of State laws or rules, or local ordinances concerning environmental issues;
8. The discharge consists of landfill leachate, either pure*, treated* or diluted by groundwater or surface runoff;
9. The discharge consists of significant quantities of polluted groundwater which is pumped from the ground in order to decontaminate an aquifer; or
10. The Department determines it would be consistent with the intent of the "Pretreatment Standards for Sewage", N.J.S.A. 58:11-49 et seq., or the "Water Pollution Control Act", N.J.S.A. 58:10A-1 et seq., to require a permit for the indirect discharger.

"SIU pretreatment works" means any treatment works serving exclusively a SIU facility and treating the facility's process wastewater, or a combination of its process wastewater and its domestic wastewater, prior to the discharge thereof into a domestic treatment works.

"Sludge" means the solid residue and associated liquid resulting from physical, chemical, and/or biological treatment of domestic or process wastewaters.

"Sludge quality criteria" means any restriction on quantities, quality, discharge rates, concentration of chemical, physical, thermal,

biological, or other constituents of a pollutant in sludge based upon the method for ultimate management.

"Suspended solids" means total nonfilterable residue as determined by analytical procedures set forth in the "Manual of Methods for Chemical Analysis of Water and Wastes", USEPA, Office of Technology Transfer, Washington, D.C., March 1983.

"Treatment works" means any *[device or system, whether public or private, used in the storage, treatment, recycling, or reclamation of domestic, municipal or industrial waste of a liquid nature and residuals associated with treatment of said liquid wastes, including, but not limited to, intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment and their appurtenances; and digesters, dewatering equipment, stabilization equipment, and conveyors; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any other works for the treatment process or for ultimate disposal of residues resulting from such treatment. Additionally, "treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of pollutants, including storm water runoff, or industrial waste in combined or separate storm water and sanitary sewer systems.]* ***treatment works as defined by N.J.A.C. 7:14A-1.9 and N.J.S.A. 58:10A-3.***

"Ultimate management" means final management of sludge at a facility or operation such that no additional permit or approval actions are required for further processing or movement.

7:14-4.4 Analytical procedures

(a) Analyses shall be performed on the total sludge sample and shall be expressed on a bulk dry weight basis (mg/kg) except as specifically provided in the sludge reports in Appendix B.

(b) Analyses shall be conducted in accordance with methods for sludge analyses promulgated under N.J.A.C. 7:18.

(c) Where a laboratory method for sludge analysis is not provided for in N.J.A.C. 7:18 for a parameter required by N.J.A.C. 7:14-4.7, the analysis shall be conducted in accordance with the appropriate laboratory method specified in Appendix A which is incorporated into this subchapter.

(d) Where a laboratory method for sludge analyses is not provided for in N.J.A.C. 7:18 or Appendix A, the analysis shall be conducted in accordance with the test procedures or recommendations as established in the following documents, including amendments and revisions (laboratories may only use alternative test procedures upon specific written permission from the Bureau of Pretreatment and Residuals, Division of Water Resources, CN-029, Trenton, New Jersey 08625):

1. "Test Methods For Evaluating Solid Waste", SW-846, USEPA, Office of Solid Waste and Emergency Response, Washington, D.C., 1986b.

2. "POTW Sludge Sampling and Analysis Guidance Document", USEPA, Office of Water Enforcement and Permits, Washington, D.C., June 1988.

(e) Analyses conducted for the purpose of determining the *[hazardous or nonhazardous nature]* ***formal waste classification*** of ***the*** sludge shall be performed in accordance with the requirements specified in N.J.A.C. 7:26-8 and/or pursuant to requirements and guidance of the Bureau of Hazardous Waste Regulation and Classification, Division of Hazardous Waste Management, CN-028, Trenton, New Jersey 08625.

(f) All laboratories performing analyses under these rules shall perform and maintain all quality control data and records as required by N.J.A.C. 7:18. Laboratories shall follow the entire test procedure for sludge analyses specified in (b), (c) and (d) above to completion without any modification. All quality control procedures as cited in the referenced analytical techniques shall be performed and documented. Said documentation shall be provided by the certified laboratory performing the sludge analyses to the authority requesting the analyses. All domestic and industrial treatment works are required to maintain on file the entire analysis and quality control data package for a period of five years from the date of the sludge sample. All laboratories shall follow the general reporting format as specified

under the "NJDEP Contract Data Report", which can be obtained from the Office of Quality Assurance, Division of Environmental Quality, CN-027, Trenton, New Jersey 08625.

(g) All sludge analyses required for the completion of form T-VWX-008, form *[F-VWX-009]* *T-VWX-009* and form T-VWX-010B set forth in Appendix B shall be performed by laboratories certified by the Department pursuant to N.J.A.C. 7:18. The laboratories shall use the analytical procedures specified in (b), (c) and (d) above.

(h) Analyses required for completion of form T-VWX-007 and form T-VWX-010A set forth in Appendix B need not be performed by a certified laboratory, except as specifically provided by (i) below. Analytical procedures as specified in (b), (c) and (d) above shall be used.

(i) The analyses required for completion of items B(6), B(7) and D on form T-VWX-010A shall be performed by laboratories certified by the Department, pursuant to N.J.A.C. 7:18. The laboratories shall use the analytical procedures as specified in (b), (c) and (d) above.

7:14-4.5 Reporting categories

(a) For the purposes of determining the frequency of sampling and analysis for submission of all required sludge reports and for determining proper sampling procedures, domestic treatment works shall be divided into categories on the basis of permitted daily flow as follows:

1. Category 1: domestic treatment works with a permitted daily flow of 0.099 MGD or less.

2. Category 2: domestic treatment works with a permitted daily flow from 0.1 to 0.999 MGD.

3. Category 3: domestic treatment works with a permitted daily flow from 1.0 to 4.999 MGD. Category 3 shall additionally include any category 1 or 2 domestic treatment works which has obtained the Department's written determination of residual quality suitability where the determination of residual quality suitability is required in order to utilize agricultural land application or distribution and marketing of a sludge derived product as a fertilizer or soil amendment, either directly or indirectly.

4. Category 4: domestic treatment works with a permitted daily flow equal to or greater than 5.0 MGD.

5. Category 5: domestic treatment works with a flow to which more than 10 percent of the permitted daily flow or the permitted

daily mass loading of BOD, COD or Suspended Solids is contributed by SIUs.

(b) All industrial treatment works shall be included in the industrial treatment works category for reporting frequency except as provided by N.J.A.C. 7:14-4.11.

(c) All permit-by-rule dischargers which are regulated pursuant to N.J.A.C. 7:14A-13.5 shall be included in the permit-by-rule category, except as provided by N.J.A.C. 7:14-4.11.

7:14-4.6 Sampling procedures

(a) All sludge samples shall be representative of the chemical and physical characteristics of the sludge removed from the treatment unit process immediately preceding ultimate management. For example, if a treatment works discharges dewatered filter cake for land application, then sampling activity must focus on the output sludge stream from the dewatering device (that is, vacuum filter, belt filter press, etc.).

(b) Sampling locations shall be as follows unless an alternative sampling location is approved in writing by the Department:

1. Sampling points for liquid sludge samples shall be at taps on the discharge side of sludge pumps.

2. For treatment works utilizing drying beds, one-quarter cup sludge samples should be taken at five foot intervals across the bed surface. Neither the weathered surface nor sand should be included in the sample.

3. For treatment works producing a dewatered sludge cake, samples of the sludge should be taken from the point of sludge cake discharge.

4. For treatment works with heat treated sludge, samples shall be taken from taps on the discharge side of positive displacement pumps after decanting from the heat treatment unit.

5. Where a treatment works generates several different types of sludges (for example, primary, secondary or advanced wastewater treatment sludges) each of which is removed separately for ultimate management, separate composite samples shall be analyzed and reported pursuant to N.J.A.C. 7:14-4.7. All reports shall be clearly marked as to the origin of the sludge sample.

(c) Samples shall be prepared in accordance with the following:

1. The sample collection, handling and preservation techniques set out in Table 1 below shall be followed for all sludge analyses required to be performed pursuant to this subchapter.

TABLE 1. CONTAINERS, PRESERVATION, HOLDING TIMES, AND MINIMUM SAMPLE VOLUMES

<u>Parameter</u>	<u>Container</u>	<u>Preservative</u>	<u>Maximum Holding Time</u>	<u>Minimum Sample Volume^(a)</u>
<u>Metals</u>				
Chromium VI	P, G	Cool, 4°C	48 hours	300 mL
Mercury	P, G	HNO ₃ to pH<2	28 days	500 mL
Metals except above	P, G	HNO ₃ to pH<2	6 months	1000 mL
<u>Organic Compounds</u>				
Extractables (including phthalates, nitrosamines organochlorine pesticides, PCBs, nitroaromatics, isophorone, polynuclear aromatic hydrocarbons, haloethers, chlorinated hydrocarbons and TCDD)	G, teflon-lined cap	Cool, 4°C 0.008% Na ₂ S ₂ O ₃	7 days (until extraction) 30 days (after extraction)	1000 mL
Extractable (phenols)	G, teflon-lined cap	Cool, 4°C H ₂ SO ₄ to pH<2 0.008% Na ₂ S ₂ O ₃	7 days (until extraction) 30 days (after extraction)	1000 mL
Purgeables (Halocarbons and Aromatics)	G, teflon-lined septum	Cool 4°C 0.008% Na ₂ S ₂ O ₃ HCL to pH<2	14 days	50 mL

Purgeables (Acrolein and Acrylonitrile)	G, teflon-lined septum	Cool 4°C 0.008% Na ₂ S ₂ O ₃	14 days	50 mL
Pesticides	G, teflon-lined septum	Cool 4°C 0.008% Na ₂ S ₂ O ₃	7 days (until extraction) 30 days (after extraction)	1000 mL

^(a)Varies with analytical method. Consult 40 CFR Part 136.

P = Plastic

G = Glass

NOTE: 0.008% Na₂S₂O₃ is only required when Cl₂ residual is known to be present.

2. Samples requiring preservation shall be preserved at the time of collection. A certified laboratory or a laboratory that has interim approval or certification shall accept only samples which are properly labeled and for which there is reasonable assurance that they have been collected, preserved, processed, stored and transported in a manner which assures the stability of the sample with respect to the requested tests or analyses. If the stability of the sample has not been assured, the laboratory report shall clearly state that the result may be invalid due to an unsatisfactory sample. If a preservative cannot be utilized at the time of collection (that is, incompatible preservation requirements), it is acceptable to initially preserve by icing the entire sample during compositing and immediately ship it to the laboratory at the end of the sampling period. Upon receipt in the laboratory, the sample shall be properly preserved.

3. All samples shall be chilled at four degrees Celsius during compositing and holding.

4. For dewatered or dried sludge samples preservation shall consist of chilling to four degrees Celsius. Use of a chemical preservative is generally not useful due to failure of the preservative to penetrate the sludge matrix.

5. Samples for reporting on form T-VWX-007 shall be obtained in accordance with the following:

i. Domestic treatment works in category 1 or 2 shall report the average of the values obtained from analyses performed on four samples of equal volume of sludge generated by said treatment works spaced one week apart during the reporting period; and

ii. Domestic treatment works in category 3, 4 or 5, shall report the average of the values obtained from analyses performed on equal volume samples of sludge generated by said treatment works collected every working day during the reporting period.

6. Composite samples for reporting on form T-VWX-008 and form T-VWX-009 shall be obtained in accordance with the following:

i. Domestic treatment works in category 1 or 2 shall form a composite using five samples of equal volumes collected one day apart during the reporting period; and

ii. Domestic treatment works in category 3, 4 or 5 shall form a composite using seven samples of equal volumes collected one day apart during the reporting period. Each daily sample shall consist of six or more samples collected over the 24 hour period.

7. Industrial treatment works shall form a composite sample for form T-VWX-010A and form T-VWX-010B using five samples of equal volumes collected one day apart during the reporting period.

8. Composite samples for *[hazardous determinations]* ***formal waste classifications*** and priority pollutant scans for domestic and industrial treatment works shall be obtained by forming a composite using five samples of equal volumes collected one day apart during the reporting period.

9. As either sludge detention time or mixing increases within a treatment plant, the sampling frequencies required by this section may be reduced, upon written approval from the Department, since certain treatment works' processes (for example, digestion, storage/blending facilities, etc.) will effectively composite sludge to a greater degree.

(d) Procedures for sampling or compositing may be modified upon written approval of the Department based upon site specific operational requirements. Requests for reductions or modifications shall be sent to the Bureau of Pretreatment and Residuals, Division of Water Resources, CN-029, Trenton, New Jersey 08625. ***Existing sampling points or procedures may be retained by an industrial or domestic treatment works which submits a written request to the De-**

partment for retention before August 1, 1989. Said alternative procedures may be utilized until and unless otherwise directed by the Department.*

7:14-4.7 Reporting requirements

(a) Sludge reports required by these rules shall be submitted on the computer forms reproduced in Appendix B which is incorporated into this subchapter. These computer forms may be obtained by contacting the Bureau of Pretreatment and Residuals, Division of Water Resources, CN-029, Trenton, New Jersey 08625. Each domestic and industrial treatment works may duplicate blank copies of said forms and shall maintain necessary supplies.

(b) Analyses for the priority pollutants which are listed in Appendix C and incorporated into this subchapter, required under (d) and (e) below, may be submitted on forms provided by a New Jersey certified laboratory.

(c) All reports shall be addressed to the Bureau of Information Systems, Management Services Element, Division of Water Resources, CN-029, Trenton, New Jersey 08625.

(d) The following are the reporting requirements for domestic treatment works:

1. All owners or operators of a domestic treatment works shall prepare a Domestic Wastewater Sludge Report (T-VWX-007) for every calendar month. The report shall be submitted to the Department on or before the first day of the third month following the last day of the reporting period. Reporting periods for form T-VWX-007 shall begin on the first day of each month and end on the last day of each month.

2. The owner or operator of a domestic treatment works shall prepare a Metals and Selected Chemical Parameters Report (T-VWX-008) and a Toxic Organic Compounds Report (T-VWX-009) for each reporting period. The reports shall be submitted to the Department on or before the first day of the third month following the last day of the reporting period. The reporting periods for each category shall be as follows:

i. The reporting period for category 1 shall be the month of January;

ii. Category 2 reporting periods shall be the months of January and July;

iii. Category 3 reporting periods shall be the months of January, April, July and October; and

iv. Categories 4 and 5 shall prepare a form T-VWX-008 and a form T-VWX-009 report for each calendar month.

3. The owner or operator of a domestic treatment works shall submit a full priority pollutant scan on the domestic wastewater sludge produced at the domestic treatment works for the priority pollutants listed in Appendix C. In addition, the largest 15 purgeable volatile organic peaks, 10 acid extractable peaks and *[10]* ***15*** base/neutral extractable peaks shall be identified and reported. The report shall be submitted to the Department on or before the first day of the third month following the last day of the reporting period. The reporting periods for each category shall be as follows:

i. The reporting period for categories 1 and 2 shall be the month of February during years ending in five or zero (that is, 1990, 1995, 2000, etc.);

ii. The reporting period for categories 3, 4 and 5 shall be the month of August, annually; *[and]*

All POTWs with an industrial pretreatment program approved by the Department in accordance with 40 CFR 403 shall perform their priority pollutant scans for sludge during the same period when influent priority pollutant scans, required by their NJPDES permit, are performed; and

[iii.] *iv.* The Department may, after the receipt of a priority pollutant scan, require a domestic treatment works to increase the schedule of reporting for any or all constituents which are detected on a priority pollutant scan.

4. The Department may require *[hazardous determinations]* ***a formal waste classification*** to be made, pursuant to the requirements of N.J.A.C. 7:14-4.6(e)* ***4.4(e)***, on a case-by-case basis. The Department may specify a frequency for performing the required determination based on available sludge quality data or knowledge of industrial discharges into the system.

5. A domestic treatment works shall comply with the sludge quality criteria applicable to the ultimate management alternative utilized by the domestic treatment works as specified in:

- i. The Statewide Sludge Management Plan;
- ii. Criteria established under 33 U.S.C.A. Section 1251 et seq.;
- iii. 40 CFR 257; or
- iv. NJPDES permit conditions pursuant to N.J.A.C. 7:14A.

6. A domestic treatment works shall report any noncompliance with the sludge quality criteria to the Department. The non-compliance with the sludge quality criteria shall be orally reported within 24 hours to the Bureau of Pretreatment and Residuals at (609) 633-3823 and to the ultimate sludge management site. A written submission shall be made within five days thereafter to: Chief, Bureau of Pretreatment and Residuals, Division of Water Resources, CN-029, Trenton, New Jersey 08625 and shall include the following information:

- i. Dates of occurrence;
- ii. A description of the noncompliance with the sludge quality criteria;
- iii. The cause of the noncompliance; and
- iv. Steps being taken to reduce, eliminate and prevent reoccurrence of the noncompliance.

(e) The following are the reporting requirements for the industrial treatment works category:

1. The owner or operator of an industrial treatment works that produces process wastewater sludge shall prepare an Industrial Process Wastewater Sludge Report (T-VWX-010A) for every calendar month. The report shall be submitted to the Department on or before the first day of the third month following the last day of the reporting period;

2. The owner or operator of an industrial treatment works shall prepare an Industrial Process Wastewater Sludge Report (T-VWX-010B) for every calendar month. The report shall include an analysis of the sludge for all those toxic pollutants listed in N.J.A.C. 7:14A, Appendix B, Table II, III, IV, V and VI that are currently manufactured, processed, formed, repackaged, handled, used, disposed or stored in the facility served by the industrial treatment works and as required to be reported on the Discharge Monitoring Report pursuant to N.J.A.C. 7:14A-2.5. The report shall be submitted to the Department on or before the first day of the third month following the last day of the reporting period;

3. The owner or operator of an industrial treatment works shall submit a full priority pollutant scan on each process wastewater sludge produced for the priority pollutants listed in Appendix C. In addition, the largest 15 purgeable volatile organic peaks, 10 acid extractable peaks and *[10]* ***15*** base/neutral extractable peaks shall be identified and reported. The report shall be submitted to the Department on or before the first day of the third month following the last day of the reporting period;

4. The reporting period ***for submission of the full priority pollutant scan*** for all industrial treatment works shall be annually in the month of November. If the nature of the process wastewater or sludge produced by an industrial treatment works should change at any time due to an increase or change in process wastewater contributions, a change in treatment processes at the industrial treatment works or a change in its process, handling, manufacturing, packaging, storage or disposal practices, a new priority pollutant scan shall be submitted within *[ninety]* ***90*** days; and

5. The Department may require an industrial treatment works to increase the schedule of reporting for any or all constituents which are detected on a priority pollutant scan.

6. The Department may require *[hazardous determinations]* ***a formal waste classification*** to be made, pursuant to the requirements of N.J.A.C. 7:14-4.6(e)* ***4.4(e)***, on a case-by-case basis. The Department may specify a frequency for performing the required determination based on available sludge quality data or knowledge of process wastewater contributions.

7. Any noncompliance with the sludge quality criteria shall be immediately reported pursuant to the procedure outlined in (d)6 above.

(f) The permit-by-rule category shall be required to sample, perform analyses and maintain records on file for a period of five years in accordance with the reporting requirements for industrial treatment works in (e) above.

7:14-4.8 Access

The owner or operator of a domestic or industrial treatment works shall provide access to the treatment works' premises and related records to representatives of the Department upon presentation of identification or credentials during normal working hours. The Department may take samples of sludge to verify the reported analytical data and to determine if the treatment works is in compliance with the reporting requirements of this subchapter.

7:14-4.9 Non-compliance

A failure to submit the required sludge reports in the manner prescribed by this subchapter or any willful falsification of information contained in these reports shall constitute a violation of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and shall be subject to the penalties contained in N.J.A.C. 7:14-8 and 7:19-6.14.

7:14-4.10 Implementation

(a) All domestic and industrial treatment works and permit-by-rule dischargers shall commence reporting under these rules on June 1, 1989.

(b) All new domestic and industrial treatment works shall submit their first report within 90 days after their start of operations. Thereafter, they shall follow the reporting schedule prescribed by N.J.A.C. 7:14-4.7. All new permit-by-rule dischargers shall commence reporting under these rules within 90 days after their start of operations.

7:14-4.11 Exemptions and reductions in reporting requirements

(a) The following exemptions and reductions in reporting requirements are applicable to domestic treatment works:

1. There shall be no exemptions or reductions for domestic treatment works in the reporting frequency or requirements for completing form T-VWX-007, form T-VWX-008 or form T-VWX-009.

2. The Department may reduce the requirement to perform an annual priority pollutant scan to years ending in five or zero for domestic treatment works in categories 3, 4 or 5, based on current sludge quality, present or anticipated sludge management practices or knowledge of industrial discharges into the system. The request for a reduction shall be submitted in writing. The domestic treatment works may request a reduction at any time after submission of the first required report. Any domestic treatment works granted a reduction shall comply with the following:

i. The domestic treatment works shall submit to the Department, on an annual basis, an affidavit affirming that there have been no changes to the nature of the service area in a manner such that the analysis of the sludge generated by the domestic treatment works may also change. The affidavit shall be submitted by May 1, of each calendar year; and

ii. If the nature of the sludge produced by a domestic treatment works on a reduced reporting schedule should change at any time due to an increase or change in process wastewater contributions or a change in treatment processes at the domestic treatment works, the owner or operator shall, within 30 days, notify the Department of the nature of the change. Based upon this information, the Department may require additional analyses to be performed and require that the domestic treatment works return to the reporting schedule required under N.J.A.C. 7:14-4.7.

(b) The following exemptions and reductions in reporting requirements are applicable to industrial treatment works and permit-by-rule treatment works:

1. The following industrial and permit-by-rule treatment works shall be exempt from all reporting requirements:

- i. Noncontact cooling water treatment works;
- ii. Treatment works for the discharge of untreated storm water; and
- iii. Treatment works which are not regulated pursuant to N.J.A.C. 7:14A.

2. The Department may reduce the reporting requirements for submission of the Industrial Process Wastewater Sludge Reports (form T-VWX-010A and form T-VWX-010B) for the following treatment works:

- i. Treatment works regulated by permits under N.J.A.C. 7:14A which are not required to remove contaminants and are only required to submit monitoring reports;
- ii. If an industrial treatment works has a process wastewater permitted flow of 10,000 gallons per day or less, the Department may reduce the frequency of reporting after submission of the first Industrial Process Wastewater Sludge Reports (from T-VWX-010A and form T-VWX-010B);
- iii. If an industrial treatment works produces a process wastewater sludge which is recycled, the industrial treatment works may apply for a change in the frequency of reporting after submission of the first required Industrial Process Wastewater Sludge Reports (form T-VWX-010A and form T-VWX-010B); and
- iv. Where an industrial treatment works can demonstrate to the Department's satisfaction, based on the criteria in (b)5 below, that removal schedules or historical sludge quality justify a reduction, the Department may reduce the reporting frequency at any time after submission of the first required Industrial Process Wastewater Sludge Reports (form T-VWX-010A and form T-VWX-010B).

3. The following treatment works shall be exempt from the reporting requirements for submission of a priority pollutant scan:

- i. Industrial treatment works which treat only process wastewater contributed from the processing of food for human consumption; and
- ii. Industrial treatment works which treat only process wastewater contributed from the treatment of surface water or groundwater for human consumption.

4. The industrial treatment works identified in (b)2 above may apply to the Department for a reduction in the frequency of reporting for the priority pollutant scan.

5. The Department's determination of reductions or exemptions in reporting requirements for industrial treatment works will be based on the following criteria:

- i. All requests for a reduction in the reporting frequency shall be accompanied by a complete analysis for those substances required to be reported under these rules. The request for a reduction shall also be accompanied by a flow diagram which documents each and every manufacturing or production campaign, a detailed description of the individual treatment processes and a list of those substances for which the reduction is requested;
- ii. In considering requests for reduced reporting, the Department will consider the quantity and quality of the sludge produced, removal frequency, storage provisions, ultimate management mode, the quantities and toxicities of the substances for which the reduction is requested and the likelihood for soil, water or air pollution associated with management of the sludge;
- iii. The Department will review all requests and may grant a reduction, or may require additional analytical testing for any or all of the pollutants required to be reported in N.J.A.C. 7:14-4.7. The Department may also require that the applicant for a reduction demonstrate that the use of best management practices justifies the request;
- iv. Any industrial treatment works granted a reduction shall submit to the Department, on an annual basis, an affidavit affirming that there have been no changes to the nature of the process wastewater, in a manner such that the sludge generated by the industrial treatment works may also change. The affidavit shall be submitted by May 1, of each calendar year; and

v. If the nature of the process wastewater or sludge produced by an industrial treatment works on a reduced reporting schedule should change at any time due to an increase or change in process wastewater contributions, a change in treatment processes at the industrial treatment works or a change in its process, handling, manufacturing, packaging, storage or disposal practices, the owner or operator shall, within 30 days, notify the Department of the nature of the change. Based upon this information, the Department may require analyses to be performed and require that the industrial treatment works return to the reporting schedule required by N.J.A.C. 7:14-4.7.

(c) All treatment works shall continue to submit reports as required in N.J.A.C. 7:14-4.7 until written Department approval has been provided which exempts or reduces reporting requirements.

AGENCY NOTE: The text of the adopted repeal may be found at N.J.A.C. 7:14-7.

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.1 Authority and purpose

(a) (No change.)

(b) The Department may assess a civil administrative penalty of not more than \$50,000 for each violation of each provision of either the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, or not more than \$100,000 for a violation of both statutes.

(c) Each day during which a violation as set forth in (b) above continues shall constitute an additional, separate and distinct violation.

(d) (No change in text.)

7:14-8.3 Procedures for assessment, payment and settlement of civil administrative penalties

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

(c) The Department may settle any civil administrative penalty assessed pursuant to this subchapter on the following terms and conditions:

1. On the basis of mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;
2. Upon implementation by the violator of pollution prevention and/or abatement measures in addition to those minimally required by applicable statute or rule;
3. Upon implementation by the violator of measures to clean up, reverse or repair environmental damage previously caused by the violation;
4. Upon full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and/or a notice of civil administrative penalty assessment and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or
5. Upon any other terms or conditions acceptable to the Department.

7:14-8.5 Civil administrative penalty determination

(a) (No change.)

(b) Each violation of any provision of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto, shall constitute an additional, separate and distinct violation. In addition, the unpermitted discharge of each separate pollutant shall constitute an additional, separate and distinct violation.

(c) Each day during which a violation as set forth in (b) above continues shall constitute an additional, separate and distinct violation.

(d) Unless the Department assesses a civil administrative penalty pursuant to N.J.A.C. 7:14-8.6 through N.J.A.C. 7:14-8.11, the Department shall assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges unless adjusted pursuant to (g) below:

SERIOUSNESS

CONDUCT	SERIOUSNESS			
	Major	Moderate	Minor	
	Major	\$40,000-\$50,000	\$30,000-\$40,000	\$15,000-\$25,000
	Moderate	\$30,000-\$40,000	\$10,000-\$20,000	\$ 3,000-\$ 6,000
	Minor	\$15,000-\$25,000	\$ 3,000-\$ 6,000	\$ 1,000-\$ 2,500

(e) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major shall include:
 - i. Any violation which has caused or has the potential to cause serious harm to human health or the environment; or
 - ii. (No change.)
 2. Moderate shall include:
 - i. Any violation which has caused or has the potential to cause substantial harm to human health or the environment; or
 - ii. (No change.)
 3. Minor shall include:
 - i. Any violation not included in (e)1 or 2 above; or
 - ii. (No change.)
- (f) The conduct of the violator shall be determined as major, moderate or minor as follows:
- 1.-2. (No change.)
 3. Minor shall include any other conduct not included in (f)1 or 2 above.

(g) The Department may, in its discretion, adjust the amount determined pursuant to (d) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

- 1.-2. (No change.)
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty; or
5. Other specific circumstances of the violator or violation.

7:14-8.6 Civil administrative penalty for submitting inaccurate or false information

- (a)-(b) (No change.)
- (c) The Department shall ***[determine the amount of the]* *assess a*** civil administrative penalty for violations described in this section based on the conduct of the violator ***[as follows]* *at the mid-point of the following ranges except as adjusted pursuant to (d) below*:**
 - 1.-2. (No change.)

***(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:**

1. The compliance history of the violator;
2. The number, frequency and severity of the violations;
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty; or
5. Other specific circumstances of the violator or violation.*

7:14-8.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative.

(b) Each day, from the initial day of failure by the violator to allow immediate lawful entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit or prohibit immediate lawful entry and inspection, shall be an additional, separate and distinct violation.

(c) The Department shall ***[determine the amount of the]* *assess a*** civil administrative penalty for violations described in this section ***[as follows]* *at the mid-point of the following ranges except as adjusted pursuant to (d) below*:**

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which an admin-

istrative order or permit exists under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, the civil administrative penalty shall be in an amount of not more than \$30,000 nor less than \$20,000; and

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount of not more than \$5,000 nor less than \$3,000.

***(d) The Department may, in its discretion, adjust the amount determined to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:**

1. The compliance history of the violator;
2. The number, frequency and severity of the violations;
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty; or
5. Other specific circumstances of the violator or violation.*

7:14-8.8 Civil administrative penalty for conducting unapproved activities

- (a) (No change.)
- (b) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on the seriousness of the violation and the conduct of violator in accordance with N.J.A.C. 7:14-8.5 or based on the following:
 - 1.-3. (No change.)

7:14-8.9 Civil administrative penalty for failure to properly conduct monitoring or sampling under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act

- (a) (No change.)
- (b) Each violation, including each parameter that is required to be monitored, sampled and reported and that is not monitored, sampled and reported, is an additional, separate and distinct violation. Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(c) (No change.)

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

- 1.-2. (No change.)
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty; or
5. Other specific circumstances of the violator or violation.

7:14-8.10 Civil administrative penalty for failure to pay a ***[permit]*** fee

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to pay a ***[permit]*** fee when due pursuant to the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act.

(b) Each day a ***[permit]*** fee is not paid after it is due shall constitute an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on an amount equal to the unpaid ***[permit]*** fee, up to a maximum of \$50,000 per violation.

7:14-8.11 Civil administrative penalty for violation of the rules governing laboratory certification and standards of performance

- (a) (No change.)

(b) Each violation of each provision of each rule shall be an additional, separate and distinct violation. Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(c) (No change.)

7:14-8.13 Water Supply and Wastewater Operators' Licensing Act and Water Supply Management Act civil administrative penalties

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

(c) The Department shall assess a civil administrative penalty for each violation of each provision of the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act and each violation of each provision of any rule, administrative order, permit or license as follows:

1. For the first violation of a provision, not more than \$1,000;
2. For the second violation of the same provision, not more than \$2,500; and
3. For the third and subsequent violations of the same provision, not more than \$5,000.

(d) The Department shall assess a civil administrative penalty of \$5,000 for refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place by any authorized Department personnel. Each day, from the initial day of failure by the violator to allow immediate lawful entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit or prohibit immediate lawful entry and inspection, shall constitute an additional, separate and distinct violation.

(e) The Department shall assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained under the Water Supply and Wastewater Operators' Licensing Act or the Water Supply Management Act, or who fails to submit or maintain any application, record or other document required to be submitted or maintained under the Water Supply and Wastewater Operators' Licensing Act or the Water Supply Management Act, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained by the Water Supply and Wastewater Operators' Licensing Act, or the Water Supply Management Act. Each day, from the day of submittal of the false or inaccurate information to the Department to the day of receipt by the Department of a written correction of the inaccurate information or falsified statement, shall constitute an additional, separate and distinct violation. The Department shall determine the amount of the civil administrative penalty based on the conduct of the violator as follows:

1.-3. (No change.)

7:14-8.14 Severability

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

Full text of the proposed new appendices follows.

APPENDIX A
DEP LABORATORY METHODS

Method No. 010: pH (Electrometric)
Method No. 012: Total Residue
Method No. 013: Volatile and Ash Content of Total Residue
Method No. 032: Phenols
Method No. 036: Oil and grease
Method No. 100: Metals

pH (ELECTROMETRIC)
N.J. SLUDGE METHOD NO. DEP 010

1.0 Scope and Application

1.1 This method is applicable to the determination of pH in municipal and industrial sludges.

2.0 Summary of Method

2.1 A representative sample of sludge is thoroughly mixed and analyzed for pH electrometrically using either a glass electrode in combination with a reference electrode or a combination electrode.

2.2 The calibration of the pH electrode meter system is adjusted and checked with buffer solutions.

3.0 Sample Handling and Preservation

3.1 Upon collection, samples shall be refrigerated or iced at 4°C.

4.0 Limitations

4.1 Sodium error at pH levels greater than 10 can be reduced or eliminated by using a "low sodium error" electrode or applying a correction factor from a table or graph provided by the pH meter manufacturer.

4.2 Coatings of oil material or particulate matter can impair electrode response. These coatings can usually be removed by gentle wiping or detergent washing, followed by distilled water rinsing. An additional treatment with dilute hydrochloric acid (1 ml concentrated hydrochloric acid diluted to 10 ml with water) may be necessary to remove any remaining film.

NOTE 1: It may be necessary to centrifuge an oily sludge to obtain an aqueous phase for true pH determination.

4.3 Temperature effects on the electrometric measurement of pH arise from two sources. The first is caused by the change in electrode output at various temperatures. This interference can be controlled with instruments having temperature compensation or by calibrating the electrode-instrument system at the temperature of the samples. The second source is the change of pH inherent in the sample at various temperatures. This error is sample dependent and cannot be controlled; it should therefore be noted by reporting both the pH and temperature at the time of analysis.

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely defined; however, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory should maintain a current awareness file of OSHA rules regarding the safe handling of the chemicals specified in this method. A reference file of Material Safety Data Sheets should be made available to all personnel involved in the chemical analysis.

6.0 Apparatus

6.1 pH Meter, laboratory or field model, with an accuracy of ± 0.05 unit. A wide variety of instruments are commercially available with various specifications and optional equipment.

6.2 Glass pH electrode.

6.3 Reference electrode- a fiber junction, calomel, silver-silver chloride or other electrode of constant potential may be used. (Do not use gel filled electrodes).

6.4 Glass combination electrode.

6.5 Magnetic stirrer and TFE coated stirring bar.

6.6 Thermometer with at least one degree calibrations or less.

NOTE 2: Temperature compensator may be used instead of a thermometer.

6.7 Dispersion Device, homogenizer, blender, or other apparatus capable of disintegrating large particles.

7.0 Reagents

7.1 Secondary standard buffers may be prepared from NBS salts or purchased as a solution from commercial vendors. Use of these commercially available solutions, that have been validated by comparison to NBS standards, are recommended for routine use.

8.0 Calibration

8.1 At a minimum, each instrument must be calibrated at pH 7.0 before each use and after each set of 10 samples. The accuracy of the system must be checked and recorded daily at approximately pH 4 and 9 or 10 with appropriate certified buffers. The three values must agree within 0.05 pH units of the assigned values.

8.1.1 If the values do not agree within 0.05 pH units, correct the problem before proceeding.

ADOPTIONS

9.0 Procedure

9.1 Dilute, if required, with distilled water to achieve fluidity and/or to dissolve any inorganic buffer salts that may be present.

9.2 Disperse sample, if necessary, with a homogenizer or blender to disintegrate large particles.

9.3 Calibrate the meter and electrode system as described in Section 8.

9.4 Bring the sample temperature within 2°C of the buffer solution.

9.5 Rinse or gently wipe the electrodes with distilled or deionized water after each sample or buffer and gently blot them with a clean dry tissue. Immerse them into the sample beaker and stir gently at a constant rate to provide homogeneity and suspension of solids. Note and record sample pH to the nearest 0.1 unit and temperature to the nearest degree.

10.0 Precision and Accuracy—No data are available.

11.0 References

11.1 Methods for Chemical Analysis of Water and Wastes, U.S. Environmental Protection Agency, EPA 600/4-79-020, March, 1979.

**TOTAL RESIDUE
N.J. SLUDGE METHOD NO. DEP 012**

1.0 Scope and Application

1.1 This method is designed to measure the residue content of municipal and industrial sludges over a range of 1-75% W/W.

2.0 Summary of the Method

2.1 A representative portion of the sample is weighed and dried to constant weight in an oven at $104 \pm 1^\circ\text{C}$. The remaining solids are weighed and calculated as % W/W total residue of the original sample.

3.0 Sample Handling and Preservation

3.1 Upon collection, samples shall be placed in a wide mouth, air tight, polyethylene or glass container and refrigerated or iced to 4°C.

4.0 Limitations

4.1 Rapid weighing of the sample, before and after drying, is essential to obtain accurate results.

5.0 Safety

5.1 The drying oven should be placed in a hood or supplied with a vent to remove noxious odors.

6.0 Apparatus

6.1 Pan balance, electronic, capable of weighing to ± 0.01 gram.

6.2 Weighing dishes, aluminum pan, porcelain dish or equivalent.

Note 1: Use a porcelain dish if proceeding to N.J. Sludge Method No. DEP 013 or for highly alkaline samples.

6.3 Oven, mechanical or gravity convection capable of being regulated at $104 \pm 1^\circ\text{C}$, or equivalent.

6.4 Steam bath (optional).

6.5 Desiccator, with indicating desiccant.

7.0 Reagents—none.

8.0 Procedure

8.1 Tare the weighing dish, using a pan balance, to the nearest 0.01 gram and record as W1.

Note 2: If used, two aluminum pans should be seated together to provide a more rigid support for the sample.

8.2 Shake the covered sample container vigorously, disperse sample, if necessary, with a homogenizer or blender to disintegrate large particles.

8.3 Immediately, transfer a mixed sample aliquot to the dish such that the final residue weight is at least 1 gram and will provide adequate drying in 16-24 hours.

8.4 Reweigh the dish to the nearest 0.01 gram and record the weight as W2.

Note 3: Rapid transfer and weighing is essential to prevent loss of moisture during this step.

8.5 Transfer the dish containing the sample to a convection oven, operating at $104 \pm 1^\circ\text{C}$ and dry the contents to constant weight.

Note 4: A steam bath may be used to reduce the sample volume provided the sample is subsequently dried in the convection oven at 104°C for at least an hour and then brought to constant weight as specified above.

8.6 Remove the dish from the oven and place in a desiccator until cool. Reweigh to the nearest 0.01 gram and record weight as W3.

Note 5: Rapid weighing is essential to prevent the adsorption of moisture from the air.

Note 6: If volatile residue or ash residue analysis is to be performed on the sample, place the weighed sample in a desiccator and proceed directly with N.J. Sludge Method No. DEP 013.

9.0 Calculations

9.1 To determine the percent total residue by weight in the sample, use the following equation:

$$\% \text{ W/W total residue} = \frac{W3-W1}{W2-W1} \times 100$$

Where:

W1= weight of the original empty dish, in grams (see 8.1);

W2= weight of the original dish plus the sample, in grams (see 8.4); and,

W3= weight of the original dish plus the sample residue, in grams (see 8.6).

10.0 Precision and Accuracy—No data are available.

11.0 References

11.1 Methods for Chemical Analysis of Water and Wastes, U.S. Environmental Protection Agency, EPA 600/4-79-020, March 1979.

**VOLATILE AND ASH CONTENT OF TOTAL RESIDUE
N.J. SLUDGE METHOD NO. DEP 013**

1.0 Scope and Application

1.1 This method is applicable to sludge and provides an approximation of the organic material contained in municipal and industrial sludge over a range of 1-75% W/W. It is used in conjunction with the procedure for the determination of Total Residue, N.J. Sludge Method No. DEP 012.

2.0 Summary of the Method

2.1 The residue from N.J. Sludge Method No. DEP 012, is ignited at 550°C in a muffle furnace. The loss in weight on ignition is reported as volatiles and the resulting solids are reported as ash.

3.0 Sample Handling and Preservation—See N.J. Sludge Method No. DEP 012.

4.0 Limitations

4.1 The method is empirical and approximates the organic content of the sludge due to the volatilization of organic matter. Mineral salts may decompose and give high results for organic volatiles.

5.0 Safety

5.1 The muffle furnace and drying ovens should be placed in a hood or supplied with a vent to remove noxious odors.

Note 1: Sludges containing relatively large amounts of nonvolatile hydrocarbons may present a potential hazard when placed in a muffle furnace at 550°C . These samples may be placed in a cold muffle furnace and brought up to 550°C slowly to avoid spontaneous ignition.

6.0 Apparatus

6.1 Muffle furnace, capable of being regulated at $550 \pm 50^\circ\text{C}$.

7.0 Reagents—none.

8.0 Procedure

8.1 Place the weighed residue and dish from N.J. Sludge Method No. DEP 012, in a muffle furnace preheated to $550 \pm 50^\circ\text{C}$.

Note 2: Do not use an aluminum pan for this procedure.

8.2 Ignite the sample for 60 minutes ± 5 minutes at $550 \pm 50^\circ\text{C}$.

8.3 Remove the sample from the furnace with crucible tongs and after allowing the pan to cool partially in the air, place in a desiccator for at least one hour.

8.4 Reweigh the dish to ± 0.01 gram and record the weight as W4.

Note 3: If subsequent analyses are to be performed on the resultant residue, store the residue in a desiccator.

9.0 Calculations

9.1 To determine the volatile content of the residue, use the following equation:

$$\% \text{ W/W Volatile residue} = \frac{(W3-W4)}{W3-W1} \times 100$$

Where:

W1 = weight of the original dish, in grams (determined in DEP 012, 8.1);

W3 = weight of the original dish plus the sample residue, in grams (determined in DEP 012, 8.6); and,

W4 = weight of the original dish plus the ignited sample, in grams (determined in DEP 013, 8.4).

9.2 To determine the ash content of the residue, use the following equation:

$$\% \text{ W/W Ash residue} = \frac{W4-W1}{W3-W1} \times 100$$

Where:

W1 = weight of the original dish, in grams (determined in DEP 012, 8.1);

W3 = weight of the original dish plus the sample residue, in grams (determined in DEP 012, 8.6); and,

W4 = weight of the original dish plus the ignited sample, in grams (see DEP 013, 8.4).

10.0 Precision and Accuracy—No data are available.

11.0 References

11.1 Standard Methods for the Examination of Water and Wastewater, American Public Health Association, 14th ed., New York, 1975.

PHENOLS

N.J. SLUDGE METHOD NO. DEP 032

1.1 Scope and Application

1.1 This method is designed to determine the amount of phenolic compounds in municipal and industrial sludges.

1.1.1 The range of the method can be increased, if necessary, either by taking a smaller sample in step 9.2.3 or by taking a smaller aliquot in step 9.5.1.

1.1.2 The range of the method can be lowered, if necessary, by increasing the sample size taken in step 9.2.3.

2.0 Summary of Method

2.1 A representative portion of the sludge sample is mechanically dispersed in water to aid in solubilizing the phenolics, the pH is adjusted to pH 12.0-12.5 with sodium hydroxide. The alkaline sample is made to a known volume with water. A portion of the sample is filtered to remove insolubles. The filtrate is extracted with "Freon"† 113 to remove interferences. The extracted sample is heated to remove the extractant, cooled to room temperature and then adjusted to pH 3 with phosphoric acid. A known portion of the acidic solution, after treatment with copper sulfate solution, is distilled to remove steam-distillable phenolics from the sample matrix. The steam-distillate is reacted with 4-aminoantipyrine at pH 10.0 ± 0.2 in the presence of potassium ferricyanide to form a reddish-brown colored antipyrine dye. The absorbance of the aqueous dye solution is measured directly at 510 nm. The concentration of phenolic compounds, as phenol (C₆H₅OH), in the sample is expressed in terms of mg/kg on the "dry weight" basis.

†Registered U.S. Patent Office

3.0 Sample Handling and Preservation

3.1 Upon collection, samples shall be placed in a wide mouth polyethylene or glass container and refrigerated or iced to 4°C.

4.0 Limitations

4.1 Addition of sodium hydroxide to the sample causes heavy metals to precipitate. If this precipitate is not removed, an emulsion forms during the "Freon" 113 extraction step which causes an inefficient separation of the two phases. Filtration prior to extraction

removes the precipitate and the extraction step proceeds without difficulty as little or no emulsion is formed.

4.2 The "Freon" 113 extraction step is necessary to eliminate substances which steam distill over with the phenolics and cause turbidity which interferes with the photometric determination. The "Freon" 113 extraction step normally eliminates the need for re-distillation to remove turbid materials as required in the referenced methods (12.1, 12.2 and 12.3).

4.3 Phosphoric acid and copper sulfate are added after extraction and prior to distillation to eliminate interference due to hydrogen sulfide and sulfur dioxide. The use of CuSO₄ during the distillation of an acidic sample permits the formation of cupric sulfide without subsequent decomposition to H₂S. The acid solution also prevents the precipitation of cupric hydroxide which acts as an oxidizing agent toward phenols.

4.4 The phenols are distilled at a nearly constant rate from the non-volatile impurities. The rate of volatilization of the phenols is gradual, so that the volume of the distillate must equal that of the sample being distilled. It is for the above reason that the distillation is carried out in two steps.

4.5 The term "phenolics" as used in this method includes those hydroxy derivatives of benzene and its condensed nuclei which can be determined by the specified conditions of this method. Certain para-substituted phenols are excluded from the determination as they do not react with the colorimetric reagent. Other phenols may also be excluded if they (1) do not form water soluble phenolates at pH 12 and are extractable by "Freon" 113 and (2) do not steam distill during the distillation step.

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely defined; however, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory is responsible for maintaining a current awareness file of OSHA rule regarding the safe handling of the chemicals specified in this method. A reference file of Material Data Handling Sheets should be made available to all personnel involved in the chemical analysis.

6.0 Apparatus

6.1 Pan balance, capable of weighing to ± 0.1 gram.

6.2 Tekmar Tissumizer homogenizer, or equivalent, consisting of:

Tissumizer motor	#SDT-1810
Tissumizer shaft and generator	#SDT-182EN
Thyristor regulator	#TR-5T
Stand	#R-1821

NOTE 1: Blenders may not be an equivalent substitute.

6.3 Magnetic stirrer and TFE coated stirring bar.

6.4 pH Meter, laboratory or field model, with an accuracy of ± 0.05 unit. A wide variety of instruments are commercially available with various specifications and optional equipment.

6.5 Glass pH electrode.

6.6 Reference electrode—a fiber junction, calomel, silver-silver chloride or other electrode of constant potential may be used. (Do not use gel filled electrodes).

6.7 Glass combination electrode.

6.8 Filter, funnel, Buchner.

6.9 Filter discs, glass fiber, 7.0 cm, Whatman 943AH grade, or equivalent.

6.10 Separatory funnel, 1-liter capacity with TFE stopcock, Lab-Glass Co., Cat. No. LG-8371T-110, or equivalent.

6.11 Hotplate.

6.12 Ice-water bath.

6.13 1-liter distillation apparatus as shown in figure 1. Fisher Scientific Co., Cat. No. 9-126B, or equivalent.

6.14 Heating mantle, 1000 mL size, Glass-Col, or equivalent.

6.15 Retaining pan, stainless-steel mixing bowl, 3 qt. capacity.

6.16 Cenco-Lerner Lab-Jack, or equivalent.

6.17 500-mL volumetric flask, Class A, MCA type, marked at the 450 mL level.

6.18 Spectrophotometer, with 1.0 cm absorption cells.

ADOPTIONS

ENVIRONMENTAL PROTECTION

7.0 Reagents

7.1 Sodium hydroxide (NaOH), 50% solution, reagent. Fisher Scientific Co., Cat. No. So-S-254, or equivalent.

7.2 "Freon" 113 ("F-113"; 1,1,2-trichloro-1,2,2-trifluoro-ethane).

NOTE 2: 250 mL of the solvent should leave no measureable residue on evaporation; distill if necessary.

7.3 Phosphoric acid (H₃PO₄), concentrated, reagent grade.

7.4 Copper sulfate (CuSO₄) solution.

Dissolve 100 g of reagent grade copper sulfate (CuSO₄·5H₂O) in reagent water and dilute to 1 liter volume. Store in glass container.

7.5 Ammonium chloride (NH₄Cl) solution, 2%.

Dissolve 20 g of reagent grade ammonium chloride in reagent water and dilute to 1 liter volume. Store in glass container.

7.6 Ammonium hydroxide (NH₄OH) solution, concentrated, reagent grade.

7.7 4-Aminoantipyrine solution, 2%. Prepare fresh daily.

Dissolve 2.0 g of 4-aminoantipyrine crystals in reagent water and dilute to 100 ml volume. Store in glass container.

7.8 Potassium ferricyanide (K₃Fe(CN)₆) solution, 8%. Prepare fresh weekly.

Dissolve 8.0 g of reagent grade potassium ferricyanide in reagent water and dilute to 100 ml volume. Store in glass container.

7.9 Phenol (C₆H₅OH), reagent grade.

7.10 Phenol Stock Solution. Prepare fresh monthly and store at 4°C in a low actinic bottle. (1.0 mL = 1.0 mg).

Weigh out 1.000 g (± 0.001 g) of reagent grade phenol crystals and transfer quantitatively to a clean 1-liter volumetric flask which contains about 800 mL of reagent water using reagent water to aid in the transfer. Make the flask to volume with reagent water and mix the contents thoroughly. May be kept for 3 days in 4°C refrigerator.

NOTE 3: CAUTION—Use extreme caution in handling reagent grade (100%) phenol as it is very caustic. Wash off spills with copious amounts of cold water. Wear appropriate gloves and eye protection when handling the crystals.

7.11 Phenol Standard Solution. Prepare fresh on day of use (1.0 mL = 0.10 mg).

Transfer a 25.0 mL (pipet) aliquot of the Phenol Stock Solution (1.0 mL = 1.0 mg) to a clean 250-mL volumetric flask which contains about 100 mL of reagent water. Make the flask to volume with reagent water and mix the contents thoroughly. Use within 2 hours after preparation.

7.12 Reagent water, distilled or deionized.

7.13 Boiling stones, Hengar granule.

7.14 "Chromerge", or equivalent—chromic acid dissolved in concentrated H₂SO₄.

NOTE 4: CAUTION—Use care in preparation and handling. Wear appropriate gloves and eye protection.

8.0 Calibration

8.1 Spectrophotometer Calibration

8.1.1 Prepare a series of 100 mL phenol standards in clean, dry 150-mL beakers according to the following schedule:

Phenol Standard Solution (1.0 mL = 0.10 mg phenol)	Reagent Water mL	Phenol mg
0.0	100.0	0.00
1.0	99.0	0.10
2.0	98.0	0.20
3.0	97.0	0.30
4.0	96.0	0.40
5.0	95.0	0.50
7.0	93.0	0.70
10.0	90.0	1.00

NOTE 5: All solutions must be at room temperature.

NOTE 6: Use an automatic laboratory grade 100-mL buret to add the water to the beaker and a 10-mL buret to add the phenol standard to the water.

8.1.2 Develop and measure the color, immediately and without delay, in the series of standards according to the procedure given in steps 9.5.2-9.5.8.

8.1.3 Calculate the factor (F) according to the following directions.

8.1.3.1 Determine the individual factor (f) for each standard in the series to the nearest 0.1 unit using 1.0 cm cells according to the following formula:

$$\frac{C}{A} \times 1000 = f$$

Where: C = mg of phenol present in the standard solution.

A = absorbance of standard solution in a 1.0 cm cell at 510 nm.

8.1.3.2 Determine the average factor for the seven individual standard solutions and record it as the factor (F) to the nearest whole number for the 1.0 cm cell.

8.1.3.3 A plot of absorbance vs. mg phenol (per 100 mL volume) on rectilinear coordinate graph paper should yield a straight line which passes through the origin.

9.0 Procedure

9.1 Determine % W/W total residue, NJ Sludge Method No. DEP 012.

9.2 Sample Preparation

9.2.1 Shake the covered sample container vigorously several times to ensure mixing.

9.2.1.1 Break up large particles with a spatula and remix.

9.2.2 Tare a clean, dry 250-mL beaker on a pan balance to the nearest 0.1 gram, record as W1.

9.2.3 Transfer, with a metal spatula 18-22 g of the well-mixed sample, (be sure to pick up the sample from at least two different spots within the sample container), weighed to the nearest 0.1 g, to the beaker, record as W2.

9.2.4 Add about 150 mL of reagent water to the beaker.

9.2.5 Use the Tekmar homogenizer to disperse the sludge sample into the water. Homogenize for 1-minute, first at a low speed setting, with the bottom of the probe just off the beaker bottom. The speed setting may be increased to increase the efficiency of the dispersion as long as no sample spills from the beaker.

9.2.6 Turn off homogenizer and let any large undispersed particles settle for 1 minute.

9.2.7 Decant slowly the dispersed sample into a clean 1-liter beaker. Retain all large particles in the 250-mL beaker for further dispersion.

9.2.8 Repeat steps 9.2.4-9.2.7 as needed, to completely disperse the sample. Normally, this step will be repeated 4-5 times.

9.2.9 Quantitatively rinse all residue from the homogenizer probe into the beaker using several reagent water rinses. The homogenizer may be turned "on" for a fraction of a second several times to remove water from the probe. Do this while the probe is inserted in the empty beaker.

9.2.10 Add a magnetic stirring bar to the dispersed sample in the liter beaker, stir the contents and measure the sample pH (meter standardized with pH 7 buffer; use temperature compensation).

9.2.11 Add dropwise 50% NaOH solution to bring solution to pH 12.2-12.5. Heavy metal ions will form a precipitate.

9.2.12 Transfer the alkaline solution quantitatively to a 1-liter volumetric flask using reagent water to aid in the transfer and to make the flask to volume. Mix the contents thoroughly.

9.2.13 Let the solids formed settle for 5-10 minutes and then filter about 600 mL of the supernatant solution through a 7.0 cm glass fiber filter (on a 7.0 cm Buchner funnel) into a 1-liter suction flask. Do not wash the filter cake. Use a dry funnel and suction flask for this step. Discard the filter residue.

9.3 Sample Extraction

9.3.1 Transfer the filtrate to a dry 1-liter separatory funnel.

9.3.2 Add 50 mL (graduated cylinder) of "Freon" 113, stopper the funnel and shake the contents vigorously for 1 minute to extract interferences into the "Freon" 113. Carry out extractions in front of well-ventilated laboratory hood. The separatory funnel stem must be dry before use. Vent the funnel, after the extraction, through the top stopper, not through the stopcock. Keep the emulsion in the funnel.

9.3.3 Swirl the funnel contents gently, let the "Freon" 113 settle for about 1-2 minutes and then drain the bottom "Freon" 113 layer to a waste solvent jar.

9.3.4 Repeat steps 9.3.2 and 9.3.3 three times more to extract the solution with a total of 200 mL of "Freon" 113.

9.3.5 Drain the extracted alkaline water layer back to a clean, dry 800-mL beaker.

9.3.6 Heat the solution (in a hood) to 60°C (thermometer) with occasional stirring to remove residual "Freon" 113. Stir the hot solution on magnetic stirrer at moderate rate for 1 minute to completely remove all of the "Freon" 113.

9.3.7 Cool the solution to room temperature (thermometer in an ice-water bath).

9.3.8 Measure out 500 mL (graduated cylinder) of the above solution to an 800-mL beaker and adjust the solution to pH 3.0-3.1 by the dropwise addition of concentrated phosphoric (H_3PO_4) acid while stirring the solution with a magnetic stirrer.

9.3.9 Proceed now directly to step 9.4, without delay.

9.4 Sample Distillation

NOTE 7: IMPORTANT, if a white residue (probably a copper salt) remains on the interior of the distillation flask after the normal cleaning treatment, it can be removed by rinsing the flask with warm 1+1 nitric acid (caution) followed by rinsing with reagent water to remove the residue and the acid.

9.4.1 Transfer, without rinsing the beaker, the extracted, acidified solution to a clean phenol distillation apparatus (see Figure 1).

9.4.2 Add 5 mL pipet of copper sulfate ($CuSO_4$) solution, add 12-15 boiling stones and then stopper the retort flask.

NOTE 8: Do not use glass beads as they cause excessive bumping.

9.4.3 Place a clean, dry 500-mL special volumetric flask under the condenser and turn on the positioned heating mantle. Be sure cooling water is flowing through the condenser.

9.4.4 Let the solution come to a full boil, distill 450 mL of the sample into the volumetric flask and then stop the distillation at this point by turning off the heating mantle and lowering it from the distillation flask. Use the 450 mL graduation mark on the special volumetric flask to determine the distillate volume. The heating mantle is connected directly into a 110 volt line, not into a Variac, in order to reduce the time of distillation.

9.4.5 Remove carefully, when boiling ceases, the stopper from the retort flask and add 50 mL (graduated cylinder) of reagent water to the flask.

9.4.6 Restopper the apparatus, reposition the heating mantle and reheat the solution to a boil again. Continue the distillation until a total of 500 mL of distillate has been collected in the volumetric flask.

9.4.7 Just as 500 mL volume is collected, turn off the heating mantle and lower it from the retort flask to stop the distillation. The distillate should be clear (no turbidity or oil droplets), essentially odorless and essentially colorless.

9.4.8 Mix thoroughly the contents of the stoppered volumetric flask by shaking and then proceed directly to step 9.5 without delay.

9.5 Colorimetric Procedure-Direct Photometric

9.5.1 Transfer 100 mL (pipet) of the mixed distillate (from step 9.4.8) to a clean dry 150-mL beaker. Prepare a blank from 100 mL (pipet) of reagent water and carry it through the same steps as the sample. If necessary, a smaller aliquot (pipet) of the sample distillate plus enough reagent water (pipet) to make a total volume of 100 mL is transferred to a 150-mL beaker.

9.5.2 Add 5.0 mL (pipet) of ammonium chloride (NH_4Cl) solution and mix with a clean glass stirring rod.

9.5.3 Calibrate the pH meter (combination electrode) with pH 7 buffer. Be sure to wash off buffer from the electrode with reagent water.

9.5.4 Measure pH of sample solution and adjust it to pH 10.0 \pm 0.2 by dropwise addition of concentrated ammonium hydroxide (NH_4OH) solution (in a hood) from a medicine dropper while mixing the solution with the glass rod.

9.5.5 Remove pH electrode from the solution. Rinse off the electrode into a waste beaker, not into the sample solution.

9.5.6 Add 2.0 mL (pipet) of 4-aminoantipyrine solution (4-AAP) to the sample and mix promptly; followed immediately by 2.0 mL

(pipet) of potassium ferricyanide solution ($K_3Fe(CN)_6$) and again mixed immediately. Treat each sample (and BLANK) in the series with the two reagents, as above, before proceeding to the next in the series.

9.5.7 Let the solution stand for 15 minutes, after mixing, to develop the color completely.

9.5.8 Measure the absorbance (A) of the sample solution (vs. the BLANK set at 0.000 absorbance) in a 1.0 cm absorption cell with the spectrophotometer set at 510 nm wavelength. Rinse the cell 2 times with reagent water and 2 times with acetone between samples. Use vacuum to aspirate the sample, water and acetone from the cell.

10.0 Calculations

10.1 Determine the amount (mg/kg) of phenolics in the sample on a dry weight basis, use the following equation:

$$\text{mg/kg phenolics} = \frac{A(F)(100000)}{V(W_2 - W_1)(\%S)}$$

Where:

A = absorbance of sample solution (see 9.5.8) in 1.0 cm cell;

F = factor as determined (see 8.1.3.2);

V = mL volume of distillate (see 9.5.1), usually 100 mL;

W1 = weight of the original empty beaker, in grams (see 9.2.2);

W2 = weight of the original empty beaker plus the sample, in grams (see 9.2.3); and

%S = percent W/W total residue of sample (see 9.1) as determined by N.J. Sludge Method No. DEP 012.

Report all results to nearest mg/kg.

10.1.1 If the absorbance in the 1.0 cm cell in step 9.5.8 is less than 0.010A, then report the mg/kg value as "less than" the calculated value using 0.010A.

10.1.2 If the absorbance in the 1.0 cm cell in step 9.5.8 is greater than 1.000A, repeat steps 9.5.1-9.5.8 using a smaller aliquot of the distillate.

11.0 Precision and Accuracy—No data are available.

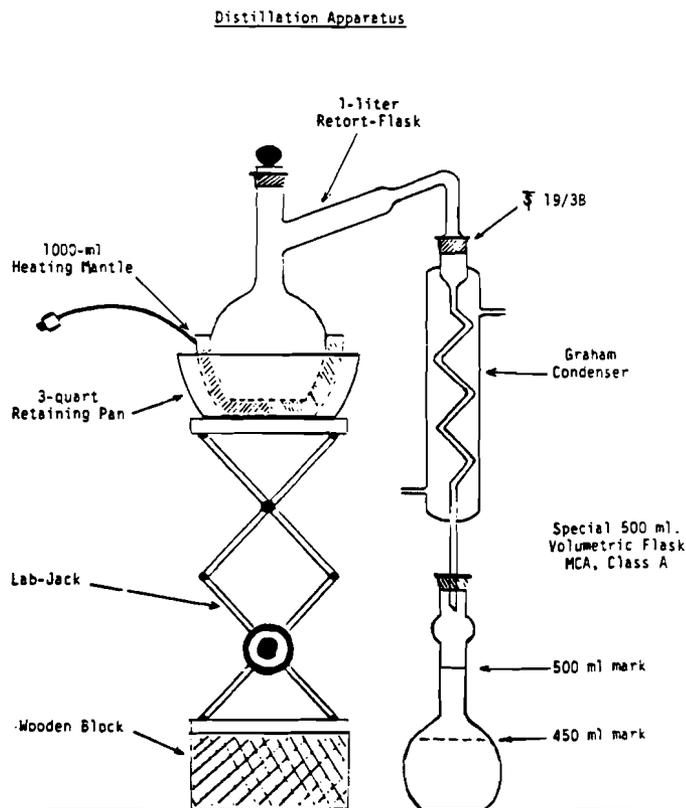
12.0 References

12.1 Methods for Chemical Analysis of Water and Wastes, U.S. Environmental Protection Agency, Cincinnati, 1974, pp. 241-242.

12.2 1974 Annual Book of ASTM Standards (Part 31), American Society for Testing and Materials, Philadelphia, 1974, Method D 1783-70 (Reapproved 1974).

12.3 Standard Methods for the Examination of Water and Wastewater, American Public Health Association, 14th ed., New York, 1975, Method 510.

Figure 1



OIL AND GREASE
N.J. SLUDGE METHOD DEP 036

1.0 Scope and Application

1.1 This method is designed to determine the amount of oil and grease in municipal and industrial sludges in the range of 0=10% W/W oil and grease.

2.0 Summary of Method

2.1 This method defines two extraction procedures, one applicable to all sludges and one which may be used for sludge samples with a low percent total residue.

2.1.1 For all sludge samples, provided the detection limit of 0.5% can be achieved, a representative portion of the sludge sample is manually dispersed in a limited volume of water and then acidified with concentrated hydrochloric acid. The acidified sample slurry is dehydrated with the addition of magnesium sulfate monohydrate. After solidification, the dry sample is ground to a powder. Oil and grease is extracted from the powdered sample in a soxhlet extraction apparatus, using "Freon"† 113 as the extractant.

2.1.2 For sludge samples containing less than ten percent W/W total residue, the sample may be manually dispersed and acidified with concentrated hydrochloric acid. The oil and grease is extracted from the sample in a separatory funnel using "Freon" 113 as the extractant.

2.2 The "Freon" 113 is removed by distillation and the amount of residual extracted oil and grease, after drying, is determined gravimetrically. Results are reported as % W/W oil and grease on the dry 100% solids basis.

†Registered U.S. Patent Office.

3.0 Sample Handling and Preservation

3.1 Upon collection, samples shall be refrigerated or iced at 4°C.

4.0 Limitations

4.1 Any filterable "Freon" 113 soluble substances, such as elemental sulfur and certain organic dyes and nitrocompounds, will be extracted and calculated as oil and grease.

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely defined; however, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory is responsible for maintaining a current awareness file of OSHA rule regarding the safe handling of the chemicals specified in this method. A reference file of Material Safety Data Sheets should be made available to all personnel involved in the chemical analysis.

6.0 Apparatus

- 6.1 Pan balance, capable of weighing to ± 0.1 gram.
- 6.2 Glass stirring rod, heavy duty.
- 6.3 Boiling stones, Hengar granule.
- 6.4 Desiccator, with indicating silica-gel or calcium sulfate desiccant.
- 6.5 Finger cots, rubber, large, Fisher Scientific Co., Cat. No. 10-001C, or equivalent.
- 6.6 Balance, analytical, capable of weighing to ± 0.1 mg.
- 6.7 Hot water/steam bath.
- 6.8 Connecting tube, condenser, and solvent receiver.
- 6.9 For soxhlet extraction only (see 8.2).
- 6.9.1 Mortar and pestle, glass, 16 oz. capacity. Do not use porcelain as it is difficult to clean.
- 6.9.2 Soxhlet extraction assembly, consisting of:
 - Flask, 250 ml capacity, flat-bottom, with 24/40 joint; Fisher Scientific Co., Cat. No. 09-559B, or equivalent;
 - Extraction tube, with 55/50 joint, Fisher Scientific Co., Cat. No. 09-558C, or equivalent;
 - Condenser, Allihn-type with 55/50 joint, Fisher Scientific Co., Cat. No. 09-557C, or equivalent; and
 - Soxhlet cellulose extraction thimble, 43 mm diameter x 123 mm long, mfgd. by Whatman, or equivalent.
- 6.9.3 Glasswool, washed with "Freon" 113.
- 6.9.4 Heating mantle, designed for flat bottom flask, 250-ml size.
- 6.9.5 Variable autotransformer, 120V output with 0-100 scale.
- 6.9.6 Forceps, metal, approx. 10 inch length.
- 6.10 For separatory funnel extraction only (see 8.3).
- 6.10.1 Separatory funnel, 50 ml with TFE stopcock.
- 6.10.2 Drying column-Chromatographic column, 19 mm ID, coarse frit filter disc.
- 6.10.3 Flask, 250 ml capacity, flat-bottom, with 24/40 joint; Fisher Scientific Co., Cat. No. 09-559B, or equivalent.

7.0 Reagents

- 7.1 Hydrochloric acid (HCl), concentrated.
 - 7.2 Indicating pH paper for low pH measurement.
 - 7.3 "Freon" 113 ("F-113"; 1,1,2-trichloro-1,2,2-trifluoro-ethane).
- NOTE 1: 250 ml of the solvent should leave no measurable residue on evaporation; distill if necessary.
- 7.4 For soxhlet extraction only (see 8.2).
 - 7.4.1 Magnesium sulfate monohydrate ($\text{MgSO}_4 \cdot \text{H}_2\text{O}$).
Dry a thin layer of laboratory grade magnesium sulfate heptahydrate ($\text{MgSO}_4 \cdot 7\text{H}_2\text{O}$), crystal, in an oven at 105-110°C for 48 hours.

NOTE 2: Stir and break up lumps frequently during the drying process.

NOTE 3: Caution, do not attempt to substitute magnesium sulfate, anhydrous, powder for the monohydrate as too much heat will be generated during the procedure and the resulting mass will be difficult to pulverize.

- 7.4.2 Reagent Water, distilled or deionized.
- 7.5 For separatory funnel extraction only (see 8.3).
- 7.5.1 Sodium sulfate-(ACS) Granular, anhydrous. Purify by heating at 400°C for 4 hours in a shallow tray.

8.0 Procedure

- 8.1 Determine % W/W total residue, N.J. Sludge Method No. DEP 012, if necessary.
- 8.2 Soxhlet extraction-applicable to all sludge samples, provided the required detection limit can be achieved.

8.2.1 Shake the covered sample container vigorously, disperse sample, if necessary, with a homogenizer or blender to disintegrate large particles.

8.2.2 Tare a clean, dry 250 ml beaker on a pan balance to the nearest 0.1 mg, record as W1.

8.2.3 Transfer, with a metal spatula 18-22 grams of the well-mixed sludge sample, (be sure to pick up the sample from at least two different spots within the sample container), weighed to the nearest 0.1 mg, to the beaker, record as W2.

8.2.4 Add 20 ml (graduated cylinder) of reagent water to the sample, if necessary, to fluidize.

8.2.5 Disperse the sample manually into the water, using the flat end of a clean, heavy glass stirring rod, with stirring and mixing to yield a uniform, lump-free slurry (do not homogenize). This step may require several minutes of effort to achieve the uniform finely divided slurry; do not use any additional water in this step.

8.2.6 Add concentrated hydrochloric acid (HCl), approximately one ml at a time, to the dispersed sample while stirring with the glass rod until the slurry is strongly acidic (pH 2 or less) as indicated by the pH paper. Stir the sample 10-15 seconds before testing for acidity.

8.2.7 Wait 10 minutes after the last HCl addition and recheck for acidity using the pH paper. If the sample is strongly acidic (pH 2 or less) proceed to step 8.2.8. If the sample is not strongly acidic, continue the HCl addition as in step 8.2.6 and repeat step 8.2.7 until the acidity holds for at least 10 minutes.

8.2.8 Reweigh the beaker (no stirring rod present) to the nearest 0.1 gram, record as M, determine the amount of total acidic slurry (TAS) that is present by difference from the tare weight (W1) of step 8.2.2 (TAS = M-W1).

8.2.9 Weigh out the magnesium sulfate monohydrate ($MgSO_4 \cdot H_2O$) that is at least equal to 1.3 times the total acid slurry weight found in step 8.2.8, (grams $MgSO_4 \cdot H_2O$ = TAS x 1.3).

8.2.10 Add slowly while stirring with the glass rod the $MgSO_4 \cdot H_2O$ to the acid slurry. The $MgSO_4 \cdot H_2O$ will dehydrate the sample slurry to form a solid sample that can be ground to a powder. The oil and grease will be dispersed in the solid sample and heat will be generated by the reaction.

8.2.11 Stir the sample with the glass rod to a smooth paste and, before the paste sets up, spread the paste evenly over the entire inside of the beaker surface to facilitate its subsequent removal after it solidifies. Keep the paste off the bottom of the beaker as much as possible to ease the removal of the solidified sample in step 8.2.13.

8.2.12 Let the sample stand for about 1/2 hour so it may solidify and cool.

8.2.13 Transfer the solidified sample, using a metal spatula, to a clean glass mortar and grind to a uniform, free-flowing powder. Do not attempt to grind the entire sample at one time.

8.2.14 Transfer the entire powdered sample to a soxhlet cellulose extraction thimble (43 mm diameter X 123 mm long). Tap the thimble gently as it is filled to prevent the presence of voids in the powder. At this point, the thimble and sample can be placed in a clean labeled pint screw-cap jar to hold overnight, if necessary.

8.2.15 Transfer one small boiling stone to a clean, dry 250 ml flat bottom extraction flask (24/40 joint) and place in a desiccator to condition for at least 1/2 hour.

8.2.16 Remove the flask from the desiccator, using finger cots, and rapidly weigh to the nearest 0.1 mg; record as W3, and set the flask aside.

8.2.17 Fill the remaining space in the sample-filled thimble with a loosely-packed wad of glasswool (washed with "Freon" 113) to prevent particles from flushing out of the thimble during extraction.

8.2.18 Gently slide the extraction thimble down the inside of the clean, dry extractor tube and assemble it to the condenser and to the tared extraction flask. Be sure good seal is obtained for the ungreased ground glass joint.

8.2.19 Seat the extraction flask in the heating mantle that is controlled by a variable transformer.

8.2.20 Turn on the water flow to the condenser; check for an adequate flow during the extraction procedure.

8.2.21 Slowly transfer about 225 ml (graduated cylinder) of "Freon" 113 to the apparatus by pouring it through the condenser top.

8.2.22 Turn on the heating mantle with the transformer (120 V output) to obtain a reflux rate of 1 cycle/3 minutes \pm 15 seconds, maintain reflux for 4 hours.

Note 4: The transformer setting should be noted for future use.

Note 5: The rate and time of extraction in the soxhlet apparatus must be exactly as directed because of the varying solubilities of different greases.

8.2.23 Turn off and remove the hot mantle from the extraction flask at the end of the 4 hour extraction period.

8.2.24 Remove the extraction flask from the apparatus and set aside; remove the thimble from the tube, using a clean, long metal forceps, and let the "Freon" 113 drain back into the tube; transfer the residual "Freon" 113 from the tube to the flask. Discard the thimble and extracted sample. Proceed to step 8.4.

8.3 Separatory funnel extraction-recommended for sludge samples with less than ten percent W/W total residue as determined in N.J. Sludge Method No. DEP 012.

8.3.1 Shake the covered sample container vigorously, disperse sample, if necessary, with a homogenizer or blender to disintegrate large particles.

8.3.2 Tare a clean, dry 250 ml beaker on a pan balance to the nearest 0.1 mg, record as W1.

8.3.3 Transfer approximately 100 grams of the well-mixed sludge sample to the 250 ml beaker, weigh to the nearest 0.1 mg, record as W2.

8.3.4 Add concentrated hydrochloric acid (HCl), approximately one ml at a time, to the dispersed sample while stirring with the glass rod until the slurry is strongly acidic (pH 2 or less) as indicated by the pH paper. Stir the sample 10-15 seconds before testing for acidity.

8.3.5 Wait 10 minutes after the last HCl addition and recheck for acidity using the pH paper. If the sample is strongly acidic (pH 2 or less) proceed to step 8.3.6. If the sample is not strongly acidic, continue the HCl addition as in step 8.3.4 and repeat step 8.3.5 until the acidity holds for at least 10 minutes.

8.3.6 Place a clean, dry 250 ml flat bottom extraction flask in a desiccator to condition for at least one hour.

8.3.7 Remove the flask from the desiccator, using finger cots, and rapidly weigh to the nearest 0.1 mg; record as W3, and set the flask aside.

8.3.8 Quantitatively transfer the acidified sample to a 500 ml separatory funnel with a TFE stopcock.

8.3.9 Add 50 ml of "Freon" 113 to the separatory funnel and extract the sample by shaking the funnel for two minutes with periodic venting to release excess pressure. Allow the organic layer to separate from the water phase for a minimum of ten minutes. If the emulsion interface between layers is more than one third the volume of the solvent layer, the analyst must employ mechanical techniques to complete the phase separation. The optimum technique depends upon the sample, but may include stirring, centrifugation, or other physical methods. Transfer the extract to an Erlenmeyer flask.

8.3.10 Add a second 50 ml volume of "Freon" 113 and repeat the extraction procedure a second time combining the extracts in the Erlenmeyer flask. Perform a third extraction in the same manner.

8.3.11 Pour the combined extract through a solvent-rinsed drying column containing about 10 cm of anhydrous sodium sulfate, and collect the extract in the tared 250 ml flat bottom extraction flask. Rinse the Erlenmeyer flask and column with 20 to 30 ml of "Freon" 113 to complete the quantitative transfer. Proceed to step 8.4.

8.4 Distill the "Freon" 113 from the flat bottom extraction flask in a $70 \pm 5^\circ C$ hot water bath. Clamp the extraction flask at a 45 degree angle and distill the "Freon" 113 into the solvent recycling apparatus.

Note 6: Carry out the distillation in a hood.

8.5 Place the extraction flask, free of "Freon" 113, on a boiling water/steam bath for 15 minutes. Again, clamping the flask at a 45 degree angle in a hood.

8.6 During the final 1 minute on the steam bath, draw air gently through the flask by means of applied vacuum, using 1/4" OD

polyethylene tube which reaches to within 1" from the bottom of the extraction flask. The vacuum removes any heavy "Freon" 113 vapors which could cause high results to be reported if they were not drawn off and removed.

8.7 Wipe off the entire outside of the extraction flask with clean, dry paper towels to remove all traces of water.

8.8 Place the flask in a desiccator and let it cool for exactly 30 minutes.

Note 7: The length of time required for drying and cooling the extracted material cannot be varied. There may be a gradual increase in weight, presumably due to the absorption of oxygen or a gradual loss in weight due to volatilization, if the times are varied.

8.9 Remove from the desiccator, using finger cots, and rapidly weigh to the nearest 0.1 mg, record as W4.

9.0 Calculations

9.1 To determine the percent W/W oil and grease in the sample on a dry weight basis, use the following equation:

$$\% \text{ W/W oil and grease} = \frac{W4-W3}{W2-W1 (\%S)} \times 10,000$$

Where

W1= weight of the original empty beaker, in grams (see 8.2.2 or 8.3.2);

W2= weight of the original empty beaker plus the sample, in grams (see 8.2.3 or 8.3.3.);

W3= weight of the empty flask, in grams (see 8.2.16 or 8.3.7);

W4= weight of the empty flask plus the oil and grease extract, in grams (see 8.9); and

%S= percent W/W total residue of sample (see 8.1) as determined by N.J. Sludge Method No. DEP 012.

Report all results to the nearest 0.1%

10.0 Precision and Accuracy

10.1 The following data were obtained during the development of this method.

A composite sample (43.7% solids) was analyzed four times according to the soxhlet extraction procedure contained in this method. The following results were obtained:

Run	1	2	3	4	Avg.	STD.	Dev.
% of oil and grease	1.0	1.0	0.8	1.1	1.0	0.13	

10.2 The above data indicates that the method, as written, is reasonably precise when a large enough representative sample is taken for analysis. The relative standard deviation of the determination is $\pm 13\%$, for a single laboratory.

11.0 References

11.1 Standard Methods for the Examination of Water and Wastewater, American Public Health Association, 14th ed., New York, 1975, Method 502D.

METALS

N.J. SLUDGE METHOD NO. DEP 100

1.0 Scope and Application

1.1 This procedure is applicable to the preparation of sludge samples prior to the determination of metals by atomic absorption spectrometry. This procedure is applicable to both direct aspiration and furnace atomization of the following elemental priority pollutants: arsenic (As), cadmium (Cd), calcium (Ca), chromium (Cr), copper (Cu), lead (Pb), magnesium (Mg), nickel (Ni), potassium (K), and zinc (Zn).

2.0 Summary of Method

2.1 This method defines two digestion procedures, one applicable to all sludges and one which may be used for sludge samples with a low percentage total residue.

2.1.1 For all sludge samples, the sample is digested with nitric acid and hydrogen peroxide and analyzed using atomic absorption methods.

2.1.2 For sludge samples containing less than ten percent W/W total residue, the sample may be treated as an aqueous sample and analyzed using the U.S. EPA procedure for the determination of total metals by atomic absorption found in the Methods for Chemical Analysis of Water and Wastes U.S. EPA (EPA-900/4-79-020).

3.0 Sample Handling and Preservation

3.1 Samples should be maintained at 4°C.

4.0 Limitations

4.1 See Section 5.0 of the Metals-Atomic Absorption Method in the Methods for Chemical Analysis of Water and Wastes, U.S. EPA (EPA 600/4-79-020).

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely defined; however, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory is responsible for maintaining a current awareness file of OSHA rules regarding the safe handling of the chemicals specified in this method. A reference file of Material Data Handling Sheets should be made available to all personnel involved in the chemical analysis.

6.0 Apparatus

6.1 See Section 6.0 of the Metals-Atomic Absorption Method in the Methods for Chemical Analysis of Water and Wastes, U.S. EPA (EPA 600/4-79-020).

7.0 Reagents

7.1 See Section 7.0 of the Metals-Atomic Absorption Method in the Methods for Chemical Analysis of Water and Wastes, U.S. EPA (EPA 600/4-79-020).

7.2 Hydrogen Peroxide (30%).

8.0 Procedure

8.1 Sludge Digestion—applicable to all sludge samples.

8.1.1 Weigh and transfer to a 125-mL conical beaker a representative, 1.0 gram aliquot of a pulverized sample that has been dried in accordance with N.J. Sludge Method No. DEP 012. Record the weight of the sample to the nearest mg and record as D.

8.1.2 Add 5 mL of 1:1 nitric acid to the beaker, and cover it with a watch glass. Heat the contents of the beaker gently so that a reflux action occurs. Continue heating until the volume of the contents is reduced to approximately 2 mL.

8.1.3 Allow the contents to cool, add 4 mL of concentrated HNO₃ and again heat at a gentle reflux until the volume is reduced to approximately 2 mL.

8.1.4 After the second reflux has been completed and the sample has cooled, add 2 mL of concentrated nitric acid, 2 mL of deionized distilled water, and 2 mL of 30% hydrogen peroxide.

8.1.5 Return the beaker to the hot plate for warming to start the peroxide reaction. The reaction is vigorous. Care must be taken to avoid losses with the start of effervescence.

8.1.6 Heat until the volume is reduced to approximately 3 mL.

8.1.7 Continue the addition of 30% hydrogen peroxide in 3 mL increments (do not add more than 3 increments) with warming until the effervescence is minimal or the general sample appearance is unchanged.

8.1.8 Wash any residue from the underside of the watch glass and walls of the beaker into the sample solution and dilute the contents of the beaker to approximately 10.0 mL with deionized distilled water. Filter the contents of the beaker into a 50-mL volumetric flask through Whatman No. 42 paper (or the equivalent). Wash the insoluble residues in the beakers three times with 5 mL portions of 1% nitric acid, and add the washings to the volumetric flasks through the filters.

8.1.9 Dilute the contents of the volumetric flasks to 50 mL with deionized distilled water and analyze by atomic absorption spectrometry as specified in the Section 9.0 of the Metals-Atomic Absorption Method in the Methods for Chemical Analysis of Water and Wastes, U.S. EPA (EPA-600/4-79-020). Record the metal concentration in ug/ml.

8.2 Aqueous Sludge Digestion—if the percent W/W total residue as determined in N.J. Sludge Method No. DEP 012 is less than ten, the following procedure may be used.

8.2.2 Determine percent W/W total residue, N.J. Sludge Method No. DEP 012, if necessary.

8.2.3 Digest an amount of sludge that will give the equivalent of one (1) gram on a dry weight basis and analyze the sample using the method specified in Section 4.1.3 of the Metals-Atomic Absorption Method in the Methods for the Chemical Analysis of Water and Wastes, U.S. EPA (EPA 600/4-79-020).

NOTE 1: The appropriate conversion must be made to report the final result on a dry weight (W/W) basis.

9.0 Calculations

9.1 To determine the amount of metal present in the sample on a dry weight basis when using the procedure in section 8.1 of this

method, use the following equation:

$$\text{mg metal/kg sample} = \frac{(A)(V)}{(D)}$$

Where: A = ug/mL of metal in digested sample (see 8.1.9);
 V = final volume of processed sample in mL (see 8.1.8);
 and
 D = Weight of dry sample in grams (see 8.1.1).

10.0 Precision and Accuracy

10.1 In an interlaboratory study, Reference 11.4, using a U.S. EPA reference sludge sample, the following data were obtained:

INTERLABORATORY STUDY

DETERMINATION	EPA REFERENCE VALUE	# OF PARTICIPANTS	LABORATORY AVERAGE	LABORATORY STANDARD DEVIATION
1. ARSENIC	16.97	6	6.57	12.8
2. CADMIUM	20.77	13	18.5	2.95
3. CALCIUM	—	10	15300	5800
4. CHROMIUM	204	15	183	38
5. COPPER	1095	14	941	125
6. LEAD	519	14	516	83
7. MAGNESIUM	—	9	3620	2200
8. NICKEL	198	15	165	27
9. POTASSIUM	—	7	775	262
10. ZINC	1323	14	1190	185

11.0 REFERENCES

11.1 Methods for the Chemical Analysis of Water and Wastes, U.S. EPA (EPA-600/4-79-020), March 1979.

11.2 Test Methods for the Evaluation of Solid Waste, Method 3050, USEPA SW-846, April 1984.

11.3 "Interim Methods for the Analysis of Elemental Priority Pollutants in Sludge", U.S. EPA, Cincinnati, 1978.

11.4 Adelman, H., Jenniss, S.W., and Katz, S.A., "Interlaboratory Analysis of Sewage Sludge", American Laboratory, December 1981.

FORM T-VWX-007 (FRQNT)

New Jersey Department of Environmental Protection
 Division of Water Resources

APPENDIX B

DOMESTIC WASTEWATER SLUDGE REPORT

DISCHARGE PERMIT NO. _____ REPORTING PERIOD MO. _____ YR. _____ REPORTING CATEGORY _____

I _ I Page I _ I of I _ I

FACILITY NAME: _____

A. REPORTING CATEGORY INFORMATION:

- 1. Permitted Wastewater Flow (MGD) A1: I _ I _ I _ . _ I
- 2. Industrial Contribution (% of influent) A2: I _ I _ I .
- 3. Average Daily Septage Treated (Gallons/Day) A3: I _ I _ I _ I _ I _ I _ I .

B. INFORMATION ON SLUDGE PRODUCED IN TREATMENT PROCESSES:

- 1. Average Total Solids of Sludge (% by weight) B1: I _ I _ . _ I
- 2. Average Daily Sludge Production (Gallons/Day) B2: I _ I _ I _ I _ I _ I .
- 3. Average Daily Sludge Production *(Dry Tons/Day) B3: *I _ I _ I _ . _ I _ I

**C. INFORMATION ON SLUDGE REMOVED FOR ULTIMATE MANAGEMENT:

- 1. Complete ONLY If Liquid Sludge Is Removed:
 - a. Total Solids of Liquid Sludge (% by weight) C1: I _ I _ . _ I
 - b. Average Daily Sludge Removal (Gallons/Day) C2: I _ I _ I _ I _ I _ I .

C. Air Drying (report on any beds emptied for the report period):

BED	DATE SLUDGE LOADED			DEPTH POURED INCHES	DATE SLUDGE REMOVED				
	MONTH	DAY	YFAR		MONTH	DAY	YEAR		
1.	I	I	I	I	I	I	I	I	I
2.	I	I	I	I	I	I	I	I	I
3.	I	I	I	I	I	I	I	I	I
4.	I	I	I	I	I	I	I	I	I
5.	I	I	I	I	I	I	I	I	I

- D. State Approved Lime Stabilization
- E. Thermal Treatment/Drying
- F. Phragmites
- G. Composting
- H. Other (specify here: _____)
- I. None

ULTIMATE SLUDGE MANAGEMENT METHOD CODE:

- 1. Land Application at a NJPDES Permitted Site
- 2. State Approved Distribution Permit
- 3. Incineration
- 4. Ocean Disposal
- 5. Out of State
- 6. Residual Not Classified as Sludge, Managed by Hazardous or Waste Flow Regs.
- 7. Other (specify here: _____)
- 8. None Removed

EQUATIONS:

A. Dry tons = $\frac{\text{Gallons (wet)} \times \text{Solid Content (of the gallons)}}{240}$

B. Dry Tons = $\frac{\text{Cubic Yards (wet)} \times \text{Solid Content (of the cubic yards)}}{(Y)}$

- y = 1.185 where solid content is less than 15%
- = 1.265 where solid content is 16% to 23%
- = 1.58 where solid content is 24% to 29%
- = 1.9 where solid content is greater than 30%

C. Dry Tons = Tons (wet) X Solid Content (of the wet tons)

D. Volatile Solids Reduction = $\frac{\text{VS before} - \text{VS after}}{\text{VS before} - (\text{VS before} \times \text{VS after})} \times 100$

NOTE: The total and volatile solid contents in the above equations must be expressed as a decimal, for example:

- 1% Total solids = .01
- 20% Total solids = .20

Alternative equations may be utilized if approved in writing by NJDEP

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ENVIRONMENTAL PROTECTION

BASE/NEUTRALS AND ACIDS:

Benzidine	39102	I _ 1 _ 1 _ 1 _ 1 _ 1 _ . _ 1 _ 1 _ I	I _ I
Benzo(a)pyrene	34247	I _ 1 _ 1 _ 1 _ 1 _ 1 _ . _ 1 _ 1 _ I	I _ I
Bis (2-ethylhexyl) phthalate	39100	I _ 1 _ 1 _ 1 _ 1 _ 1 _ . _ 1 _ 1 _ I	I _ I
Hexachlorobenzene	39700	I _ 1 _ 1 _ 1 _ 1 _ 1 _ . _ 1 _ 1 _ I	I _ I
Hexachlorobutadiene	39702	I _ 1 _ 1 _ 1 _ 1 _ 1 _ . _ 1 _ 1 _ I	I _ I
N-nitrosodimethylamine	34438	I _ 1 _ 1 _ 1 _ 1 _ 1 _ . _ 1 _ 1 _ I	I _ I
_____	_____	I _ 1 _ 1 _ 1 _ 1 _ 1 _ . _ 1 _ 1 _ I	I _ I
_____	_____	I _ 1 _ 1 _ 1 _ 1 _ 1 _ . _ 1 _ 1 _ I	I _ I

CERTIFICATION OF AUTHENTICITY:

Name of Authorized Agent (print): _____
 Signature of Authorized Agent: _____ Date: _____
 Title of Authorized Agent: _____
 Laboratory Name: _____ Cert #: _____

FORM T-VWX-010A

New Jersey Department of Environmental Protection
 Division of Water Resources

INDUSTRIAL PROCESS WASTEWATER SLUDGE REPORT

DISCHARGE PERMIT NO. REPORTING PERIOD
 MO. YR.
 I _ 1 _ 1 _ 1 _ 1 _ 1 _ I I _ 1 _ I I _ 1 _ 1 _ 1 _ I I 4 I Page I 1 I of I _ I

FACILITY NAME: _____

A. Information On Sludge Produced In Treatment Processes:

1. Average Daily Sludge Production (Dry Tons/Day) I _ 1 _ 1 _ . _ 1 _ 1 _ I
2. Average Daily Sludge Production (Gallons/Day) I _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ I
3. Average Total Solids of Sludge (% by weight) I _ 1 _ . _ I

*B. Information On Sludge Removed For Ultimate Management:

1. Average Daily Sludge Removal (Dry Tons/Day) I _ 1 _ 1 _ . _ 1 _ 1 _ I
2. Average Daily Sludge Removal (Gallons/Day) I _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ I
3. Total Solids Before Dewatering (% by weight) I _ 1 _ . _ I
4. Total Solids After Dewatering (% by weight) I _ 1 _ . _ I
5. pH (Standard units) I _ 1 _ . _ I
6. COD (Chemical Oxygen Demand) (mg/l) I _ 1 _ 1 _ 1 _ 1 _ 1 _ I
7. Total Oil and Grease (% by weight) I _ 1 _ . _ I

C. Disposal Method(s):

METHOD CODE	DESCRIPTION	LANDFILL REGISTRY	HAULER REGISTRY	RECEIVING PLANT
I _ I	I _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ I	I _ 1 _ 1 _ 1 _ I	I _ 1 _ 1 _ 1 _ I	I _ 1 _ 1 _ 1 _ 1 _ 1 _ I
I _ I	I _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ I	I _ 1 _ 1 _ 1 _ I	I _ 1 _ 1 _ 1 _ I	I _ 1 _ 1 _ 1 _ 1 _ 1 _ I
I _ I	I _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ 1 _ I	I _ 1 _ 1 _ 1 _ I	I _ 1 _ 1 _ 1 _ I	I _ 1 _ 1 _ 1 _ 1 _ 1 _ I

(a)

DIVISION OF SOLID WASTE MANAGEMENT**Board of Public Utilities****Interdistrict and Intradistrict****Solid Waste Flow for Essex County****Joint Adopted Amendment: N.J.A.C. 7:26-6.5**

Proposed: May 16, 1988 at 20 N.J.R. 1048(a).

Adopted: May 8, 1989 by Christopher Daggett, Department of Environmental Protection; and May 10, 1989 by the Board of Public Utilities, Christine Todd Whitman, President.

Filed: May 12, as R.1989 d.308, **without change**.

Authority: N.J.S.A. 13:1E-6; 13:1E-23, and 48:13A-1 et seq.

DEP Docket Number: 016-88-04

Effective Date: June 5, 1989.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

On May 16, 1988, the Department of Environmental Protection ("Department") and the Board of Public Utilities ("Board") proposed an amendment to the waste flow rules at N.J.A.C. 7:26-6.5 to redirect the disposal of solid waste generated within Essex County from the Hackensack Meadowlands Development Commission I-C landfill to three transfer stations for processing and transport to out-of-State facilities. Adoption of this amendment will replace the Essex County Waste Flow Redirection Order of July 27, 1987. Notice of the proposed rule amendment was published in the May 16, 1988 New Jersey Register at 20 N.J.R. 1048(a). In addition, a Notice of Public Hearing, with a copy of the New Jersey Register Notice attached, was published in the legal notices section of the Newark Star Ledger on May 16, 1988. Both notices invited written comments to be submitted on or before June 15, 1988.

A public hearing was held on June 6, 1988 at 1:00 P.M. at the Office of the Board, Two Gateway Center, Newark, New Jersey. Approximately 16 people were in attendance and nine people testified. Thirteen written documents were received during the comment period. The Department and the Board have reviewed the transcript of the hearing and the written comments which were submitted during the comment period which closed on June 15, 1988. The Department and Board are adopting the rule amendment without change.

The following is a summary of the comments received and the agencies' responses:

COMMENT: The statements in the Economic Impact statement regarding "the increased tipping fees" occasioned by costs associated with "long distance hauling" and "long term contracts for guaranteed disposal privileges" are not supported by any record or document. There is no evidence that long term contracts exist. The ones that the commenter has seen do not state that there is a long term commitment. Where are the long term contracts with the out-of-state landfills? These documents should be part of the public record.

RESPONSE: Essex County's contract with the Solid Waste Transfer and Recycling, Inc. transfer station (SWTR), located at 442 Frelinghuysen Avenue, obligates SWTR to provide solid waste disposal services for a period of five years from commencement of operations or until such time as the planned resource recovery facility begins commercial operations, whichever is earliest. The contract with the Waste Management of New Jersey Inc. transfer station (WMNJ), located on Avenue A, requires WMNJ to provide solid waste disposal services for a period of 30 months and contains a clause which permits extension of the contract. Both documents are on file at the Board of Public Utilities.

SWTR has a contract with the Chambers Landfill in Pennsylvania. The contract commenced on August 1, 1987 and has a duration of five years. The Department has this contract in its files. WMNJ is disposing of all its solid waste at the Tullytown Resource Recovery Sanitary Landfill in Pennsylvania. The Tullytown Resource Recovery Sanitary Landfill is owned by Waste Management, Inc. (see also the response to the second comment).

COMMENT: The rates are artificially high at the transfer stations. Are there documents which evaluate the economic costs of alternatives for the disposal of solid waste? What data was used to determine that the costs charged by the transfer stations are the true costs of out-of-State disposal?

RESPONSE: Essex County selected the transfer stations as the interim mechanism for solid waste disposal until the Essex County Resource Recovery facility is operational. No pre-emergency waste flow redirection order evaluation of the economic costs of solid waste disposal alternatives to the transfer station was performed.

On July 20, 1987, Essex County filed a petition requesting, in part, that the Board approve certain contracts between the County and the owner/operators of the transfer stations referenced in the first response. By Order dated July 31, 1987, the Board accepted said contracts for filing and then established the emergent interim rates to be charged at SWTR and WMNJ at the Frelinghuysen Avenue and Avenue A transfer stations respectively. On February 4, 1988, the County of Essex filed a supplemental petition wherein it requested that the rates set forth in the Board's July 31, 1987 order be approved on a permanent basis. The petition was transmitted to the Office of Administrative Law for evidentiary hearings as a contested case on May 2, 1988, pursuant to N.J.S.A. 52:14F-1 et seq. Data used to determine the costs of operating the transfer stations will be under review in the context of this rate proceeding. The monies collected under the Board approved rates are subject to refund with interest. Permanent rates will not be established until the Administrative Law Judge assigned to this case renders her initial decision and that decision is reviewed and adopted by the Board.

COMMENT: The public bidding laws were established to secure a competitive price on the disposal of solid waste. Those laws should have been, but were not, followed in developing the transfer stations in Essex County.

RESPONSE: In *Newark v. Bd of Chosen Freeholders*, 221 N.J. Super. 558 (App. Div. 1987), the court held that these very contracts between Essex County and the owner/operators of the transfer stations were properly negotiated under the public bidding law's emergency exception. While the New Jersey Supreme Court has stated that public policy favors competitive bidding where municipalities enter into solid waste contracts, see *In Re Application of Saddle River*, 71 N.J. 14 (1976), N.J.S.A. 40A:11-6 provides for exceptions where "an emergency affecting the public health, safety or welfare requires the immediate delivery of the articles or the performance of . . . [a service]."

COMMENT: The basis for the redirection order is that an emergency exists. An emergency does not exist. The Department has known of Essex County's solid waste disposal problems since 1982. The 1985 Solid Waste Management plan recognized a shortfall in capacity at the HMDC. Therefore, how can this "emergency" be used as a basis for bypassing the public bidding process and other laws?

An emergency did exist in 1987 when, subject to an agreement between Essex County, the Department and the Hackensack Meadowlands Development Commission (HMDC), Essex County's disposal privileges at the HMDC landfills were to expire on July 31, 1987 and Essex County did not have adequate alternative disposal facilities available. The transfer stations are an interim measure to meet the County's disposal needs until the resource recovery facility becomes operational.

Actions were taken in 1982 to address Essex County's shortfall in disposal capacity. On March 2, 1982, the Department, Essex County and the HMDC entered into a consent judgment which provided that HMDC would accept Essex County waste until the County's resource recovery facility was operational, but in no event beyond September 2, 1988. On May 2, 1983, the consent judgment was amended to provide financial assistance to defray the cost of the Essex County resource recovery facility thereby accelerating the construction and the date upon which Essex County would cease disposal at the HMDC landfill to July 31, 1987. The amended Consent Judgment included a nine date schedule which culminated in a January 31, 1987 date on which the resource recovery facility would become operational. In May of 1985, the County entered into a host municipality agreement with the City of Newark and the Port Authority of New York and New Jersey anticipating that the resource recovery facility would become operational by January 31, 1987. In December of 1986, the county proposed an interim disposal plan, because the resource recovery facility would not be operational by July 31, 1987, when disposal privileges ceased at the HMDC landfills. The County's plan was to solicit proposals for operation and construction of the transfer stations. On the basis of the nine proposals received, the County prepared an amendment to its Solid Waste Management Plan. On June 8, 1987, the Department certified the amendment which included the two SWTR sites in Newark and Orange and the WMNJ site in Newark. On June 23, 1987, the Department adopted an emergency rule, at 19 N.J.R. 1242(a), which streamlined the solid waste facility permitting process for transfer stations, N.J.A.C. 7:26-1.10. On June 23, 1987, the Governor

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certified that an emergency existed which justified adoption of the permitting rule on an emergent basis. On July 27, 1987, the Department and Board issued an emergency redirection order directing the waste to the three transfer stations. On July 31, 1987, the Board approved the County's petition for a solid waste disposal franchise to cover the interim transfer station disposal and issued Certificates of Public Convenience and Necessity to the County and to the transfer stations.

The contracts for the Essex County facilities were negotiated pursuant to an emergency provision in the Local Public Contracts Law, N.J.S.A. 40A:11-6. In *Newark v. Bd. of Chosen Freeholders*, 221 N.J. Super. 558, (App. Div. 1987), the City of Newark challenged the construction and operation of Essex County's two transfer stations on the basis that the contracts for the transfer stations were improperly negotiated by the county under the emergency exception to the public bidding requirements. One claim was that the County intentionally created a self-impose emergency so that it could invoke the emergency provisions of N.J.S.A. 40A:11-6. The court noted that public bodies have the continuing ability to respond to emergencies that affect the public health, safety and welfare even though past governmental inaction contributed to the emergency and that N.J.S.A. 40A:11-6 was promulgated to protect the public when such emergencies arise. The court stated that "... the actions of the County, the State, the BPU, Governor, and common sense, confirm that this is an emergency situation requiring the immediate performance of the services." *Newark v. Bd. of Chosen Freeholders*, supra, 221 N.J. Super. at 572.

COMMENT: This proposed amendment is based on the HMDC no longer having capacity. There has never been any proof that the HMDC landfill has reached capacity and the Department should present such evidence. Hudson County is still disposing of solid waste at the HMDC and at one-fourth of the price of disposal of the waste in Essex County.

RESPONSE: As stated earlier, on May 2, 1982, Essex County entered into a consent judgment which provided that Essex County could only dispose of solid waste at the Hackensack Meadowlands landfills until September 2, 1988. The consent judgment was amended on May 2, 1983 so that the judgment would provide financial assistance to the County to defray the cost of construction of the resource recovery facility thereby accelerating construction of the facility, and to change the date Essex would cease disposal in the HMDC. It is this agreement which resulted in the County no longer having disposal privileges at the HMDC. Due to subsequent delays in the development of the Essex County resource recovery facility, the county developed the transfer stations as an interim disposal plan.

Hudson County and the HMDC are presently in litigation regarding Hudson County's disposal of solid waste at the HMDC. The Department is involved as an amicus curiae. The Department is also independently investigating this matter pursuant to its permitting and planning oversight responsibilities under the Solid Waste Management Act, N.J.A.C. 13:1E-1 et seq.

COMMENT: For one year, the two Newark transfer stations have processed the solid waste generated in Essex County. Therefore, how can the Department say there is an emergency and permit the County to develop the Orange transfer station and not have documentation as to environmental suitability, as to cost, as to economic impact, as to need, as to site selection and not require that the public bidding process be followed? The Orange site should be deleted from this proposed amendment. How can the Department and Board allow the County to violate the law and continue a hardship on the taxpayers of Essex?

RESPONSE: In 1987, there was a lack of adequate disposal capacity in Essex County which resulted in a solid waste disposal emergency. Based on the available calculations of solid waste generated in Essex County at that time, the County determined that it was necessary to build three transfer stations and on June 3, 1987, the County adopted an amendment to its solid waste management plan which sited the SWTR transfer station in Orange, the SWTR transfer station in Newark, and WMNJ transfer station in Newark.

The County is responsible for siting facilities and for following the local public bidding laws. Essex County selected the Orange site as one of the sites for a transfer station and has retained that site in the District Solid Waste Management Plan. SWTR, which was selected by the County as the operator for the Orange site, is currently leasing the property of the proposed Orange facility until Essex County finalizes its decision on the need to implement construction of the Orange facility. As discussed in the third comment, the three transfer station sites and operators were selected pursuant to an emergency exception in the public contracts law. The use of that exception by the County in selecting vendors for the three

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transfer station sites was upheld by the Appellate Division, *Newark v. Bd. of Chosen Freeholders*, 221 N.J. Super. 558 (App. Div. 1987).

The Department and Board are not allowing the County to violate the law. The Department originally issued a waste flow redirection order based on the County's interim disposal plan and subsequent plan amendment. This proposed amendment reflects both of those documents and only directs the waste to the Orange facility "upon commencement of operations" at that facility. Note that the County cannot "develop" the Orange facility without obtaining all necessary permits from the Department prior to construction or operation.

COMMENT: The Department has failed to enforce the A-901 requirements for the existing facilities. The operator that has been proposed for the Orange transfer station has severe problems which would make the operator unable to clear the A-901 requirements. There is no guarantee that the A-901 requirements will ever be enforced.

RESPONSE: Pursuant to N.J.A.C. 7:26-16.5, temporary approvals for the existing facilities have been issued. These are temporary approvals and do not obviate the need for a full A-901 review to be performed. The full A-901 process, which includes the development of an investigative report by the Attorney General's office and a review of this document and the disclosure statement by the Department, must be completed for the two existing facilities. This process is presently ongoing.

As stated earlier, SWTR, which is the operator of the Frelinghuysen Avenue site in Newark, has also been selected by Essex County as the operator for the Orange site. As stated above, SWTR has received a temporary A-901 approval for operating the Frelinghuysen site and the full A-901 review process is presently ongoing for that operator. At the time SWTR submits a permit application for the Orange facility to the Department, the operator must notify the Department that they are operating a new facility. Whether a new or amended disclosure statement is required will be based on whether there are or have been certain changes to the corporate structure of SWTR.

COMMENT: A commenter stated that he had submitted a letter on August 11, 1987 and that neither the Board nor the Department had responded to the letter. A list of 22 deficiencies in the environmental impact statement and permit for the 442 Frelinghuysen Avenue facility were also submitted.

RESPONSE: The 442 Frelinghuysen Avenue transfer station was constructed and is being operated pursuant to a Master Performance Permit which was issued by the Department. This proposed rule amendment is not the appropriate forum in which to contest the Master Performance Permit (MPP) for the 442 Frelinghuysen Avenue transfer station nor the Master Performance permit regulations set forth at N.J.A.C. 7:26-1.10.

COMMENT: The Department has allowed the siting of the transfer station located at 442 Frelinghuysen Avenue (SWTR) on property contaminated with toxic materials in violation of numerous laws including the Environmental Cleanup and Responsibility Act, the Solid Waste Management Act, the Uniform Construction Code and the Soil Erosion and Control Act.

Response: The County is responsible for solid waste facility site selection. For background on the development of the Essex County transfer stations, see the fourth comment. This rule amendment does not address the siting or permitting of the facility. The concerns noted in the comment should have been raised at the time of site selection and issuance of the MPP. The Department notes, however, that it has no record of prior or outstanding hazardous waste enforcement action at this site.

In addition, SWTR leases the property on which the 442 Frelinghuysen Avenue site is located. The leasing of the property was not a transaction which triggered the requirements of the Environmental Clean Up and Responsibility Act (ECRA), N.J.S.A. 13:1E-6 to 13, N.J.A.C. 7:26B. SWTR has received a Standard Industrial Classification (SIC) number of 42 from the Bureau of ECRA Applicability and Compliance. Facilities with this SIC number are not industrial establishments (see N.J.S.A. 13:1K-8(f)).

COMMENT: If arrangements could be made to have Newark's demolished building debris exempted from the redirection order, Newark could save millions of dollars.

RESPONSE: Demolition debris is classified in accordance with N.J.A.C. 7:26-2.13(g), as waste type 13, and therefore, subject to the waste flow rules. Proper disposal of this waste type is as important as proper disposal of the other classified wastes subject to the waste flow rules. Sending this waste to the County's designated transfer stations allows it to be transferred to vehicles suitable for long distance hauling, and to be tracked to ensure that the waste is legally and properly disposed of and not deposited in a county which has not agreed, through an inter-

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district agreement, to accept the waste. Therefore, directing this waste through waste flows ensures the integrity of both Essex County and other Counties' District Solid Waste Management plans.

There are, however, alternate means by which to dispose of construction debris. N.J.A.C. 7:26-1.7 allows for on-site burial of several types of materials, including but not limited to, brick, cement, concrete, asphalt, and scrap wood. In addition, source separated recyclables are not subject to the waste flows rules. The Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq., defines recycling center as "any facility designed and operated solely for receiving, storing, processing and transferring source separated, nonputrescible or source separated commingled nonputrescible metal, glass, paper, plastic containers, and corrugated and other cardboard, or other recyclable materials approved by the department." Construction debris properly separated and sent to a recycling center which recycles construction debris and which has obtained Department approval to recycle that material, is not subject to the waste flow rules.

COMMENT: An operations manager of a transfer station stated that despite communications with the Department, the Department did not notify the transfer station that they could not send their waste out-of-State for disposal.

RESPONSE: Participants in the solid waste industry are obligated to be familiar with the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the rules adopted pursuant thereto, N.J.A.C. 7:26.

COMMENT: Commenters stated that the Essex County Plan requires transfer stations in the plan to utilize recycling to its maximum feasibility. They claimed that certain transfer stations are recycling and that the County designated transfer stations do not recycle.

RESPONSE: Pursuant to the Mandatory Statewide Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq., households, and commercial and institutional entities should be separating designated recyclables from their garbage. These recyclables should not be directed to or accepted at the transfer stations. In addition, SWTR and WMNJ are pulling recyclables from the remaining non-source separated waste stream. SWTR removes steel, other metals, tires, cardboard and paper for recycling. WMNJ is currently recycling tires and rubber products.

COMMENT: An operator of a transfer station stated that the facility is permitted to take type 10 (commercial), 13 and 27 waste. The facility collects waste from various counties. These wastes are unloaded at the facility tipping area. The waste includes numerous recyclable materials. Recyclables are removed and the remaining waste is directly shipped out-of-State. The commenter stated that the rule amendment will require transfer stations to send the remaining waste to the transfer station, and therefore, will result in the double handling of waste. The argument was made that it makes no sense to recycle and process waste materials at one transfer station and then send the remaining waste to another transfer station (WMNJ or SWTR stations) only to be unloaded from one truck and reloaded onto another truck. Double handling of solid waste can cause a facility to go out of business.

In addition, it was also argued that the Mandatory Source Separation and Recycling Act is a legislative mandate to maximize the removal of recyclables and reusable material from New Jersey's waste stream and that transfer stations that also perform recycling functions meet the legislative mandate to reduce waste. However, it was argued that double handling will cause transfer stations to go out of business and that double handling will, therefore, hinder the recycling goals of the State. It was also stated that centralization of waste for shipment out-of-State is not as important as meeting the goals of the Recycling Act.

RESPONSE: This rule amendment will replace a July 27, 1987 Emergency Redirection Order. The order directed waste type 10, 13, 23, 25, and 27 generated within Essex to the county designated transfer stations. Therefore, type 10, 13, 23, 25, and 27 waste generated in Essex County is already directed to SWTR and WMNJ pursuant to that order and the Essex County Solid Waste Management Plan. Direct hauling of the waste out-of-State is a violation of the waste flow order and the Essex County Solid Waste Management Plan. The transfer station operator is not the generator of the waste. Removal of recyclables does not alter the waste classifications, because all remaining waste retains the classification from when it was generated. Since the remaining waste is made up of I.D. 10, 13, and 27 waste, the waste is and should be treated identically to I.D. 10, 13, and 27 waste going directly from the Essex County generator to the County designated transfer station.

Centralization of shipping is only one function that the transfer stations serve. The Legislature has found "that the planning and construction of

waste-to-energy resource recovery facilities requires substantial capital expenditures and a guaranteed flow of processible and combustible waste" (see N.J.S.A. 13:1E-93). Transfer stations serve an important county solid waste planning function. It is important to approximate the solid waste generated in each county for estimating and accounting purposes. The actual volume of each solid waste type plays an integral part in the County's solid waste planning and ultimately, in the operation of the county's resource recovery facility, because various waste types produce varying percentages of waste processibles in a mass burn facility. It is also important to know the percentages of nonprocessibles in order to adequately plan for their appropriate disposal.

The utilization of County designated transfer stations does not conflict with the Recycling Act. The Mandatory Statewide Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq., states that each county after consultation with each municipality within the county, prepare and adopt a district recycling plan to implement the State Recycling Plan goals. Upon approval by the Department, the separation of recyclables from the solid waste stream, at the municipal level, prior to placement for refuse to pick up, will considerably reduce the tonnage of materials currently being transferred and transported out-of-State, while increasing the volume of materials recycled. Source separated recyclables are not directed to transfer stations. While additional transfer stations that also perform recycling functions undoubtedly enhance the state's recycling efforts, the main thrust of the Recycling Act is to mandate source separation.

Recycling centers will only accept source separated waste. Nonrecyclable waste cannot be directly hauled out-of-State. Transfer stations that perform some recycling functions are obliged to follow the rules and regulations and the Essex County District Solid Waste Management Plan as they relate to the facility's operation and disposal activities. Therefore, even though "double handling" of solid waste will indeed occur in some instances, the County and State's concern for ensuring that solid waste is legally and properly disposed requires that transfer stations that perform some recycling remain in compliance with the waste flow rules.

While the Department recognizes that double handling of solid waste may cost more than single handling, the revenues from recycling should help offset the costs associated with utilizing the Essex County transfer stations. Also to date, none of the transfer stations have provided documentation to the Department or Board that such double handling will reduce their recycling effort, reduce incentives to recycle or cause significant hardship beyond which can be recouped from the Board of Public Utilities through a rate increase.

COMMENT: If the amendment to the "Interdistrict and Intradistrict Solid Waste Flow," N.J.S.A. 7:26-6.5(g), is allowed to proceed as proposed, its application would result in an impermissible taking of property in violation of the 5th and 14th Amendments of the United States Constitution.

RESPONSE: Initially, the Department and Board would again point out that the obligations imposed by this rule adoption essentially mirror those reflected in the emergency waste flow order. Secondly, this comment is factually without merit. Duly registered solid waste transfer station facilities were free to operate both before and after the July, 1987 redirection of Essex County waste. Moreover, to the extent that this commenter claims to be removing recyclables from the solid waste for recycling, it is unclear how this waste flow redirection would discourage such conduct. Rather, the only effect on this commenter's business is its continuing disability to transport the solid waste it processes directly out-of-State for disposal. Such redirections have previously been upheld as being consistent with the Commerce Clause of the United States Constitution. *J. Filiberto Sanitation, Inc. v. State of New Jersey, et. al.*, 857 F.2d. 813 (3rd. Cir. 1988). Accordingly, the sole issue raised in this comment is whether this commenter has a property interest in transporting the waste it collects and processes directly out-of-State. In this regard, the Department and Board note that the commenter was not undertaking such out-of-State disposal when the HMDC was available for disposal of Essex County waste. Therefore, the redirection impacted on no more than an expectation not based in law, and not an ongoing business practice of the commenter. Finally, as a participant in a business which is heavily regulated by both the Department and the Board and thoroughly affected with the public interest, the commenters' expectation was neither reasonable nor constitutionally protected.

COMMENT: Transfer stations that also perform some recycling functions are not subject to this rule amendment. As stated earlier, these facilities pick up waste from various counties and this waste is dumped

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on the tipping floor. Recyclable materials are removed. The remaining waste cannot be classified as ID 10, 13, 23, 25 or 27. Therefore, the remaining waste can be directly hauled out-of-State.

Several commenters also stated that the remaining waste from transfer stations that also perform some recycling functions should be exempted from this waste flow redirection. It was one commenter's understanding that other businesses in Essex have received waivers whereby they did not have to bring the remaining waste to the Essex County designated transfer stations.

Response: Transfer stations do not receive source separated recyclables. All waste types are typically commingled but still considered to be classified as solid waste I.D. types. The act of commingling does not alter the structure of the waste material. Each waste item is still classified as the previously assigned solid waste identification number or category. Pursuant to the Emergency Redirection Order of July 27, 1987 and this rule amendment, transfer stations that receive type 10, 13, 23, 25 and 27 waste generated in Essex County are required to dispose of that waste at the Essex County designated transfer stations. Transfer stations are not considered the generators of the waste. See the twelfth comment and response.

COMMENT: The requirement that there be no mixing of waste from the various counties and that the waste be returned to the county of origin by these facilities is simply a physical and economic impossibility. Therefore, transfer stations that also perform recycling functions should be granted a waiver or exemption from the requirement that there be no mixing of waste.

In addition, one commenter also suggested that the rule amendment include an exemption from the no mixing of waste requirement if the transfer station has a computer system for the tracking of the waste flow.

RESPONSE: The issue of transfer stations combining waste from various counties is not the subject of this amendment. This rule amendment only directs I.D. 10, 23, 25, and 27 waste generated in Essex County to the county designated transfer stations.

In reference to the computer tracking system, the Department notes that the tracking of waste is not the only reason for the development and use of the transfer station, see previous comments and responses. The Department also notes that the county designated transfer stations have implemented computer tracking systems. SWTR has installed a computer system which identifies the truck hauling the solid waste, the driver and the origin of the solid waste. Billing is charged to the transfer station from the final disposal point, therefore, allowing the monitoring of each truck's disposal of its solid waste. WMNJ has a computer system which identifies the origin of the solid waste, tons per day and tons per week of solid waste delivered by each municipality. Additionally, a check is made with the Tullytown Resource Recovery Sanitary Landfill in Pennsylvania, a Waste Management, Inc. owned company, to ensure all solid waste is disposed of at a permitted out-of-State landfill.

COMMENT: Several commenters state that a particular transfer station should be exempted from the rule requirements, because the transfer station pre-dates the Solid Waste Management Act.

RESPONSE: All facilities are subject to the requirements of this rule regardless of when they began operation. There is no grandfather provision.

COMMENT: There is no factual basis to support the claim that only the County can secure reliable out-of-State disposal sites.

RESPONSE: This rule amendment does not address whether, or claim that, the County is the only entity capable of securing out-of-State contracts. However, pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the County has a responsibility to provide suitable and available disposal sites for each of its municipalities. In July 1987, due to a lack of adequate disposal capacity in Essex County, the County adopted a plan amendment to develop transfer stations to assist with out-of-State disposal of Essex County's waste. This amendment was reviewed and approved by the Department pursuant to the Solid Waste Management Act. The transfer station initiative was the strategy adopted by the County and approved by the Department at that time to remedy a pending solid waste disposal crisis.

COMMENT: The Board has not given Newark host municipality benefits sufficient to compensate it for the burden borne in hosting two transfer stations.

RESPONSE: The sufficiency of the host municipality benefits is not the subject of this proposed amendment. The amount of the host municipality benefits are determined by the facility and the municipality in which the facility is located.

COMMENT: One commenter stated that the Department and Board in proposing to amend the joint waste flow redirection order must meet

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the requirements of the administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. Failure to meet the requirements may render the rule defectively promulgated. The Legislature provided that all interested parties must be afforded a reasonable opportunity to comment, but no interested party raised any evidence in support of the amendment. Broad policy judgments are being made even though there are no facts to support the proposed waste flow redirection rule. If the Department and Board follow the mandate in the Act and fully consider all the written and oral submissions from the public, the plan proposed amendment is unnecessary and totally unsupported by any evidence of record.

Another commenter stated that the social, economic and environmental impact sections of the proposal have no support in fact. There is no documentation to support any of these conclusory statements.

RESPONSE: The Department has followed the requirements of the Administrative Procedures Act. The rule proposal and the notice of the proposal and hearing were properly published. There was a 30 day comment period during which a public hearing was held and public comment solicited. The agencies' responsibility is to take comment and consider the comments prior to making a decision. The Department and Board have met this requirement. This adoption includes the Department and Board's responses to the comments received. The commenters are referred to the individual comments and responses in this adoption for an elaboration of the agencies' bases for the proposed amendment.

Full text of the adoption follows:

7:26-6.5 District waste flow planning requirements and disposal facility designations

Due to the lack of adequate disposal capacity within certain solid waste districts, and pursuant to a finding by the BPU that the public interest will be best served by designated specific disposal facilities as the ultimate destination of specific waste streams, it is necessary to direct waste flows described in this section.

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

(g) Waste flows within, into and out of the Essex County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within the Essex County municipalities of Irvington, Livingston, Maplewood, Millburn, and South Orange are hereby directed to the Waste Management of New Jersey Transfer Station, located at 100 Avenue A, in the City of Newark, Essex County, New Jersey.

2. All solid waste types 10, 23, 25, and 27 generated from within the Essex County municipality of Newark are hereby directed to the Waste Management of New Jersey Transfer Station, located at 100 Avenue A, in the City of Newark, Essex County, New Jersey.

3. All solid waste types 10, 13, 23, 25, and 27 generated from within the Essex County municipalities of Belleville, Bloomfield, Caldwell, Cedar Grove, East Orange, Essex Fells, Fairfield, Glen Ridge, Montclair, North Caldwell, Nutley, Orange, Roseland, Verona, West Caldwell and West Orange are hereby directed to the Solid Waste Transfer and Recycling, Inc. Transfer Station, located at 442 Frelinghuysen Avenue, in the City of Newark, Essex County, New Jersey.

4. All solid waste type 13 generated from within the Essex County municipality of Newark is hereby directed to the Solid Waste Transfer and Recycling, Inc. Transfer Station, located at 442 Frelinghuysen Avenue, in the City of Newark, Essex County, New Jersey.

5. Upon commencement of operations of the Solid Waste Transfer and Recycling, Inc. Transfer Station, located at Hill Street, in the City of Orange, Essex County, New Jersey, all solid waste types 10, 23, 25, and 27 generated from within the Essex County municipalities of Belleville, Bloomfield, Caldwell, Cedar Grove, East Orange, Essex Fells, Fairfield, Glen Ridge, Montclair, North Caldwell, Nutley, Orange, Roseland, Verona, West Caldwell and West Orange shall be directed to this facility.

(h) (No change.)

(i) Waste flows within, into and out of the Hackensack Meadowlands District:

1. (No change.)

2. In addition to these approved waste flows, the following interdistrict waste flow changes that have been made as a result of modifications, directives, and/or resolutions approved and issued by the Department and/or the HMDC shall be incorporated into the affected district plans: i.-ix. (No change.)

x. According to the May 2, 1983 amended Consent Judgment issued by the Honorable John A. Murzulli, J.S.C., all waste types 10, 13, 23, 25, and 27 generated from within all of Essex County's municipalities shall be disposed of at facilities located in the Hackensack Meadowlands District until July 31, 1987. Under the amended Consent Judgment, the

HMDC will assume no responsibility for the acceptance of Essex County's waste beyond July 31, 1987 except insofar as residual, non-processible and backup capacity is required upon completion of the Essex County resource recovery facility.

(j)-(v) (No change.)

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(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Screening and Screening Outreach Programs

Adopted New Rules: N.J.A.C. 10:31

Proposed: October 3, 1988 at 20 N.J.R. 2427(d).

Adopted: April 27, 1989 by Drew Altman, Commissioner,
Department of Human Services.

Filed: April 27, 1989, as R. 1989 d.284, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4-27.1 et seq., especially 30:4-27.5

Effective Date: June 5, 1989.

Operative Date: June 7, 1989.

Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Responses:

The public comment period on these proposed rules expired on November 2, 1988, and no public hearing was held. The Division of Mental Health and Hospitals (DMH&H) received written comments from a legislator, the Department of Health, the Department of the Public Advocate, seven professional associations, four provider agencies and two individuals, 16 commenters in all.

Presented below is a summary of the comments received and the responses made by the Department of Human Services, organized by proposed subchapters.

SUBCHAPTER 1. GENERAL PROVISIONS

N.J.S.A. 10:31-1.1 Scope

COMMENT: The proposed rules appear to give tacit approval to the application of this law to individuals under the age of 18, despite the clear inapplicability of the law to this group.

RESPONSE: The Department of Human Services never intended these rules to apply to individuals under 18 years of age. However, to make this perfectly clear, additional text has been added at N.J.A.C. 10:31-1.3 making these rules applicable to "individuals eighteen years of age or older."

N.J.A.C. 10:31-1.2 Purpose

COMMENT: N.J.A.C. 10:31-1.2(a)6 should be rewritten to read "to ensure that only those persons who meet the standard for involuntary commitment as set forth in P.L. 1987, c. 116, . . . are committed."

RESPONSE: This section has been rewritten to clarify this purpose. It now reads, "To screen individuals so that only those persons who meet the standard for involuntary commitment as set forth in N.J.S.A. 30:4-27.2(m) are committed."

COMMENT: Since the legislation does not give screeners authority to remove someone from his home if he is "in crisis," N.J.A.C. 10:31-1.2(a)2 impermissibly uses this term.

RESPONSE: Use of the term "in crisis" was never intended to describe, either here or elsewhere in the rules, the standard screeners should use to transport an individual to a screening center. That standard is ". . . that the person may need involuntary commitment and the person is unwilling to come (in) . . ." To clarify this, this section has been rewritten and use of the term "in crisis" eliminated. The legislative language describing the standard for an outreach visit has been substituted.

COMMENT: There were comments recommending that screening for involuntary commitment become the first or second goal in the purpose section.

RESPONSE: Screening centers are being developed to fulfill all of the purposes listed in N.J.A.C. 10:31-1.2a. The listing is intended to be comprehensive and there is no order of priority implied in paragraphs (a)1 to 9.

COMMENT: The proposed rules shift acute care medical treatment from short term care facilities (STCFs) to screening centers; thus, the Department of Health's authority to regulate acute care has been eliminated.

RESPONSE: These rules deal exclusively with screening centers, not with acute inpatient care. The Department of Health is in the process of developing standards for STCFs which will regulate inpatient care in community hospitals.

N.J.A.C. 10:31-1.3 Definitions

COMMENT: Several commenters pointed out the need for the definition of an acute care system.

RESPONSE: The Department accepts this comment. Such a definition would add clarity to issues elsewhere in the regulations and the new definition reads: 'Acute care system' means those services either contracted for or designated by DMH&H as part of a geographic area's acute care services. They include, but may not be limited to: screening center, emergency services, short term care facility, affiliated voluntary inpatient service, acute partial care, crisis housing and crisis companion service.

COMMENT: There were several comments regarding the need for an expanded definition of assessment, particularly the addition of an evaluation of an individual's current psychiatric and medical condition.

RESPONSE: The Department agrees that these factors are important parts of an assessment; therefore, the definition of assessment has been changed. It now reads: "Assessment" means evaluation of the individual in crisis in order to ascertain his or her current and previous level of functioning, psychosocial and medical history, potential for dangerousness, current psychiatric and medical condition, factors contributing to the crisis, and support systems that are available."

COMMENT: Several definitions do not make it clear that referrals or linkages of individuals by screening centers to community services must be with the willingness of the individual, rather than coercive in any way.

RESPONSE: In order to further emphasize the requirement that these referrals or linkages must be voluntary in nature, the word "voluntary" has been added to the Purpose (N.J.A.C. 10:31-1.2(a)4) and Definitions (N.J.A.C. 10:31-1.3, "linkage" and "referral") sections.

COMMENT: Clinical certificates should only be completed by psychiatrists and the rules should so state.

RESPONSE: N.J.S.A. 30:4-27.2b clearly provides that such certificates may be completed by either psychiatrists or physicians.

COMMENT: An additional part of a sentence in the statutory definition of "dangerous to self" should be added to the regulatory definition (N.J.A.C. 10:31-1.3).

RESPONSE: The Department accepts this comment and the language has been added as follows: ". . . ; however, no person shall be deemed to be unable to satisfy his need for nourishment, essential medical care or shelter if he is able to satisfy such needs with the supervision and assistance of others who are willing and available."

N.J.A.C. 10:31-1.4 Waiver

COMMENT: At least four professional associations and three provider agencies commented that compliance with several of the rules could be expected only if designated screening centers received adequate funding from DMH&H. Subsequently, during discussions with provider agency representatives on implementation of N.J.S.A. 30:4-27.1 et seq. and these rules, the Director of DMH&H indicated that a specific provision to waive these rules would be considered. Several provider agency representatives then specifically requested that DMH&H plan to exercise waiver authority if and when sufficient resources appeared unavailable to enable their agencies to satisfy certain provisions of these rules.

RESPONSE: The Department agrees with these comments. In order to assure the flexibility which provider agencies have requested, the Department has reviewed whether it possesses the required authority to waive any provision of these rules when necessary, as long as the underlying legislative intent of the statutory program being implemented is not violated. The Department has determined that such implicit authority to waive rules does, in fact, exist. The Department has, therefore, upon adoption, added a rule which will permit the Department to grant waivers to provider agencies when available resources are insufficient to enable these agencies to satisfy the provisions of the rules. The Department believes the addition of such a waiver rule upon adoption is not a substantive change because, based on Federal case law, agencies have the implicit authority to waive rules, as long as the underlying legislative intent of the statutory program being implemented is not violated.

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SUBCHAPTER 2. PROGRAM REQUIREMENTS

N.J.A.C. 10:31-2.1 Functions of a screening center

COMMENT: The rules should specify the exact training needed for the 24-hour hotline staff.

RESPONSE: Hotlines may be answered by either certified screeners or other staff, as needed. Training of the staff who may answer hotlines will be the responsibility of the screening center.

COMMENT: N.J.A.C. 10:31-2.1(a)6, 7 and 8 and 2.1 (c) and (d), appear to condone "rapid tranquilization" and provide tacit approval for medicating individuals against their will in non-emergency situations.

RESPONSE: The Department intends neither of these two interpretations and believes that the language in the rule allows for changing medical practice. Therefore, no change has been made.

COMMENT: By permitting one or more functions of a screening center to be delegated, implementation of N.J.A.C. 10:31-2.1(e) will result in the fragmentation of services. This will make screening centers difficult to find and use by mentally disabled individuals.

RESPONSE: Although it is anticipated that such delegation will be the exception rather than the rule, flexibility is required to establish the most efficient and effective service delivery system, due to local variations Statewide.

COMMENT: There were numerous comments on the one hour response time and 24-hour on-site availability for outreach. These focused on the difficulty raised by regulating specific availability and response times considering the differing geographic areas and diversity in need and resources in the State.

RESPONSE: The goal of the screening outreach service is to provide the most responsive service possible at the local level. Since there is a great diversity throughout the State in local need and current development of outreach services as well as availability of resources, the response timeframe is being removed from the rule (N.J.A.C. 10:31-2.3(f) and the word 'capability' has been added to N.J.A.C. 10:31-2.1(a)5. The screening outreach service available for each service area will be outlined in the contract with the screening center.

COMMENT: There were several comments regarding the need for screening centers to provide medication follow-up prior to linkage to service (N.J.A.C. 10:31-2.1(c)).

RESPONSE: Follow-up services to assure linkage is an important screening center function. One of the purposes of the screening center (N.J.A.C. 10:31-1.2(a)4) is to assure referral and linkage of persons provided screening and/or screening outreach services to appropriate mental health and social services. The seven-day medication follow-up was a compromise reached during the drafting of the rules with the major provider organizations.

N.J.A.C. 10:31-2.2 Functions on an emergency service

COMMENT: The legislation does not give DMH&H any authority to establish such emergency services.

RESPONSE: Emergency psychiatric services have existed throughout New Jersey for many years and have been appropriately regulated by DMH&H at N.J.A.C. 10:37-5.6 through 5.11 since November 3, 1980, pursuant to the authority of N.J.S.A. 30:9A-1 et seq. Since these emergency services currently function in a somewhat similar, though far less comprehensive, manner to screening centers, their relationship to and coordination with the newly established screening centers have been addressed in these rules. Accordingly, previous rules governing emergency services at N.J.A.C. 10:37-5.6 through 5.11 are being repealed and replaced by this section (see repeal adoption elsewhere in this Register).

COMMENT: The creation of "emergency services" potentially exposes individuals to additional trauma, if additional transport to a screening center is required.

RESPONSE: N.J.A.C. 10:31-2.3(g) clearly states that the screening of clients seen in an ES shall be "based upon the best interest of the client and with the goal of avoiding the transportation of the client, except where necessary for treatment purposes . . ." (emphasis added).

N.J.A.C. 10:31-2.3 Screening process and procedures

COMMENT: Comments were received regarding the need for psychiatric consultation during the screener's initial assessment of all persons brought to a screening center.

RESPONSE: The rule recognizes and intensifies psychiatric involvement in screening centers. Their expertise will be utilized in consultation, training and working with treatment teams at the screening center. The majority of fiscal resources will be utilized to hire new psychiatrists. It is recognized, however, that due to difficulties in recruiting and fiscal restraints, all persons coming to the screening center cannot be seen by

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a psychiatrist. It is felt that the screeners, with their specialized training, will be able to provide a triage function in most cases. It is expected that the screeners will request a psychiatric evaluation for all persons thought to be dangerous to self or others. For clarification, N.J.A.C. 10:31-2.3(a) now reads "screening center staff," wherever "screener" appeared.

COMMENT: The proposed rule should define the steps to be included in a thorough assessment in N.J.A.C. 10:31-2.3(a).

RESPONSE: The definition of assessment has been expanded and now reads: "evaluation of the individual in crisis in order to ascertain his or her current and previous level of functioning, psychosocial and medical history, potential for dangerousness, current psychiatric and medical conditions, factors contributing to the crisis and support systems that are available." The elements of the assessment are part of this definition.

COMMENT: To reflect the legislative definitions more adequately, N.J.A.C. 10:31-2.3(d) should be amended to state that a psychiatrist at a screening center completes the screening certificate rather than the clinical certificate. N.J.A.C. 10:31-2.3(c)2 should be amended to state that a screener shall complete a screening document rather than a screening certificate.

RESPONSE: The Department accepts these comments as accurate and has accordingly amended those two sections.

COMMENT: N.J.A.C. 10:31-2.3(d) should be amended to require the psychiatrist to conduct a personal, face-to-face examination.

RESPONSE: N.J.A.C. 10:31-2.3(d) has been amended to include the statutory language requiring the psychiatrist to conduct a face-to-face psychiatric evaluation.

COMMENT: In N.J.A.C. 10:31-2.3(e), the phrases "failure to obtain the bare necessities of life" and "failure to obtain unjustifiable essential provisions required to sustain life" expands the statutory standard for commitment as "dangerous to self."

RESPONSE: Again, the Department had no intention to expand the statutory standard for commitment. In order to make this perfectly clear, the statutory language has been substituted in N.J.A.C. 10:31-2.3(e).

N.J.A.C. 10:31-2.4 Confidentiality

COMMENT: Several commenters questioned whether the provision on confidentiality of patient records either provided access that was too wide or lacked sufficient clarity to implement properly.

RESPONSE: The proposed regulatory provision on confidentiality merely reiterated the legislative requirement articulated in the amendment to N.J.S.A. 30:4-24.3 found in P.L. 1987, c. 116. As such, it is legislatively mandated.

The legitimate interests of safeguarding the privacy of patients through the duty of confidentiality and providing professional services which are likely to achieve their purpose, may conflict at times. Balancing these interests in an effective confidentiality provision is both complex and sensitive. Accordingly, DMH&H believes this issue now requires its own special focus and will initiate a process in the near future to elicit provider, consumer and advocate perspectives to recommend whether N.J.A.C. 10:31-2.4 requires any modifications, consistent with the mandated legislation.

COMMENT: N.J.A.C. 10:31-2.1(f)10 references an incorrect citation in Chapter 37 of Title 10 of the New Jersey Administrative Code.

RESPONSE: The Department agrees. The reference to N.J.A.C. 10:37-6.13 has been changed to N.J.A.C. 10:37-6.79.

SUBCHAPTERS 3 and 4. PERSONNEL REQUIREMENTS

N.J.A.C. 10:31-3.3 Screener certification requirement, qualifications and duties

COMMENT: The rule, as proposed, inappropriately permits a screener to meet the education requirements with a master's degree in a non-related field.

RESPONSE: The Department accepts this comment. The phrase "in a related field" has been added to this qualification.

COMMENT: All certified screeners should have at least one year's experience in a community-based psychiatric setting.

RESPONSE: This requirement, although desirable, would unduly reduce the pool of otherwise qualified individuals who could become screeners.

COMMENT: Comments on the personnel section ranged from the difficulty of recruiting personnel with required experience to be screeners to the need for all screeners to be masters' prepared.

RESPONSE: DMH&H received many comments on this issue prior to this rule proposal. The qualifications in the rules represent a compromise recognizing market forces and the need to have the highest

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possible qualifications for staff. The rules read that a master's degree is preferable.

COMMENT: There was a lack of clarity regarding bi-annual recertification at N.J.A.C. 10:31-3.3(e).

RESPONSE: The Department agrees that some clarity is required and N.J.A.C. 10:31-3.3(e) omits the phrase "of the screener's choice" and adds "these may include courses, conferences, in-service training; and . . ."

COMMENTS: Several commenters felt that greater flexibility was needed regarding temporary certification of screeners (N.J.A.C. 10:31-3.3(f)).

RESPONSE: This section was rewritten to provide greater flexibility regarding temporary certification by eliminating the completion of the Division's Crisis Training Course as a requirement for temporary certification. However, those receiving a temporary certification who have not taken the crisis training course are required to register in the next available session and to enroll in the screener certification course within one year.

COMMENT: N.J.A.C. 10:31-3.3(g), the duties of a screener, should include consultation with a psychiatrist, when clinically indicated.

RESPONSE: The section was rewritten to include this as a duty at N.J.A.C. 10:31-3.3(g)6. Likewise, consultation with a screener has been added to the qualifications and duties of a psychiatrist at N.J.A.C. 10:31-3.5(b)5 and 4.4(b)4.

COMMENT: A commenter stated that proposed legislation calls for the title "registered professional nurse" and they would request that this title be used wherever RN appears in these rules.

RESPONSE: The term 'registered professional nurse' has been substituted wherever RN appeared in the proposal.

COMMENT: There were several comments that screening centers should do their own training for certification of screeners.

RESPONSE: N.J.S.A. 30:4-27.1 et seq. provides for DMH&H to certify screeners. The Department believes that there is a need for uniform training Statewide. Therefore, no change has been made.

10:31-3.4 and 4.3 Crisis intervention specialist qualifications

COMMENT: DMH&H should require, rather than recommend, that at least one of the crisis intervention specialists employed by the screening center be a registered nurse.

RESPONSE: Although this is desirable, budgetary uncertainty and constraints, as well as a well-documented nursing shortage in New Jersey, preclude this from being more than a recommendation. However, this has been added as an option at N.J.A.C. 10:31-3.4(b)4.

SUBCHAPTER 5. SYSTEMS REVIEW IN THE ACUTE CARE SYSTEM

N.J.A.C. 10:31-5.1 Development of acute care review system

COMMENT: The establishment of an acute care review system in each geographic area apparently relieves each screening center from the obligation to have its own quality assurance system.

RESPONSE: The establishment of an acute care review system in each geographic area does not relieve each screening center from having its own quality assurance system. As pointed out in N.J.A.C. 10:31-5.1(b), such quality assurance systems are complemented by and integrated with the acute care review system.

N.J.A.C. 10:31-5.2 Make-up of the systems review committee

COMMENT: The systems review committees should be expanded to include independent professional members not involved in the provision of services under review.

RESPONSE: The goal of this review is the efficient and effective local coordination of services, not external monitoring.

N.J.A.C. 10:31-5.3 Role of the systems review committee

COMMENT: The systems review committee should be required to solicit the views of mental health clients, their families, the judiciary and the legal profession.

RESPONSE: The composition of the systems review committee will include family and consumer representation, thus providing a mechanism for input from those groups. Systemic and/or individual problems identified by the judiciary or legal profession are better addressed to DMH&H for resolutions than to the systems review committee.

COMMENT: Each systems review committee should monitor the implementation of clients' rights and provide regular comprehensive reviews to ensure that clients are treated in compliance with State and Federal law.

RESPONSE: This responsibility belongs primarily to the screening center staff and administration as well as its quality assurance mechanism. Other agencies are also empowered to monitor and enforce the provision of clients' rights.

COMMENT: A variety of comments on this subchapter dealt with the nature of the role of the systems review committee.

RESPONSE: The Department agrees that some clarity is necessary on this issue. There was no intention to supplement internal agency quality assurance mechanisms or committees or to resort to broad-based regulatory agencies, but rather to develop a mechanism for system review. In order to clarify the role of the systems review committee, the Department has added a definition of acute care system to the definition section. Under role of the systems review committee, N.J.A.C. 10:31-5.3(a)6 will read ". . . make recommendations to DMH&H and county mental health boards regarding impediments and obstacles in the acute care system." N.J.A.C. 10:31-5.3(a)7 will read ". . . discuss additional system issues within the geographic area and make recommendations to DMH&H and the county mental health boards."

COMMENT: There is a lack of clarity regarding the intention of the systems review committee in regard to ". . . studying medication monitoring practices." (N.J.A.C. 10:31-5.3(a)8)

RESPONSE: The intention of this section is not to look at individual practitioners but rather what medication monitoring services exist and make recommendations for such services. The Department agrees that clarity is needed. N.J.A.C. 10:31-5.3(a)8 will now read: ". . . study the medication monitoring services within the geographic area and make recommendations for change when necessary."

COMMENT: There was a lack of clarity regarding the role of the systems review committee in case conferences.

RESPONSE: The goal is for the committee to review cases for the purpose of identification of service problems and gaps. The proposed provision at N.J.A.C. 10:31-5.3(a)9 has been deleted and now reads: "Review disputed or problem cases which are indicative of possible service gaps and need systems change."

SUBCHAPTER 6. PLANNING

N.J.A.C. 10:31-6.1(a) Designation of screening center

COMMENT: Each county should have one screening center, at a minimum.

RESPONSE: It is generally desirable for each county to have a minimum of one screening center and, at this time, the Department anticipates the likelihood that this will occur.

COMMENT: Several comments were received regarding the redesignation timeframes of ". . . after the first year of operation and every two years thereafter." It was stated that this timeframe was too frequent.

RESPONSE: This timeframe is consistent with the renegotiations of contracts and it is felt that it is in the best interest of clients and the system of care to evaluate the functioning of the screening center on this timeframe.

COMMENT: The designation section should reflect that a certificate of need (CN) may be required if the screening center would expend capital funds in excess of CN thresholds.

RESPONSE: The Department accepts this comment. N.J.A.C. 10:31-6.1(f) has been added and reads: "If capital construction costs exceed Certificate of Need thresholds, a Certificate of Need (CN) may be required."

SUBCHAPTER 7. TERMINATION OF SERVICES

N.J.A.C. 10:31-7.1 Standards for termination of services

COMMENT: N.J.A.C. 10:31-7.1(a)1 states that individuals shall be terminated from screening center service when they are "not at risk and refuse further services." This should state, more precisely, "does not meet the standard for involuntary commitment and refuses further services."

RESPONSE: The Department accepts this comment. The language has been changed accordingly.

SUBCHAPTER 8. POLICE INVOLVEMENT

N.J.A.C. 10:31-8.1 to 8.3 Police

COMMENT: Comments on subchapter 8 dealt with the need to develop specific policies and protocols regarding when the police should/will be involved in either outreach visits, or transporting persons to screening centers.

RESPONSE: These rules deal only with the responsibilities of screening centers in working with the police. A separate protocol is being

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developed by the Department of Criminal Justice in consultation with DMH&H regarding police involvement. This protocol will be the basis of training in both police academies and at the local level with municipal police. Screening centers will have the primary responsibility for work with local police.

Textual changes have been provided at N.J.A.C. 10:31-8.1 and 8.2(b) to clarify that the current practice, of regulating law enforcement assistance when situations may be dangerous and staff have not yet been able to conduct a face to face interview, may continue.

SUBCHAPTER 9. CLIENTS' RIGHTS

N.J.A.C. 10:31-9.1 Client rights

COMMENT: Client rights at screening centers should be legislatively promulgated, not administratively promulgated.

RESPONSE: If and when legislation concerning client rights at screening centers is enacted which supercede these regulatory rights, the regulatory rights will be repealed or amended, if necessary. Since the time-frame of enactment of such legislative rights is uncertain at this time, these rights will provide enforceable protection for clients in the interim.

COMMENT: Two commenters proposed additional clients' rights for inclusion in N.J.A.C. 10:31-9.1.

RESPONSE: The Department considers the clients' rights adequate as proposed, pending legislative action on this issue.

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 31

SCREENING AND SCREENING-OUTREACH PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

10:31-1.1 Scope

(a) The Screening and Screening-Outreach Program is designed to provide on and off site screening and crisis stabilization services, 24-hours per day, 365 days per year, in every geographic area in the State of New Jersey. The mode of stabilization will depend on the seriousness of the impairment, degree of potential dangerousness and the availability of appropriate services. The locus of treatment will be as close to the ***[patient's]* *individual's*** home as circumstances permit.

(b) The Screening and Screening-Outreach Program shall be established in every geographic area as a new program or as an expansion of an existing emergency service. The Screening and Screening-Outreach Program shall be provided by a screening center, designated by the Division.

10:31-1.2 Purpose

(a) The purposes of the Screening and Screening-Outreach Program are as follows:

1. To provide clinical assessment and crisis stabilization in the least restrictive clinically appropriate setting, as close to the ***[patient's]* *individual's*** home as possible;

2. To provide, at a minimum, outreach to individuals who ***[are in crisis]* *may need involuntary commitment*** and are unable or unwilling to come in to the screening center as stipulated in P.L. 1987, c.116;

3. To expand outreach to include other crisis and emergency situations whenever possible;

4. To assure referral and linkage ***[of]* *which is voluntary in nature to*** persons provided screening and/or screening outreach services to appropriate mental health and social services;

5. To coordinate access, where appropriate, to the publicly affiliated acute care psychiatric resources serving a designated geographic area, that is, acute partial care, crisis house, voluntary inpatient services;

6. To ***[provide screening for involuntary commitment]* *screen individuals so that only those persons who meet the standard for involuntary commitment as set forth in N.J.S.A. 30:3-27.2(m) are committed***;

7. To serve as the admission screener and primary route of access to the short term care facility, county psychiatric hospital, and State psychiatric hospital;

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8. To provide training and technical assistance concerning psychiatric emergencies to other social service and mental health providers in the geographic area; ***and***

9. To coordinate a system for review and monitoring of the effectiveness and appropriateness of screening and screening outreach service use, including impact upon admissions to State and county psychiatric hospitals.

10:31-1.3 Definitions

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

"Acute care" means community and in-patient psychiatric services designed to provide stabilization during the acute phase of psychiatric illness.

"Acute care system" means those services either contracted for or designated by DMH&H as part of a geographic area's acute care services. They include, but are not limited to, the screening center, emergency services, short term care facility, affiliated voluntary inpatient service, acute partial care, crisis housing, clinical case management, and crisis companion service.

"Acute in-home service" means family or significant other focused interventions provided on an outreach basis in the consumer's residence (for example, boarding home, own home, etc.) to prevent a more restrictive placement by assisting all individuals in the client's living situation.

"Acute partial care" means a day treatment program whose purpose is to promote stabilization and acute symptom reduction through structured individual and group activities and interventions which are provided throughout the day and early evening.

"Assessment" means evaluation of the individual in crisis in order to ascertain his or her current and previous level of functioning, psychosocial and medical history, potential for dangerousness, ***current psychiatric and medical condition*** factors contributing to the crisis, and support systems that are available.

"Certified screener" means an individual who has fulfilled the requirements set forth in N.J.A.C. 10:31-3.3 and has been certified by the Division to assess a patient's eligibility for involuntary commitment.

"Client" means an individual ***18 years of age or older*** receiving assessment or treatment in a screening center or any ambulatory mental health service.

"Clinical case management program (CCMP)" means the case management program provided to mentally ill individuals who do not accept or engage in facility-based mental health programs and/or have multiple service needs and require extensive service coordination. The CCMP ensures a coordinated and integrated client service system for the targeted mentally ill individual.

"Clinical certificate" means a form developed by the Division of Mental Health and Hospitals and approved by the Administrative Office of the Courts that is completed by a psychiatrist or other physician, which states that the person designated therein is in need of involuntary commitment.

"Clinical director" means the person who is designated by the director or chief executive officer of the screening center to provide medical leadership in a screening center. This may be a full or part-time position.

"Commissioner" means the Commissioner of the Department of Human Services.

"Community gatekeeper" means an individual such as a police officer, religious leader, family member^[, etc.] ***or other person***, who may refer an individual for mental health services.

"Crisis companion" means an individual who is trained and experienced in the care of the acutely mentally ill patient and provides supervision on an as-needed basis on a variety of settings.

"Crisis housing" means a community-based crisis stabilization program providing an alternative setting for stabilization of individuals who are assessed by an emergency screening service as being in acute psychiatric crisis.

"Crisis intervention counseling" means an attempt to facilitate crisis stabilization through the use of specific, time-limited counseling techniques. Crisis intervention counseling focuses on the present, providing pragmatic solutions to identified problems.

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"Crisis intervention specialist" means an individual employed by a screening center or emergency service who meets the educational and experiential requirements set forth in N.J.A.C. 10:31-3.4 and 4.3, and provides assessment, crisis stabilization services, hotline coverage, outreach and referral to people who are in crisis.

"Crisis outreach" means outreach provided by an emergency service for the purpose of crisis stabilization. It does not include screening.

"Crisis stabilization" means that intensive crisis intervention efforts have resulted in a significant reduction of positive symptomatology and some improvement in level of functioning, bringing the individual closer to the level of functioning demonstrated prior to the crisis.

"Crisis stabilization services" means acute care services.

"Dangerous to self" means that, by reason of mental illness, the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his or her need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical debilitation or death will result within the reasonably foreseeable future*; however, no person shall be deemed to be unable to satisfy his or her need for nourishment, essential medical care, or shelter if he or she is able to satisfy such needs with the supervision and assistance of others who are willing and available*.

"Dangerous to others or property" means that, by reason of mental illness, there is a substantial likelihood that the person will inflict serious bodily harm upon another person or cause serious property damage within the reasonably foreseeable future. This determination takes into account a person's history, recent behavior and any recent act or threat.

"Designated screening center" means a public or private ambulatory care service designated by the Commissioner, which provides mental health services including assessment, screening, emergency and referral services to mentally ill, persons in a specified geographic area. A designated screening center is the facility in the public mental health care treatment system wherein a person believed to be in need of commitment to a short-term care, psychiatric facility or special psychiatric hospital undergoes an assessment to determine what mental health services are appropriate for the person and where those services may be most appropriately provided.

"Division" means the Division of Mental Health and Hospitals, Department of Human Services.

"Emergency service (ES)" means a mental health provider responsible for the provision of service to people in crisis. ES includes mental health and social service provision or procurement and advocacy. Emergency services offer immediate crisis intervention services and service procurement to relieve the client's distress and to help maintain or recover his or her level of functioning. Emphasis is on stabilization, so that the client can actively participate in needs assessment and service planning.

"Emergency service coordinator" means an individual employed by an emergency service who meets the educational and experiential requirements set forth in N.J.A.C. 10:31-4.2 (a) and fulfills the duties set forth in N.J.A.C. 10:31-4.2 (b).

"Geographic area" means a geographically distinct area designated by the Commissioner to be served by one screening center. This area may be a county, portion of a county, or a multi-county area.

"Hotline" means a telephone line answered directly by a clinical worker 24 hours per day for the purpose of providing telephone crisis intervention counseling, information and referral.

"Holding bed" means a bed provided in a secluded secure area where an individual can be held for up to 24 hours while being assessed and receiving intensive supervision and medication monitoring.

"Involuntary commitment" means the procedure for enacting treatment of an adult who is mentally ill, whose mental illness causes the person to be dangerous to self or dangerous to others or property, and who is unwilling to be admitted to a facility voluntarily for care, and who needs care at a short-term care facility, psychiatric facility or special psychiatric hospital because other services are not appropriate to meet the person's mental health care needs.

"Linkage" means ***voluntary*** referral to and enrollment in a mental health and/or non-mental health program.

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"Medication monitoring" means the provision of a variety of medication-related services which may include assessment for appropriateness of medication, titration of dosage, prescription, administration, evaluation and management of side effects and education related to psychotropic medication.

"Mental health board" means the county board appointed by each county board of freeholders or county executive or governing body, to review progress in the development of comprehensive community mental health services in the county.

"Mental illness" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgement, behavior or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability unless it results in the severity of impairment as defined herein.

"Natural support system" means the patient's family, friends, neighbors, or significant others who are willing and able to provide emotional, financial or other help.

"Off site" means service provided in any location other than the screening center.

"On site" means service provided at the screening center.

"Personal contact" means either face-to-face or telephone contact.

"Program" means a set of related organizations, resources and/or services directed to the accomplishment of a defined set of objectives or missions for a specific target group(s). A program may include the activities of more than one agency, program element, division or department.

"Psychiatric facility" means a State psychiatric hospital listed in N.J.S.A. 30:1-7, a county psychiatric hospital, or a psychiatric unit of a county hospital.

"Psychiatrist" means a physician who has completed the training requirements of the American Board of Psychiatry and Neurology.

"Psycho-education" means information dissemination, professional guidance and consultation and skill development to families in becoming essential contributors in the rehabilitation process.

"Quality assurance (QA)" means the ongoing objective and systematic monitoring and evaluation of a service's or system's components to ensure quality, effectiveness, and appropriateness of care and the pursuit of opportunities to further improve the care.

"Referral" means services which ***are voluntary in nature and which*** direct, guide, and link a recipient with appropriate services provided by community resources outside of the organization itself.

"Screening" means the process by which it is ascertained that the individual being considered for commitment meets the standards for both mental illness and dangerousness as defined in P.L. 1987, c.116 (N.J.S.A. 30:4-27.1 et seq), and that all stabilization options have been explored or exhausted.

"Screening center coordinator" means an individual who is employed by a designated screening center, who meets the educational and experiential requirements set forth in N.J.A.C. 10:31-3.2 (a) and fulfills the duties set forth in N.J.A.C. 10:31-3.2(b).

"Screening outreach" means an evaluation provided off site by a certified screener, wherever the person to be screened may be located*,* when clinically relevant information indicates the person may need involuntary commitment and is unable or unwilling to come to a screening service.

"Short-term care facility (STCF)" means an inpatient, community-based mental health treatment facility which provides acute care and assessment services to a mentally ill person whose mental illness causes the person to be dangerous to self, or dangerous to others, or property.

"Stabilization options" means treatment modalities or means of support used to remediate a crisis. They may include, but are not limited to, crisis intervention counseling, acute partial care, crisis housing, acute in-home services, holding bed with medication monitoring or emergency stabilization regimes, voluntary admission to local inpatient unit, referral to other 24-hour treatment facilities, referral and linkage to other community resources, and use of natural support system.

"Treatment facility" means a legal entity, public or private, providing mental health, mental retardation and/or drug and alcohol services.

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***10:31-1.4 Waiver of Rules**

(a) Subject to the authority of the Department of Human Services, the Division of Mental Health and Hospitals may waive any provision of this chapter for a provider agency if:

1. Adequate resources are unavailable to assure compliance with this chapter;
2. Application of any provision would conflict with a policy objective stated in N.J.S.A. 30:4-27.1 et seq.; and
3. Waiver of a specific provision would advance a policy objective stated in N.J.S.A. 30:4-27.1 et seq.*

SUBCHAPTER 2. PROGRAM REQUIREMENTS

10:31-2.1 Functions of a screening center

(a) A screening center shall perform the following direct service functions:

1. Assessment of the crisis situation, and the need for stabilization and support services and/or screening for, involuntary commitment. This shall take place throughout the geographic area served by the center including other emergency service (see N.J.A.C. 10:31-2.2);
2. Crisis intervention counseling;
3. Assessment, referral via personal contact, linkage and follow-up in order to maintain contact with all clients until they are engaged in another service, accepted for clinical case management, or are no longer in crisis (see N.J.A.C. 10:31-2.1(d)9.);

4. A 24-hour hotline which shall be answered directly by a certified screener, crisis intervention specialist, or other clinical personnel under the supervision of the screener or crisis intervention specialist, which hotline shall receive calls which have been forwarded from other ES during off hours;

5. Twenty-four hour per day screening outreach ***capability***, which shall include provision of mobile screening services in any location in the geographic area, under the following circumstances:

- i. Whenever there is indication that there may be a reasonable likelihood of dangerousness to self, or others, or property due to mental illness;
- ii. Whenever the individual is unable or unwilling to come to the screening center or transporting the individual may put him or her or others at further risk; and
- iii. If the client's history, behavior or location presents safety concerns, consultation by the screening outreach team with the police, if necessary, and coordination of the outreach with them;

6. Operation of holding bed(s) with 24-hour capability, which shall be used for crisis stabilization;

7. Provision of protocol and procedures for use of various medication techniques, including emergency stabilization regimes;

8. Provision of medication monitoring, which shall include medication on-site for the purpose of crisis stabilization;

9. Provision for face-to-face follow-up visits (either on site or off site) until the crisis is resolved or linkage completed;

10. Psycho-educational and/or supportive services to family members who are involved at time of initial crisis.

(b) Each screening center shall submit and have approved by the Division a plan for prioritizing response to screening outreach calls and provide time frames for response. Time frames shall reflect the unique characteristics of the geographic area. The plan shall also include a protocol for police involvement.

(c) The center shall maintain responsibility for medication until this responsibility is transferred to another agency according to the procedure set forth in an affiliation agreement. Linkage shall be completed within seven days.

(d) Screening outreach services may be expanded to provide additional prevention, intervention, and stabilization services. This is strongly encouraged when resources are available.

(e) One or more functions of a screening center may be delegated in accordance with a county plan approved by the Division.

(f) In addition to the direct service functions listed in (a) above, for the geographic area's acute mental health services, the screening center shall:

1. Have exclusive access, assured by the Division through its contracting process, to a specifically designated portion of Division-funded acute care services in its geographic area. The intent of this

provision is to ensure that acute care services are prioritized for use by persons in crisis, and that equitable utilization of resources occurs throughout the geographic area. These services shall include acute partial care, crisis housing (including a crisis house, foster home or crisis bed model), acute in-home services and crisis companions. The following options may be utilized:

- i. The screening center may itself operate the acute care services;
- ii. The screening center may sub-contract all or a portion of the acute care services; and/or
- iii. The screening center may affiliate with another provider which is under contract to the Division to provide some or all acute care services within the geographical area;

2. Maintain an affiliation with the STCF(s) serving the geographic area which will be utilized for involuntary hospitalization and screen admissions to the STCF;

3. Notify the provider of liaison services whenever an individual is involuntarily hospitalized at a STCF or State or county psychiatric hospital;

4. Develop written affiliation agreements with other community agencies which ensure immediate access to psychiatric evaluation for medication and other mental health support services;

5. Provide training or technical assistance for police and other community gatekeepers as needed, directly or through affiliation with other agencies;

6. Assure that a plan for transporting clients in crisis be developed, which includes transportation to an emergency service or screening center and from these services to an appropriate treatment facility once identified;

7. Provide crisis intervention training for ES providers in the geographic area as needed;

8. Develop and coordinate mechanism for acute care system review for all acute care services listed in N.J.A.C. 10:31-2.1(a);

9. Maintain a system for tracking currently available treatment openings in acute mental health services for which the screening center is granted access either directly, by subcontract, or by affiliation; and

10. Comply with N.J.A.C. 10:37-*[6.13]**6.79* regarding records of all persons seen by the center and compile information regarding disposition of such persons for review by the systems review committee N.J.A.C. 10:31-5.).

10:31-2.2 Functions of an emergency service (ES)

(a) In addition to the designated screening center, a geographic area may include one or more ES's. All emergency services shall be affiliated by written agreement with the geographic area's designated screening center. Each ES shall provide all of the following services:

1. Crisis intervention counseling for clients, family members, and/or significant others;

2. Provision and monitoring of medication on site for the purpose of crisis stabilization and provision for medication until this responsibility is transferred to another agency or service;

3. Assessment, referral, linkage, and follow-up, which shall include maintenance of contact with all clients until they are engaged in another service or their problem has been resolved;

4. A hotline, answered directly by clinical staff during peak hours, and provision for calls to be forwarded to the designated screening center at other times;

5. Linkage to acute care services (such as crisis housing, acute partial, and acute in-home services), facilitated through the designated screening center; and

6. Provision of linkage and necessary follow-up to other mental health and non-mental health services;

(b) The following services may also be directly provided by the emergency service:

1. Holding bed(s) with 24 hour capacity;
2. Protocol and procedures for use in various medication techniques, including emergency stabilization regimes;
3. Follow-up visits to ensure stabilization;
4. Crisis intervention outreach; and
5. Follow-up visits off-site.

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10:31-2.3 Screening process and procedures

(a) The screening process shall involve a thorough assessment of the client and his or her current situation to determine the meaning and implication of the presenting problem(s) and the nature and extent of efforts which have already been made. The *[screeener]* ***screening center staff*** shall make every effort to gather information from the client's family and significant others to determine what the clinical needs of the client are and to determine what services are in the best interest of the client. The *[screeener]* ***screening center staff***, in conjunction with affiliated mental health care providers, shall advocate for services to meet client needs and encourage the system to respond flexibly.

(b) Whenever possible and appropriate, all stabilization options including the following shall be explored before involuntary commitment is considered.

1. Use of natural support system;
2. Referral and linkage to community resources;
3. Crisis intervention counseling;
4. Outpatient services for medication monitoring and follow-up;
5. Acute partial care;
6. Acute in-home services;
7. Holding bed with medication monitoring;
8. Crisis housing;
9. Referral to other 24-hour treatment facility; and
10. Voluntary admission to local in-patient unit.

(c) After exploring the appropriateness of, and exhausting all options listed in (b)*[1]* above, the screener shall ascertain whether the individual being considered for commitment:

1. Meets the standard for mental illness as defined in P.L. 1987, c.116 (N.J.S.A. 30:4-27.1 et seq); and
2. Meets the standard for dangerousness as defined in P.L. 1987, c.116 (N.J.S.A. 30:4-27.1 et seq)*[;]* and N.J.A.C. 10:31-1.3. If so, the screener shall complete the screening *[certificate]* ***document*** and refer the patient to the psychiatrist for evaluation.

(d) The psychiatrist shall complete a ***face to face*** psychiatric evaluation and complete the *[clinical]* ***screening*** certificate if the client meets the standards for commitment.

(e) A client shall receive a thorough assessment if he or she is referred to a screening center because *[of possible dangerousness resulting from mental illness and failure to obtain the bare necessities of life]* ***he or she has behaved in such a manner as to indicate that the person is unable to satisfy his or her need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical debilitation or death will result within the reasonably foreseeable future***.

1. If the assessment reveals that a client does not meet the commitment standard, the screening center shall refer the client to the appropriate social service agency(s). It shall be the responsibility of such agencies to procure needed services. If the client is in need of mental health services, the screening center shall facilitate the necessary linkages to mental health services.

2. If the assessment reveals that a client *[is dangerous to self due to a failure to obtain essential provisions required to sustain life,]* ***is mentally ill and has behaved in such a manner as to indicate that the person is unable to satisfy his or her need for nourishment, essential medical care or shelter so that it is probable that substantial bodily injury, serious physical debilitation or death will result within the reasonably foreseeable future,*** it shall be the responsibility of the screening center to arrange the provision of such services for the client.

(f) Each screening center shall have the capability to provide mobile screening outreach in the community, 24 hours per day. Outreach teams are preferable and should be utilized, based on both clinical and safety factors. Such outreach shall take place whenever clinically relevant information indicates that a person may be mentally ill and a danger to himself or others. The mobile team shall determine priority *[and respond to all such calls within one hour]*. Screening outreach shall take place wherever the client is located whether in a private home, hospital, boarding home or other location. Police shall be requested to accompany the mobile team when necessary. The outreach screener shall provide appropriate intervention, referral and linkage following a face-to-face assessment

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whether or not the individual is found to meet the commitment standard.

(g) The screening of clients seen in an ES (other than the designated screening center) may be accomplished in any of the following ways, in accordance with affiliation agreements developed between the screening center and the emergency service, and as determined by the screening center, based upon the best interest of the client and with the goal of avoiding the transportation of the client, except where necessary for treatment purposes:

1. Outreach by a screener to the ES: If this option is utilized, the screener shall be available within one hour to provide the outreach. There shall be sufficient staff and space at the ES to maintain the client until the screener arrives.

2. By a screener stationed in the ES: If ES utilization justifies this option, a screener, employed by the designated screening center and credentialed by the host ES, shall be stationed at the ES during peak hours.

3. By transportation of a client to the screening center: This option shall be utilized only after a telephone consultation with the screening center confirms that there is reason to believe that the person may meet the criteria for commitment and the screening center has given approval for the transfer. If this option is utilized, alternative treatment planning shall occur at the screening center if the client does not require commitment; that is, the client shall not be transferred back to the ES for such alternative treatment planning. During the telephone consultation, if there is a disagreement about disposition, a face-to-face evaluation by the screener shall take place prior to transport.

4. In the case of (g)1 and 2 above, if the screener has seen the person, explored all options and involuntary commitment is needed, the screener may fill out the screening document and the person may be seen by the emergency service psychiatrist for assessment and, if necessary, the completion of a clinical certificate, prior to admission to an inpatient service.

10:31-2.4 Confidentiality

(a) Screening centers shall comply with N.J.S.A. 30:4-24.3, as follows:

"All certificates, applications, records, and reports made pursuant to the provisions of this Title and directly or indirectly identifying any individual presently or formerly receiving services in a noncorrectional institution under this Title, or for whom services in a noncorrectional institution shall be sought under this act shall be kept confidential and shall not be disclosed by any person, except insofar as:

1. The individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, shall consent; or

2. Disclosure may be necessary to carry out any of the provisions of this act or of article 9 of chapter 82 of Title 2A of the New Jersey Statutes; or

3. A court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest.

Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to a patient's current medical condition to any relative or friend or to the patient's personal physician or attorney if it appears that the information is to be used directly or indirectly for the benefit of the patient.

Nothing in this section shall preclude the professional staff of a community agency under contract with the Division of Mental Health and Hospitals in the Department of Human Services, or of a screening service, short-term care or psychiatric facility as those facilities are defined in section 2 of P.L. 1987, c.116, from disclosing information that is relevant to a patient's current treatment to the staff of another such agency".

10:31-2.5 Availability of staff

(a) A designated screening center shall have, at a minimum, the following personnel:

1. A psychiatrist, who shall be available 24 hours per day, 365 days per year, to provide telephone consultation, medication orders, and face-to-face evaluation as needed, with the amount of on-site cov-

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erage appropriate to the amount of volume experienced by this service;

2. Certified screener(s) who shall be available 24 hours per day, 365 days per year, to provide screening as needed on site at the screening center and off site through mobile screening outreach services;

3. Personnel, as specified in the contract between the center and the Division, who shall be on-site to provide continuous monitoring of the patient in the holding bed(s) and administration of medication as needed;

4. A screening center coordinator, or his or her designee, who shall be available 24 hours per day, 365 days per year, to provide administrative and treatment planning direction as needed;

5. A clinical director, who shall be available on either a full-time or part-time basis to provide/coordinate medical services; and

6. Personnel, as specified in the contract between the center and the Division, sufficient to provide required consultation and education, hotline coverage, psycho-education, and other appropriate services, including coordination of the acute care system review procedures,

(b) An emergency service shall have, at a minimum, the following personnel:

1. A psychiatrist, who shall be available 24 hours per day, 365 days per year, to provide telephone consultation, medication orders, and face-to-face evaluation as needed;

2. A crisis intervention specialist who shall be available 24 hours per day, 365 days per year, to provide assessment, monitoring, and treatment planning as needed; and

3. Those emergency services which have holding bed(s) and administer medication must have personnel, as specified in the contract between the center and the Division.

SUBCHAPTER 3. SCREENING AND SCREENING-OUTREACH PERSONNEL REQUIREMENTS

10:31-3.1 Composition of screening and screening outreach staff

Screening and screening outreach staff shall include psychiatrists, registered ***professional*** nurses and screeners. The Division recommends that the staff also include social workers, psychologists, and/or other mental health professionals.

10:31-3.2 Screening center coordinator requirement, qualifications and duties

(a) Each screening center shall have a coordinator possessing a minimum of a master's degree in social work, psychology, nursing, or a related field, who shall have a minimum of three years post master's work experience in the provision of mental health services. Previous supervisory experience is desirable but not necessary. The coordinator shall have completed the Division's Crisis Training Course, level 1 and 2.

(b) The duties of the screening center coordinator shall include, at a minimum, the following:

1. Ensuring appropriate staff availability 24 hours per day, 365 days per year;

2. Ensuring adequate levels of clinical staff supervision, skill development and support;

3. Completion and monitoring of affiliation agreements with police, corrections, other mental health, social service, and health service systems;

4. Provision of formal liaison with police and sheriff departments regarding interface issues, transportation, screening outreach escort/accompaniment, etc.;

5. Monitoring fulfillment and appropriate documentation of the various screening center functions listed in N.J.A.C. 10:31-2.1 and 2.2;

6. Participation of the screening service in local mental health, health and human services planning activities;

7. Coordination between the screening center and short term care facility, State psychiatric hospital and county psychiatric hospital;

8. Responsibility for ensuring access to all acute services in the screening center's geographic area;

9. Coordination of the Systems Review Committee; and
10. Coordination of emergency service education in the geographic area.

10:31-3.3 Screener certification requirement, qualifications and duties

(a) Each screening center shall have one or more screeners available on each shift, who shall be certified by the Division.

(b) Screener certification shall be granted to individuals who have completed the Division's screener certification course.

(c) The following shall be prerequisites to the Division's screener certification course:

1. Evidence of the following educational/experiential background. Although a master's degree is preferable, any of the following is acceptable:

i. A master's degree ***in a related field*** plus one year of experience in a psychiatric setting; or

ii. A bachelor's degree plus three years mental health experience, one of which is in a crisis setting; or

iii. A bachelor's degree plus two years mental health experience, one of which is in a crisis setting and currently enrolled in a master's program; or

iv. A registered ***professional*** nurse designation with three years of mental health experience, one of which is in a crisis setting.

2. Completion of the Division's Crisis Training Course.

(d) Screener certification shall be valid for two years from the date of certification, with recertification in accordance with (e) below.

(e) Biannual recertification shall be granted after a screener has submitted evidence of:

1. Completion of 15 continuing education hours ***[(of the screener's choice)]* relevant to emergency or screening services***. **These may include courses, conferences, or inservice training***; and

2. Completion of periodic updated emergency service training provided by the Division (not to exceed eight hours per year). These training hours can be applied towards the 15 continuing education hours required in (e)1 above.

(f) Temporary certification may be granted at the discretion of the Division. Temporary credentialing may be granted to those individuals who ***[have completed the Division's Crisis Training Course and]*** are eligible for the screener certification course. Individuals receiving temporary certification must enroll in the screener certification course within one year of receiving the certificate. ***Persons receiving a temporary certification who have not taken the crisis training course shall register in the next available session and within one year shall enroll in the screener certification course.*** Those individuals who possess either a bachelors degree or are registered ***professional*** nurses, plus four years of acute psychiatric experience, or a master's degree plus two years of acute psychiatric experience, and have met the necessary training requirements, may be granted temporary certification for a period of up to two years.

(g) The duties of a screener shall include, but not be limited to, the following:

1. Assessment, referral and linkage;

2. Hotline coverage;

3. Crisis stabilization;

4. Development of alternative treatment plans;

5. Consultation, training and technical assistance to other clinical staff;

***6. Consultation with the psychiatrist*;**

[6.]7.*** Supervision and monitoring of patients;

[7.]8.*** Screening outreach;

[8.]9.*** Screening of patients who may be in need of commitment; and

[9.]10.*** Screening for admission to STCF's

10:31-3.4 Crisis intervention specialist qualifications and duties

(a) A screening center may employ one or more crisis intervention specialist(s).

(b) The crisis intervention specialist shall possess, at a minimum:

1. A master's degree ***in a related field***;

2. A bachelor's degree, plus two years of experience in a psychiatric setting; or

3. Licensure as a registered professional nurse.

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*[3.]**4.* For good cause and upon review of a formal request, the Division may grant a waiver in regard to the credentials in (b)1 *[and]* *,* 2 *and 3* above.

(c) The duties of the crisis intervention specialist shall include, but are not limited to, the following:

1. Crisis intervention counseling, on and off-site;
2. Monitoring and supervision of patients;
3. Assessment, referral and linkage;
4. Hotline coverage; and
5. Crisis outreach.

(d) The screening center utilizing certified screeners shall orient and provide training for all new crisis intervention specialists, prior to unaccompanied and unsupervised performance of their duties.

(e) The Division recommends, but does not require, that at least one of the crisis intervention specialists employed by the screening center be a registered ***professional*** nurse, who, in addition to the duties listed above shall:

- i. Provide medication monitoring;
- ii. Provide nursing assessment; and
- iii. Provide education to staff regarding health care issues.

10:31-3.5 Psychiatrist requirement*s*, qualifications and duties

(a) Each screening center shall employ one or more psychiatrists. The psychiatrist shall be a physician who has completed the training requirements of the American Board of Psychiatry and Neurology.

(b) The duties of the psychiatrist shall include, but not be limited to, the following:

1. Psychiatric assessment and management;
2. Prescription and monitoring of medication;
3. Completion of *[clinical]* ***screening*** certificates; *[and]*
4. Participation in the planning of alternatives to hospitalization*.[.]* *; and*

5. Consultation with screeners.

10:31-3.6 Clinical director requirement, qualifications and duties

(a) Each screening center shall employ a clinical director in a full or part time capacity. The clinical director shall be a psychiatrist; however, those persons serving in a clinical director position as of the effective date of this chapter shall not be affected by this requirement.

(b) The duties of a clinical director shall include, but not be limited to, the following:

1. The organization of medical services provided by the screening center;
2. The organization and participation in clinical training for the screening center staff; and
3. The ensurance of availability of psychiatric services.

SUBCHAPTER 4. EMERGENCY SERVICE PERSONNEL REQUIREMENTS

10:31-4.1 Composition of emergency service staff

The ES staff shall be made up of an appropriate balance of representatives from the following disciplines: medicine, nursing, social work, and psychology, or related field.

10:31-4.2 ES coordinator requirement*s*, qualifications and duties

(a) Each ES shall have a coordinator. The coordinator shall possess a minimum of a master's degree in social work, psychology, nursing, or a related field and have a minimum of three years post master's work experience in the provision of mental health services. Previous supervisory experience is desirable, but not required. The coordinator shall have completed the Division's Crisis Training Course. Completion of the Division's screener certification course is desirable, but not required.

(b) The duties of the ES coordinator shall be to ensure the following:

1. Appropriate staff availability 24 hours per day, 365 days per year;
2. Adequate levels of clinical staff supervision, skill development and support;
3. The completion and monitoring of affiliation agreements with police, other mental health, social service and health service systems; and

4. Monitoring of the fulfillment and appropriate documentation of the various ES functions.

10:31-4.3 Crisis intervention specialist requirement*s*, qualifications and duties

(a) Each ES may employ one or more crisis intervention specialist(s). The crisis intervention specialist shall possess two years of experience in a psychiatric setting and either a master's degree or a bachelor's degree or shall be a registered ***professional*** nurse.

(b) The duties of the crisis intervention specialist shall include, but not be limited to, the following:

1. Crisis intervention counseling, on and off-site;
2. The monitoring and supervision of patients;
3. Assessment, referral and linkage; and
4. Hotline coverage.

(c) The Division recommends, but does not require, that at least one crisis intervention specialist be a registered ***professional*** nurse. In addition to the duties listed above, the registered ***professional*** nurse shall:

1. Provide medication monitoring;
2. Provide nursing assessment; and
3. Provide education to ES staff regarding health care issues.

10:31-4.4 Psychiatrist requirement*s*, qualifications and duties

(a) Each emergency service shall employ one or more psychiatrists. The psychiatrist shall be a physician who has completed the training requirements of the American Board of Psychiatry and Neurology.

(b) The duties of the psychiatrist shall include, but not be limited to, the following:

1. Psychiatric assessment and management;
2. The prescription and monitoring of medication;
3. Participation in the planning of alternatives to hospitalization; *[and]*

4. Consultation with screeners when appropriate; and

*[4.]**5.* Consultation with and provision of support for families and/or significant others regarding emergency services received by clients.

SUBCHAPTER 5. SYSTEMS REVIEW IN THE ACUTE CARE SYSTEM

10:31-5.1 Development of acute care system review

(a) Each geographic area shall develop a process to monitor the provision of acute care services. The development of this process shall be coordinated by the screening center in consultation with the Division. Technical assistance shall be provided by the Division as necessary. The monitoring process shall be accomplished by a committee which meets monthly.

(b) The monitoring process shall be integrated with the system-wide quality assurance process, where the quality assurance process exists.

10:31-5.2 Composition of the systems review committee

(a) The systems review committee shall include representatives from:

1. Each of the separately identifiable programs comprising the acute care services available in a geographic area;
2. The State or county psychiatric hospital, STCF and affiliated voluntary psychiatric inpatient unit;
3. The county mental health board and the Division; and
4. Family and consumer organizations concerned with the quality and provision of acute care services, and/or consumers and family members of consumers who have been recipients of acute care services.

(b) Confidentiality shall be observed by all committee members.

10:31-5.3 Role of the systems review committee

(a) The systems review committee shall perform the following functions:

1. Identify gaps in the acute care system and bring them to the attention of the appropriate county mental health board(s) and the Division;
2. Monitor utilization of acute care resources to ensure that services are fairly and appropriately distributed;

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3. Ensure that clients receive the highest quality of care in the most appropriate, least restrictive environment;
4. Review transfers from the STCF to State psychiatric hospitals (as well as direct admissions to State psychiatric hospitals) to monitor appropriateness;
5. Identify those concerns which shall be considered by an agency's internal quality assurance committee, notify that committee, and provide the internal agency committee with any relevant information;
6. Investigate and make recommendations to *[appropriate boards and regulatory authorities]* ***DMH&H and county mental health boards*** regarding impediments and obstacles in the acute care system;
7. Discuss additional systems issues within the geographic area, and make recommendations to *[the appropriate Boards and regulatory authorities]* ***DMH&H and county mental health boards***;
8. Study the medication monitoring *[practices within the system]* ***services within the geographic area*** and make recommendations for change when necessary; and
9. *[Undertake comprehensive reviews of clients who do not accept or engage in facility-based mental health programs and those who have multiple service needs.]* ***Review disputed or problem cases which are indicative of possible service gaps and need systems change.***

SUBCHAPTER 6. PLANNING

10:31-6.1 Designation of screening centers

(a) A designated screening center shall be named in each geographic area. Although a geographic area will usually consist of a county, depending on geographic size, population, demographics or other factors, the Division may designate a portion of a county or a multi-county area as a geographic area. The following procedure shall be used for designation of the screening centers:

1. The county mental health board shall make a recommendation to the Division regarding the boundaries of the geographic area to be covered by the screening center;
2. The Division shall designate the geographic area after consideration of this recommendation; and
3. The county mental health board shall recommend an agency to be designated as the screening center, based on, but not limited to, the following factors:
 - i. Demonstrated history of providing quality services;
 - ii. Knowledge of, and willingness to provide services to, target populations;
 - iii. Ability to provide mental health services in a cost effective manner; and
 - iv. The documented ability to comply with this chapter.

(b) In order to assure the availability and provision of necessary medical services, a designated screening center shall be physically located in a hospital, and shall be either directly operated by or formally affiliated by written agreement with said hospital.

(c) The Division shall designate a screening center after reviewing the mental health board's recommendation and evaluating the proposed agency or hospital's ability to comply with this chapter. Continued designation is contingent upon the center's ability to perform mandated functions.

(d) Re-designation shall be required after the first year of operation and every two years thereafter.

(e) Once designated, the screening center shall have the sole authority to provide screening in, and for, the geographic area in which it is located, and shall assume all of the functions listed in N.J.A.C., 10:31-2.1.

(f) If capital construction costs exceed Certificate of Need thresholds, a Certificate of Need (CN) may be required. The New Jersey Department of Health Certificate of Need program staff should be contacted regarding applications for CN.

SUBCHAPTER 7. TERMINATION OF SERVICES

10:31-7.1 Standards for termination of services

(a) Persons will be terminated from the screening center for any of the following reasons:

1. The person *[is not at risk]* ***does not meet the standard for involuntary commitment*** and refuses further services;

2. The crisis has been resolved;
 3. The person has been successfully linked to another service or accepted for clinical case management;
 4. The person has been voluntarily admitted to a hospital or other treatment facility; or
 5. The person has been involuntarily committed to a STCF, State psychiatric hospital or county psychiatric hospital.
- (b) Persons will be terminated from the emergency service for any of the following reasons:
1. The person has been linked to the screening center for further evaluation or commitment;
 2. The person *[is not at risk]* ***does not meet the standard for involuntary commitment*** and refuses further services;
 3. The crisis has been resolved;
 4. The person has been successfully linked to another service or accepted for clinical case management; or
 5. The person has been voluntarily admitted to a hospital or other treatment facility.

SUBCHAPTER 8. POLICE INVOLVEMENT

10:31-8.1 Transportation of clients

A certified screener may request that a law enforcement officer transport an individual to a screening center, if the screener has evaluated the individual and signed a screening document indicating that the individual may meet the commitment standard, and requires further evaluation. ***Additionally, when situations are assessed by telephone by the screener as potentially dangerous, a law enforcement official may be requested to transport individuals who are unable or unwilling to come to the screening centers.***

10:31-8.2 Police request for evaluation

(a) A screening center shall evaluate an individual who is brought to the screening center by a law enforcement officer if, based on personal observation, that officer has reason to believe that the individual meets the commitment standard.

(b) A screening center *[shall]* ***should*** provide*, **whenever possible,*** mobile screening outreach at the request of a law enforcement officer if the screening center determines that, based on clinically relevant information provided by a law enforcement officer with personal knowledge of the individual subject to screening, the person may need involuntary commitment and is unwilling or unable to come to the screening center for an assessment.

10:31-8.3 Provision of security

A screener may request that a law enforcement officer shall remain at the screening center whenever his or her presence is necessary to protect the safety of the client or other individuals. He or she shall request that the officer remain at the screening center until the situation is secured.

SUBCHAPTER 9. CLIENT'S RIGHTS

10:31-9.1 Client rights

(a) Clients shall not be involuntarily detained at a screening center for evaluation and emergency treatment for more than 24 hours, unless involuntary commitment procedures are followed.

(b) Clients who are detained at a screening center shall have the following rights:

1. The right to impartial access to all screening center services regardless of race, religion, sex, ethnicity, age, handicap, or ability to pay;
2. The right to receive a prompt and adequate evaluation of his or her psychiatric, social, and economic needs and to receive services of a qualified professional of the appropriate disciplines (medicine, nursing, psychiatry, social work, or psychology) as indicated, which evaluation and services shall be delivered in a manner which is respectful of the dignity of the individual;
3. The right to a professional assessment in the least restrictive, clinically appropriate manner and the right to referral to the least restrictive, clinically appropriate, available service;
4. The right to an explanation of their condition, the treatment being provided, and a response to questions they may have about their condition or treatment;

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5. The right to participate in treatment planning to the fullest extent that his or her condition permits;

6. The right to prompt access to medical treatment for physical ailments;

7. The right to be free from unnecessary or excessive medication;

8. The right to be free of physical restraints and isolation except in situations where there is reason to believe that the client may cause imminent harm to himself or herself, to others, or property. The reason for physical restraint or isolation shall be documented in the client's chart and a physician's order obtained within one hour;

9. The right to have reasonable access to and use of telephones, both to make and receive calls; and

10. The right to be free of corporal punishment.

(c) Notice of the rights in (b) above shall be prominently posted and written copies shall be available in language easily understandable by clients at each screening center.

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Community Mental Health Services

Adopted Repeals: N.J.A.C. 10:37-5.6 through 5.11 and 5.16 through 5.24.

Proposed: February 6, 1989 at 21 N.J.R. 273(a).

Adopted: April 27, 1989 by Drew Altman, Commissioner,

Department of Human Services.

Filed: April 27, 1989, as R.1989 d.283, **without change**.

Authority: N.J.S.A. 30:9A-1 through 11 and N.J.S.A. 30:4-27.1 et seq., specifically N.J.S.A. 30:4-27.5.

Effective Date: June 5, 1989.

Operative Date: June 7, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adopted repeals may be found in the New Jersey Administrative Code at N.J.A.C. 10:37-5.6 through 5.11 and 5.16 through 5.24, pending deletion.

(b)

DIVISION OF DEVELOPMENTAL DISABILITIES

Organizational Rules

Division of Developmental Disabilities

Adopted New Rules: 10:40

Adopted: May 10, 1989 by Drew Altman, Commissioner,

Department of Human Services.

Filed: May 11, 1989 as R. 1989 d. 301.

Authority: N.J.S.A. 30:109 et seq and N.J.S.A. 52:14B-4(b) (exempt organizational rule).

Effective Date: May 11, 1989.

Expiration Date: May 11, 1994.

Take notice that Drew Altman, Commissioner, Department of Human Services, has adopted new organizational rules for the Division of Developmental Disabilities. These rules are intended to inform the public of the basic composition responsibilities and goals of the Division of Developmental Disabilities. These organizational rules are exempt from the notice and hearing requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., pursuant to N.J.S.A. 52:14B-4(b). These rules replace the rules currently in the New Jersey Administrative Code at N.J.A.C. 10:40, which expired on March 15, 1989.

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Full text of the adoption follows:

CHAPTER 40

DIVISION OF DEVELOPMENTAL DISABILITIES ORGANIZATIONAL RULE

SUBCHAPTER 1. GOALS AND RESPONSIBILITIES

10:40-1.1 Goals of the Division of Developmental Disabilities

(a) The goals of the Division of Developmental Disabilities are as follows:

1. To provide comprehensive evaluation, functional and guardianship services to eligible persons;

2. To ensure and advocate for client rights, to provide for their health, safety and welfare, and to protect clients from abuse, neglect and exploitation;

3. To develop an Individualized Habilitation Plan with each eligible person admitted to ongoing services;

4. To promptly provide effective and individually appropriate care, treatment, training and habilitation to eligible persons;

5. To establish and implement procedures for determination of eligibility for services of the Division;

6. To develop an array of services to enable eligible persons to be sustained in their own homes or other safe, wholesome and supportive living arrangements as may be most appropriate for the individual;

7. To help the families of eligible persons to develop an understanding and acceptance of both the capabilities and needs of their relatives;

8. To plan for and ensure appropriate utilization of generic and specialized private and public resources and to recommend and secure alternate services when needed;

9. To establish standards for services, whether provided or purchased on behalf of eligible persons. Such standards shall address the scope and quality of the services as well as recognize unique needs;

10. Through continual assessment of the Division's programs, to ensure that clients' needs are met and that established program standards are maintained;

11. To provide consultation to organizations and committees (public or private) which work toward improving opportunities for persons who are developmentally disabled;

12. Through research and public education, to contribute to an increased understanding of developmental disabilities;

13. To integrate and maximize the use of Federal, State, local and private resources in providing essential services to eligible persons and their families;

14. To develop and sustain working relationships with other public and private agencies to ensure a continuum of services;

15. To provide effective management of the Division's programs and services within the appropriation;

16. To ensure provision of in-service training and staff development programs to employees of the Division as well as providers and sponsors under contract, in order to ensure the quality of services; and

17. To promote positive employee relations through adherence to policies of non-discrimination, fair employment practices, promotional opportunities and good work environments.

SUBCHAPTER 2. COMPOSITION OF THE DIVISION

10:40-2.1 Organization for the provision of mandated services

(a) The Division of Developmental Disabilities operates as an integral part of the Department of Human Services.

(b) Programs and services of the Division are administered by a Director who is appointed by the Commissioner, Department of Human Services.

(c) Under the direction of a Deputy Director for Residential Services, the Division operates 10 developmental centers for the developmentally disabled located throughout the State. Each center is operated under the direction of a Superintendent and an Assistant.

(d) Under the direction of the Deputy Director for Community Services, the Division operates a vast network of community based

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services, including, but not limited to, residential placement services, day training for persons 21 years and younger adult training programs for persons over age 21, case management and evaluation, and referral services. Programs and services are administered from regional offices located in the central, southern, and northern sections of the state. The central region is divided into an upper region and lower region. Services in each region are administered by a Regional Administrator.

(e) Under the direction of a Bureau Chief, the Division provides guardianship services for eligible mentally deficient adults, and eligible orphaned or abandoned children. The program is administered from three regional offices located in the central, northern and southern sections of the State. Each regional office is under the direction of a Regional Supervisor.

(f) Under the direction of a Chief Bureau of Special Residential Services, the Division provides a purchase of services program utilizing contracted private residential facilities to appropriate care and training for eligible mentally retarded persons.

(g) Under the direction of a Program Director, the Division administers the New Jersey foster Grandparent Program. The program is designed to mobilize senior citizens to provide personal care, education and training and companionship to mentally retarded persons under 21 years of age. A similar program is also developed for mentally retarded persons ages 22 and over.

(h) The Division Central Office, comprising the management and support staff, provides executive management, budgetary, and technical assistance to the various operating units in the Division.

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Human Rights Committees

Adopted New Rules: N.J.A.C. 10:41-4

Proposed: October 17, 1988 at 20 N.J.R. 2552 (a).

Adopted: May 10, 1989 by Drew Altman, Commissioner, Department of Human Services.

Filed: May 11, 1989 as R.1989 d.302, with substantive changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12; 30:6D et seq.

Effective Date: June 5, 1989.

Expiration Date: March 20, 1994.

Summary of Public Comments and Agency Responses:

Comments were received from the Community Health Law Project, East Orange, New Jersey; the Association for Retarded Citizens, Somerset County Unit; the Association for Retarded Citizens of New Jersey and the Department of the Public Advocate, Division of Advocacy for the Developmentally Disabled. The comments and responses follow grouped by commenter. The agency's response to a comment made by more than one commenter is found the first time that comment occurs.

Community Health Law Project

COMMENT: The Law Project asked if the rules applied to it, since it contracts with the Division for client services.

RESPONSE: The rules are intended to apply to all agencies under contract with or regulated by the Division. However, the rules only require the involvement of a client where client rights may be affected. Specifically cited are such areas as behavior modification and research and review of allegations of abuse, neglect or exploitation. The rules are in no way intended to limit any other means of protecting client rights.

Association for Retarded Citizens, Somerset County Unit

COMMENT: Aversive stimuli are poorly defined.

RESPONSE: The definition has been revised to provide more detail concerning what constitutes aversive stimuli.

COMMENT: Levels of aversiveness should include examples.

RESPONSE: The review of behavior plans using highly aversive techniques is only one function of a human rights committee. Moreover, the degree of aversiveness of a specific technique is decided by clinical staff before a review by the human rights committee. It is the purpose of this subchapter to define the role of human rights committees. It is not intended to be a comprehensive description of behavior modification

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techniques. In addition, examples would not appreciably add to the content of the subchapter.

Association for Retarded Citizens, New Jersey

COMMENT: The subchapter clarifies the role of human rights committees and should provide information to the various committees. It is appropriate that an independent body oversee any questions that may arise concerning the rights of individuals served by the Division of Developmental Disabilities.

RESPONSE: The Division of Developmental Disabilities appreciates the support for the rule as written.

Division of Advocacy for the Developmentally Disabled

COMMENT: At least two-thirds of the membership of the human rights committee should not be employees of the Division component or agency. Recent literature suggests that a majority of members should have no affiliation with the treatment program.

RESPONSE: The Accreditation Council on Services for People with Developmental Disabilities (ACDD), a nationally recognized agency recommends that at least one third of the members of the committee not be employed by the agency. The Division has elected to follow the recommendation of the ACDD and has, therefore, required that "at least one-third" of the members not be employed by the agency. Some agencies have experienced difficulty in recruiting even one third of their membership from outside the agency. The requirements of membership on a human rights committee involve a considerable commitment on the part of any volunteer.

COMMENT: The human rights committee should not be viewed as an advisory body "but rather a review body" for issues directly or indirectly affecting individual rights.

RESPONSE: The human rights committee serves in an advisory capacity in that it reviews all issues which relate directly or indirectly to individual rights. The definition in N.J.A.C. 10:41-4.3 has been amended. It makes recommendations to the administrative head of the component or agency of who has decision making authority. All decisions may be appealed in accordance with N.J.A.C. 10:48.

COMMENT: N.J.A.C. 10:41-4.6(a) should be amended to permit the administrative head of a component or agency to appoint only the employee members of the committee. Non-affiliated members should be appointed by an external body, such as the Developmental Disabilities Council.

RESPONSE: There is no statutory requirement that an external body appoint non-employee members of the committee, nor is there basis in the literature for this action. Since the committee is advisory to the administrative head of the component or agency, that individual should be responsible to appoint all the committee members. Therefore, the Division has made no change to the rules as proposed.

COMMENT: Members from the Division's Bureau of Guardianship should be considered affiliated rather than non-affiliated members.

RESPONSE: N.J.A.C. 10:41-4.6(d) has been amended to indicate that staff of the Division's Bureau of Guardianship Services shall be considered affiliated members.

COMMENT: N.J.A.C. 10:41-4.8 should refer to the "Department of the Public Advocate" rather than "Office of the Public Advocate".

RESPONSE: N.J.A.C. 10:41-4.8 has been amended accordingly.

COMMENT: Subsections (b) and (c) of N.J.A.C. 10:41-4.11 are unclear with reference to what constitutes an "agency". If an agency does not include the Division of Developmental Disabilities, the Division should be added to subsections (b) and (c).

RESPONSE: The meaning of this comment is unclear. N.J.A.C. 10:41-4.11 has no subsections, nor does it have any specific reference to agency committees.

COMMENT: N.J.A.C. 10:41-4.14 should include a system for informing clients about the existence of the human rights committee and also how they may have access to the committee when the committee reviews alleged or suspected violations of the rights of individuals or groups.

RESPONSE: It is the responsibility of the individual's case manager or social worker to inform the individual of agency services and of his or her rights and to advocate for the client or clients, which may include referral to the Human Rights Committee.

The human rights committee may accept requests for reviews of rights from any source. The individual may make such requests and be heard by the committee.

Full text of the adoption follows (additions to the proposal indicated in bold face with asterisks *thus*; deletions from the proposal indicated in brackets with asterisks *[thus]*).

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SUBCHAPTER 4. HUMAN RIGHTS COMMITTEES

10:41-4.1 Scope

The rules in this subchapter establish the composition and operation of the human rights committees in developmental centers, regions of the Office of Community Services, and in the agencies and facilities under contract with or regulated by the Division of Developmental Disabilities, within the State of New Jersey.

10:41-4.2 Purpose

The purpose of this subchapter is to establish standards for the composition and operation of the Division's human rights committees*, as well as those in agencies under contract with or regulated by the Division,* within the State of New Jersey.

10:41-4.3 Definitions

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

"Aversive stimuli" means *[the presentation of stimuli or conditions for the purpose of decreasing the frequency, intensity or duration of maladaptive behaviors]* ***the presentation of stimuli or conditions to decrease the frequency, intensity or duration of maladaptive behavior by inducing distress, discomfort or pain which may place the individual at some degree of risk of physical and/or psychological injury***.

"Chief executive officer" (CEO) means the person having administrative authority over, and responsibility for, a private residential facility licensed under N.J.A.C. 10:47.

"Division" means the Division of Developmental Disabilities.

"Executive director" means the person having administrative authority over a private agency which operates community-based programs regulated by, or under contract with, the Division.

"Human rights committee" means a group comprised of professionals, clients, advocates and/or interested individuals from the community at large who function as an advisory body to the CEO, executive director, regional administrator, or superintendent on issues directly ***or indirectly*** affecting the rights of Division clients.

"Level of aversiveness" means one of the four categories of techniques used to modify behavior, as follows:

1. Level I means techniques that do not have any aversive components;

2. Level II means techniques that are presumed to be mildly aversive and/or restrictive in nature;

3. Level III means techniques that are presumed to be more aversive and/or restrictive than Level II techniques and which place the client at increased risk;

4. Level IV means severely aversive and/or restrictive techniques, such as contingent electric shock (Faradic stimulation).

"Non-affiliated member" means a member of a committee who is not employed by the service component, facility or agency.

"Regional administrator" means the person having administrative authority and responsibility for a regional office within the jurisdiction of the Office of Community Services.

"Superintendent" means the person having administrative authority and responsibility over a developmental center.

10:41-4.4 Rights of developmentally disabled persons

(a) Developmentally disabled individuals are entitled to exercise the same human and civil rights enjoyed by other citizens. These rights shall not be limited or modified unless the individual's disability limits the exercise of these rights. Staff shall make efforts to assure that the human and civil rights of developmentally disabled clients are protected and exercised.

(b) Limitations of a client's rights shall be documented in the client's record.

(c) All staff contract service providers shall advocate for and protect the rights of developmentally disabled clients in programs for which they are responsible. Staff and contract services providers shall utilize the structured forum of the human rights committee as an assist in protecting the rights of the developmentally disabled.

10:41-4.5 Role of the human rights committee

(a) The human rights committee shall exercise an advisory role only, in relation to the superintendent, regional administrator, CEO, or executive director.

(b) The superintendent, regional administrator, CEO, or executive director shall make the final decision on any issue regarding the rights of a client, and, when proceeding against the advice and recommendations of the human rights committee, shall document the substantive reasons for proceeding against the advice and recommendations of the human rights committee in the client's record.

(c) The orientation of the human rights committee shall be proactive and preventive. The committee shall recommend procedures and programs which safeguard and advance the rights of clients.

(d) Each committee shall be afforded a private meeting area and an atmosphere respectful of its independence and objectivity as a review group.

10:41-4.6 Appointment of members

(a) The members of the human rights committee shall be appointed by the superintendent, regional administrator, CEO or executive director for a two year term. The term may be renewable.

(b) There shall be no more than one-third common membership of the behavior management committee and the human rights committee of any service component, facility or agency.

(c) A human rights committee shall consist of a minimum of five and a maximum of 15 members, at least one-third of whom shall not be employed by the component, facility or agency.

(d) At least one of the *[non-]*affiliated members of a developmental center or regional human rights committee shall be a representative of the Division's Bureau of Guardianship Services, and shall be assigned by the Bureau of Guardianship Services supervisor of the region responsible for the office or facility.

(e) The Division shall have the option of assigning an observer who is not a voting member to the human rights committee of any agency or facility with its own human rights committee.

10:41-4.7 Appointment and duties of chairperson and vice-chairperson

(a) A chairperson and vice-chairperson shall be elected by a majority vote of the membership of each human rights committee.

(b) The chairperson and vice-chairperson may be staff members or individuals from outside the developmental center, region, agency or facility.

(c) The chairperson and vice-chairperson shall serve a two-year term, to which they may be reelected a maximum of three consecutive times.

(d) The vice-chairperson shall assume the responsibilities of the chairperson in his or her absence.

10:41-4.8 Conflict of interest

(a) If any matter which arises in the committee's deliberation should constitute a conflict of interest for a member of the committee that member shall abstain from voting on that issue.

(b) Representatives of legal services, such as the *[Office]* ***Department*** of the Public Advocate, or other agency, who may represent future client interests, shall not be appointed members of a human rights committee as defined in this subchapter. Their role and authority exist independent of this advisory body.

10:41-4.9 Filling vacancies created by unexpired terms

(a) Any human rights committee member who cannot complete his or her term shall communicate this in writing to the superintendent, regional administrator, CEO or executive director at least two weeks before the date of resignation.

(b) If any human rights committee member, for good reason cannot complete his or her term, the superintendent, regional administrator, CEO or executive director shall appoint a replacement within 30 days of the creation of the vacancy.

10:41-4.10 Removal of human rights committee members

(a) A committee member may be removed by the superintendent, regional administrator, CEO or executive director, for good cause based upon a two-thirds majority vote of the full committee. The member who may be removed shall not vote on the action.

ADOPTIONS

(b) If a member of the committee cannot be present for the meeting, he or she shall send an absentee vote to the chairperson prior to the meeting.

10:41-4.11 Meetings of the human rights committee

The human rights committee shall meet at least every two months, and preferably every month. Attendance of 50 percent of the *total* membership shall constitute a quorum.

10:41-4.12 Minutes of the meetings

(a) Minutes of the meeting shall be retained on file in the office of the superintendent, regional administrator, CEO or executive director, and shall be available to Division staff.

(b) Copies of the minutes shall be provided to the members of the committee.

(c) Copies of the minutes of human rights committees within the developmental centers and the regional offices shall be forwarded to the Division Director within two weeks of the date of the meeting.

10:41-4.13 Reimbursement of expenses

Any member of a committee in a developmental center or regional office who is not an employee may receive reimbursements from the center or office for travel expenses, which may include mileage, parking, public transportation expenses, and meals.

10:41-4.14 General committee functions

(a) The functions of a human rights committee shall include, but not be limited to, the following:

1. To advise the superintendent, regional administrator, CEO or executive director with regard to issues regarding the human and civil rights of clients, bringing to his or her attention existing or potential infringements upon, or impediments to, the free exercise of clients' rights, including recommendations for action.

2. To contribute to the development or revision of policies and procedures directly relating to clients' rights.

3. To review alleged or suspected violation of the rights of individual clients or groups of clients brought to the attention of the committee, and to recommend investigation of violations, as deemed appropriate by the committee.

4. To review and to permit or allow, on a case by case basis, the use of procedures not prohibited by law or rule which may present an element of risk and/or restriction to an individual client's rights.

5. To review the proposed involvement of clients in approved research projects.

6. To review investigation reports of unusual incidents involving allegations of abuse, neglect or exploitation of clients.

(b) The human rights committee shall have available to it all information that is necessary to perform its functions. The committee shall have the right to observe programs and/or activities and conduct interviews in order to clarify a problem. Confidentiality of all information obtained shall be observed by the committee members, pursuant to N.J.S.A. 30:4-24.3.

(c) The human rights committee shall have the right to request expert advice from outside the committee, as the committee deems appropriate.

10:41-4.15 Responsibilities of the chairperson

(a) The chairperson of the committee shall be responsible for the following:

1. Scheduling regular and special meetings and setting the agenda for each meeting;

2. Arranging for recording and transcription of minutes;

3. Forwarding copies of minutes and other communications to the members of the committee and to the superintendent, regional administrator, CEO or executive director; and

4. Requesting consultation from outside the committee, based upon a decision of the committee.

10:41-4.16 Decision making process; behavior modification plans

In the review of aversive techniques, the committee should reach consensus on the use of a specific techniques. If this does not occur, recommendation for approval may be given if only one member disagrees with the techniques. If two or more members disagree, a

HUMAN SERVICES

recommendation for approval shall not be granted by the committee. The dissenting members shall suggest alternate technique(s).

10:41-4.17 Orientation to the human rights committee

Individuals who are appointed to the human rights committee shall receive, from the developmental center, regional office, facility or agency, at a minimum, informational and instructional materials relevant to the services provided by the human rights committee.

10:41-4.18 Provider agency committees

(a) The administrator of each regional office shall review cases heard before facility or agency committees within the region.

(b) The CEO or executive director shall establish a line of communication with the regional administrator of the appropriate office to facilitate case reviews.

(c) Any concern about the general functioning of the committee shall be resolved between the CEO or executive director and the chairperson of the committee. If these concerns cannot be resolved, the matters shall be referred to the regional administrator for resolution.

(d) Provider agencies may elect to have their own committee or utilize a committee within an appropriate Division component, upon consultation with and recommendation of the regional administrator.

10:41-4.19 Procedures for provider agency committees

Provider agencies using their own human rights committees shall have procedures regarding the composition and operation of the committee, which shall be included in the agency or facility manual and which shall be consistent with the provisions of this subchapter.

10:41-4.20 Membership of provider agency human rights committees

(a) The CEO or executive director shall appoint members of the committee, one of whom may be a Division employee.

(b) The Division may assign an observer who is not a voting member of the committee, under the following conditions:

1. The observer shall be familiar with the agency or facility, its manual, and the general function of the committee;

2. Should the observer have concerns about the agency or facility, he or she shall bring these concerns to the CEO or executive director; and

3. If the observer's concerns are not resolved, he or she shall report these concerns to his or her immediate supervisor.

(c) Any change in the membership of the committee shall be reported to the regional administrator within 30 days.

10:41-4.21 Notification of meetings

The provider agency shall notify the Division at least five working days in advance of routine meetings, and shall notify the Division immediately by telephone of any emergency meetings.

10:41-4.22 Minutes of meeting

(a) The minutes of provider agency meetings shall be available for review by person authorized by the Division Director.

(b) Committee members and observers shall be provided with copies of the minutes.

(a)

Social Services Program for Individuals and Families Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes

Adopted Concurrent Amendment: N.J.A.C. 10:123-3.2

Proposed: March 20, 1989 at 21 N.J.R. 788(a).

Adopted: April 28, 1989 by Drew Altman, Commissioner,
Department of Human Services.

Filed: April 28, 1989 as R.1989 d.285, **without change.**

Authority: N.J.S.A. 44:7-87.

Effective Date: April 28, 1989.

Expiration Date: July 29, 1990.

HUMAN SERVICES

ADOPTIONS

Summary of Public Comments and Agency Responses:

The New Jersey Association of Health Care Facilities submitted the only comment.

COMMENT: The Association recommended that a formula be published as part of the regulation for Personal Needs Allowance (PNA) adjustments so that SSI recipients, residential health care operators and boarding home operators may plan for these increases in advance.

RESPONSE: The Department reacts favorably to this suggestion and plans to publish an equitable formula for PNA adjustments. The Department also intends to seek input from concerned individuals and groups prior to publishing the formula.

COMMENT: The Association has requested that the increase be rounded off to the nearest 50 cents and recommends that the Personal Needs Allowance be set at \$56.50 rather than \$57.00.

RESPONSE: The Department's practice has been to round increases to the nearest dollar, a practice which has proved historically sound. The Department has decided to maintain the PNA rate at \$57.00.

Full text of the adoption follows.

10:123-3.2 Amount

The owner or operator of each residential health care facility or boarding home shall reserve to each Supplemental Security Income recipient residing therein, and the owner or operator of each residential health care facility shall reserve to each General Public Assistance recipient residing therein, a personal needs allowance in the amount of at least \$57.00 per month. No owner or operator or agency thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance.

LABOR

(a)

OFFICE OF THE CONTROLLER

Remuneration

Adopted Amendment: N.J.A.C. 12:16-4.8

Proposed: March 20, 1989 at 21 N.J.R. 689(b).

Adopted: May 12, 1989 by Charles Serraino, Commissioner, Department of Labor.

Filed: May 12, 1989 as R.1989 d.303, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 43:21-1 et seq., specifically 43:21-11.

Effective Date: June 5, 1989.

Expiration Date: April 1, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:16-4.8 Other remuneration

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

(c) Money value for board and room, meals and lodging shall be treated as follows:

1. (No change.)

2. The Controller shall establish rates for board and room, meals and lodging furnished in addition to, or in lieu of, money wages, unless the employer can establish different costs determined by generally accepted accounting principles, as follows:

i. Full board and room, weekly—35 percent of the current taxable wage base divided by 52

ii. Meals per day—20 percent of the current taxable wage base divided by 260

If less than 3 meals per day, the individual meals shall be valued as follows:

Breakfast (meals served between 12:01 A.M. and 11:00 A.M.)—30 percent of meals rate and

Lunch (meals served between 11:00 A.M. and 4:00 P.M.)—30 percent of meals rate and

Dinner (meals served between 4:00 P.M. and 12:00 P.M.)—40 percent of meals rate and

iii. Lodging per week—15 percent of the current taxable wage base divided by 52

(d) Dollar amounts shall be computed to two decimal places and rounded to the nearest one-tenth of one dollar.

(b)

DIVISION OF VOCATIONAL REHABILITATION SERVICES

Transportation for Employees of Sheltered Workshops

Adopted New Rules: N.J.A.C. 12:45-2

Proposed: March 20, 1989 at 21 N.J.R. 690(a).

Adopted: May 12, 1989 by Charles Serraino, Commissioner, Department of Labor.

Filed: May 12, 1989 as R.1989 d.305, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:16-55.

Effective Date: June 5, 1989.

Expiration Date: May 2, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

SUBCHAPTER 2. TRANSPORTATION FOR EMPLOYEES OF SHELTERED WORKSHOPS

12:45-2.1 Purpose and scope

This subchapter sets forth the procedures and standards used by the Department and sheltered workshops to defray the costs of public transportation and paratransit expenses of clients enrolled in sheltered (extended) employment programs at sheltered workshops.

12:45-2.2 Definitions

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

“Department” means the New Jersey Department of Labor.

“Division” means the Division of Vocational Rehabilitation Services in the Department of Labor.

“Fiscal year” means the 12 month period from July 1 to June 30.

“Paratransit” means and includes any service, other than motorbus regular route service and charter services, including, but not limited to, dial-a-ride, nonregular route, jitney or community minibus, and shared-ride services such as vanpools, limousines or taxicabs which are regularly available to the public. Paratransit shall not include limousine or taxicab service reserved for the private and exclusive use of individual passengers.

“Public transportation” means all rail passenger service operated by the New Jersey Transit Corporation, and all motorbus regular route service operated pursuant to P.L. 1979, c. 150 (N.J.S.A. 27:25-1 et seq.) or operated pursuant to N.J.S.A. 43:4-3.

“Sheltered workshop” means a facility possessing a valid certificate to vend services to the Division issued by the Director thereof, in compliance with the rules governing vocational rehabilitation facilities.

12:45-2.3 Responsibilities of sheltered workshops

(a) Each sheltered workshop shall complete, on a biannual basis, a survey of the transportation needs of each client (see Appendix A incorporated herein and made part of by reference).

1. Each survey shall include the facility name, the name and phone number of each person completing the survey, and the following information for each client:

i. Name, address and social security number;

ii. Mode of transportation (that is, public transportation or paratransit);

iii. Round trip mileage from residence to the sheltered workshop;

iv. Daily out-of-pocket cost;

v. Daily actual cost; and

ADOPTIONS

LABOR

vi. Actual number of days in attendance per client during the prior six month period.

(b) Each sheltered workshop shall submit a completed survey by May 1 and November 1 of each year to:

Chief of Facilities Programs
 Division of Vocational Rehabilitation Services
 CN 398
 Trenton, New Jersey 08625-0398

1. Failure to submit the surveys by the due dates may result in a delay in the allocation of funds to the sheltered workshop.

12:45-2.4 Categories of expenses

(a) Upon receipt of the completed surveys, the Division shall conduct an analysis of all surveys and establish categories of expenses. Categories of expenses shall be established utilizing an equitable distribution of funds available for the applicable fiscal year.

(b) The categories of expenses established for fiscal year 1989 shall be as follows:

Categories of Expenses	Daily Reimbursement
1. \$1.60 or less:	\$1.00
2. \$1.61 to \$2.25:	\$1.60;
3. \$2.26 to \$3.25:	\$2.25;
4. \$3.26 to \$5.00:	\$3.25; and;
5. \$5.01 or more	\$4.75.

(c) Each category of expense may be subject to change during a fiscal year depending on survey results and availability of funds.

12:45-2.5 Disbursement of funds

(a) The Department shall allocate available funds to each sheltered workshop by June 1 and December 1 of each year based on their transportation needs.

(b) Each sheltered workshop shall issue checks to clients to be used to defray transportation costs by July 1 and January 1 of each year.

(c) The Department shall reimburse each sheltered workshop for the reasonable administrative costs associated with the disbursement of checks to clients.

APPENDIX A

Instructions for Completing Transportation Survey for Employees (Clients) of Sheltered Workshops

A. Complete facility name, person completing survey, and telephone number.

B. Place a check mark in the appropriate blanks related to Adult Activity or Work Activity Training Centers.

C. Complete remaining survey for each client as per the following:

1. **Client name, address and social security number:** Complete for each eligible client (even if they do not need transportation funding assistance.)

2. **Mode of transport:** How does the client get to your facility? If by public transit, please use the following code to complete this section for each client:

- NJ = NJ Transit
- C = County Transportation
- PC = Private Contractor
- F = Facility Operated Transportation System
- PC/F = Private Contractor Arranged by Facility
- DDD = Division of Developmental Disabilities

If client drives to the facility by auto (paratransit), please indicate the number of miles the client travels round trip each day. If the client car pools, take a percentage of the miles based on the number of persons sharing the car.

3. **Distance from facility:** Please indicate the round trip mileage for the client from the facility.

4. **Daily client out of pocket costs:** Indicate how much the client pays each day and/or how much the client is billed for the daily transport. (Example: A client may be billed by a facility for a particular amount but to date has not been able to pay.)

5. **Daily actual cost? Who pays the difference?** Indicate the actual cost of the daily transportation and if it is not being paid by the client, who is paying for the cost.

Transportation Survey for Employees (Clients) of Sheltered Workshops

Facility Name: _____ Person Completing Form: _____ Telephone Number: _____

Is there an Adult Activity Center on your premises or in close proximity? Yes _____ No _____ Work Activity Center? Yes _____ No _____

Client Name	Address	SS#	Mode of Transport		Time in Transit (Round trip)	Distance from Facility (Round trip)	Daily Client out of Pocket Cost	Daily Actual Cost?/Who Pays Difference?	Number of Days in Attendance
			Public	Paratransit (include mileage)					

LABOR

ADOPTIONS

(a)

OFFICE OF WAGE AND HOUR COMPLIANCE

Definitions

Adopted Amendment: N.J.A.C. 12:56-2.1

Proposed: March 20, 1989 at 21 N.J.R. 692(a).

Adopted: May 12, 1989 by Charles Serraino, Commissioner,
Department of Labor.

Filed: May 12, 1989 as R.1989 d.304, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:11-56(a)1 et seq.,
specifically 34:11-56(a)19.

Effective Date: June 5, 1989.

Expiration Date: September 26, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:56-2.1 Definitions

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

"Employee" includes any individual employed by an employer, except:

1. For trainees who are involved in a program in which:

- i. The training is for the primary benefit of the trainee;
 - ii. The employment for which the trainee is training requires some cognizable trainable skill;
 - iii. The training is not specific to the employer, that is, is not exclusive to its needs, but may be applicable elsewhere for another employer or in another field of endeavor;
 - iv. The training, even though it includes actual operation of the facilities of the employer, is similar to that which may be given in a vocational school;
 - v. The trainee does not displace a regular employee on a regular job or supplement a regular job, but trains under close tutorial observation;
 - vi. The employer derives no immediate benefit from the efforts of the trainee and, indeed, on occasion may find his or her regular operation impeded by the trainee;
 - vii. The trainee is not necessarily entitled to a job at the completion of training;
 - viii. The training program is sponsored by the employer, is outside regular work hours, the employee does no productive work while attending and the program is not directly related to the employee's present job (as distinguished from learning another job or additional skill); and
 - ix. The employer and the trainee share a basic understanding that regular employment wages are not due for the time spent in training, provided that the trainee does not perform any productive work.
2. If a trainee does not meet all of the above-listed criteria, the trainee shall be considered to be an employee.

PUBLIC NOTICES

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Notice of Public Hearings

Draft New Jersey Energy Master Plan

Take notice that the Division of Energy Planning and Conservation, at the direction of the Energy Master Plan Committee created pursuant to P.L. 1987, c.365, announces the availability of the **Draft New Jersey Energy Master Plan** (NJEMP) for review and public comment. In accord with the requirements of N.J.S.A. 52:27F-14b, the Energy Master Plan Committee will hold a series of open public meetings following the schedule stated below, to receive written and oral testimony on the Plan. These hearings will be quasi-legislative in nature. The swearing of witnesses and cross examination of presenters will not be permitted.

Upon completion of the hearings, the Division of Energy Planning and Conservation will prepare for consideration by the Committee, a comment and response document which will respond to the concerns of the public and may recommend changes to the draft NJEMP based upon the public testimony. The Committee is composed of the Commissioners or their designees from the following state cabinet level departments: Commerce, Energy and Economic Development; Environmental Protection; Community Affairs; Health; Human Services; Treasury; and Transportation. The Committee will then meet to consider the recommendations in the comment and response document and together with any additions, deletions or revisions formally adopted in NJEMP. The Master Plan Committee will transmit sufficient copies to the Governor and the Legislature for their use.

Upon adoption the Committee shall print such numbers of the NJEMP as needed for distribution to the public. The Committee at such time as it deems appropriate may charge a fee for the continued printing and distribution of the NJEMP.

The following schedule will be followed for the public hearings:

Afternoon and evening sessions will start at the times noted and continue until each person or organization has been given an opportunity to testify:

June 16, 1989	City Council Chamber, Newark Boro of Madison, Hartley Dodge Memorial (Boro Hall)	1:00 P.M. 7:00 P.M.
June 19, 1989	Mary Roebling Building, 2nd Floor, Trenton Princeton University, Center For Energy and Environmental Studies, Princeton	1:00 P.M. 7:00 P.M.
June 20, 1989	Atlantic County Office Building, Northfield Dover Twp. Municipal Bldg. 33 Washington Street, Toms River Gallery Room	1:00 P.M. 6:30 P.M.
June 21, 1989	City Council Chambers, Camden Vineland City Hall	1:00 P.M. 7:00 P.M.

Requests to testify should indicate the name of the individual, organization represented, hearing location for presentation of the testimony, and special scheduling requirements. Requests to testify can be submitted up to the first day of public hearing. After that date individuals should appear at a hearing site and indicate their desire to testify to the hearing officer. The Division would appreciate the submission of prefiled testimony to accompany the Request to Testify. A Certified Court Reporter will be present at each hearing location and session. Requests to testify at a specific location, prefiled testimony and requests for additional information should be submitted to:

Edward J. Linky, Esq.
Chief Regulatory Officer
Division of Energy Planning and Conservation
101 Commerce Street
Newark, New Jersey 07102
201-648-2410

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Treatment Works Approval Annual Report and Fee Schedule

Public Hearing

Take notice that the Department of Environmental Protection will hold a public hearing to present the Treatment Works Annual Report and Fee Schedule for fiscal year 1989-1990. The Department proposed a new fee formula for treatment works approvals by proposing amendments to N.J.A.C. 7:1C, in the April 3, 1989, New Jersey Register (see 21 N.J.R. 819(a)). The Department anticipates that the proposed amendments to N.J.A.C. 7:1C will be adopted and published in the June 19, 1989, New Jersey Register so that the new fee formula will be effective before the beginning of the 1989-1990 fiscal year. The hearing will be held:

June 22, 1989 at 10:00 A.M.
Labor Education Center Auditorium
Cook College
Ryderson Lane
Rutgers University
New Brunswick, New Jersey

The Treatment Works Annual Report and Fee Schedule will be available at the hearing location. **Advance copies** can be obtained at 401 East State St., Trenton, New Jersey between 9:00 A.M. and 4:00 P.M. (telephone requests cannot be taken) or by sending a self-addressed 10 inch by 13 inch envelope to:

New Jersey Dept. of Environmental Protection
Division of Water Resources
Wastewater Facilities Management Element
Bureau of Construction and Connection Permits
Annual Report Request
CN-029
Trenton, New Jersey 08625

Contact Erin Indelicato for further information at (609) 292-4543.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Atlantic County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would be to expand the sewer service area of the Town of Hammonton to include the N.J. Expressway Authority's Central Maintenance Facility, Block 403 Lots 10 and 11 located in the Town of Hammonton.

This notice is being given to inform the public that a plan amendment has been developed for the Atlantic 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, Third 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 be extended 15 days after the close of the public hearing.

HUMAN SERVICES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

**Hearings and Reviews
Reopening of Comment Period**

Proposed New Rules: N.J.A.C. 10:120

Take notice that the Division of Youth and Family Services, in accordance with the requirements of N.J.A.C. 1:30-3.1(h)4, has reopened the comment period for the rules published in the New Jersey Register on November 7, 1988, at 20 N.J.R. 2742(a).

Please submit comments by June 19, 1989 to:

Kathryn Clark, Esq.
Administrative Practice Officer
Office of Legal and Regulatory Liaison
Division of Youth and Family Services
CN 717
Trenton, N.J. 08625

INSURANCE

(b)

**DIVISION OF THE NEW JERSEY REAL ESTATE
COMMISSION**

**Notice of Petition for Rulemaking and Action on
Petition**

Approved Schools; Requirements

N.J.A.C. 11:5-1.28

Petitioner: Frank Kovats of Kovats Real Estate Schools.
Authority: N.J.S.A. 45:15-10.1(a), N.J.S.A. 45:15-6 and N.J.S.A. 52:14B-4(f).

Take notice that on April 27, 1989, petitioner filed a petition with the New Jersey Real Estate Commission requesting an amendment to N.J.A.C. 11:5-1.28 concerning Approved Schools.

Specifically, the petitioner is requesting amendments to N.J.A.C. 11:5-1.28 concerning the facilities, tuition charges and advertising practices of schools approved by the Commission to conduct real estate prelicensure education courses. The petitioner has also requested that the issue of recruitment activities at schools owned by or affiliated with real estate brokers be addressed by rule. The amendments proposed by the petitioner are intended to accomplish the following:

1. To prohibit broker-owned schools entirely;
2. To prevent schools from being established for recruitment purposes;
3. To amend N.J.A.C. 11:5-1.28(n) to require that all schools may only charge a tuition amount that bears a reasonable relationship to the quality and quantity of instructional services rendered;
4. To amend N.J.A.C. 11:5-1.28(s) to prohibit schools from advertising or publicly representing themselves as being owned or affiliated with any real estate company or real estate franchise, and to prohibit any school advertisement from being included or contained within any real estate sales advertisement. Also, to prohibit any advertisement which is designed to recruit sales associates through the school;
5. To amend N.J.A.C. 11:5-1.28(s)2 to discourage any school from using the same or a similar name of any real estate company or franchise when the use of such name associates the school with any unrelated non-school activity;
6. To amend N.J.A.C. 11:5-1.28(m) to prohibit any classes from being held at the office of a broker; and
7. To amend N.J.A.C. 11:5-1.28 to discourage any direct or indirect solicitation of any listings from students while enrolled in any course, including any offers of compensation to such students for participation in any referral program.

Petitioner states that this amendment should be adopted 'so that the ultimate goal of unbiased, independent education can be achieved'.

At its May 9, 1989 meeting, the Commission considered this petition and decided to publish a notice of pre-proposal in the June 19, 1989, New Jersey Register to obtain public insight to petitioner's proposal.

LABOR

(c)

DIVISION OF PLANNING AND RESEARCH

**Grant Announcement
Improve Career Decision Making**

Take notice that a grant entitled Improve Career Decision Making is being offered in the amount of up to \$6,000 to provide training for counselors, planners and other interested individuals in utilizing labor market information in the counseling process.

The grant is open to certified counselor educators who possess a complete understanding of labor market information programs and how they relate to the delivery of career counseling and the ability to teach labor market information concepts and procedures to a wide variety of individuals.

Qualified applicants should submit evidence of an interest in providing Improve Career Decision Making training along with a detailed description of the applicant's qualifications to:

Laurence H. Seidel, Staff Director
New Jersey Occupational Information
Coordinating Committee
CN 056
Trenton, New Jersey 08625-0056

The deadline for submission of applications is June 30, 1989. Awards will be made by July 31, 1989.

LAW AND PUBLIC SAFETY

(d)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS**

**An Act Concerning Disclosure of Financial Interests
by Certain Health Care Practitioners and
Supplementing Chapter 9 of Title 45 of the Revised
Statutes**

Take notice that the State Board of Medical Examiners wishes to make all physicians, chiropractors and podiatrists, as well as the public, aware that the following statute, relating to the disclosure of financial interests in health care services to patients, is currently effective. The State Board of Medical Examiners, as authorized by this statute, will, in the future, promulgate rules and regulations necessary to carry out the purposes of this act, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

P.L. 1989, CHAPTER 19, approved February 6, 1989
Senate Committee Substitute (First Reprint) for
1988 Senate Nos. 734 and 2091

AN ACT concerning disclosure of financial interests by certain health care practitioners and supplementing chapter 9 of Title 45 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. For the purpose of this act:

"Health care service" means a business entity which provides on an inpatient or outpatient basis: testing for or diagnosis or treatment of human disease or dysfunction; or, dispensing of drugs or medical device for the treatment of human disease or dysfunction. Health care service includes, but is not limited to, a bioanalytical laboratory, pharmacy home health care agency, rehabilitation facility, nursing home, hospital or a facility which provides radiological or other diagnostic imager services, physical therapy, ambulatory surgery, or ophthalmic services.

"Immediate family" means the practitioner's spouse and children, the practitioner's siblings and parents, the practitioner's spouse's siblings and parents, and the spouses of the practitioner's children.

"Practitioner" means a physician, chiropractor or podiatrist license pursuant to Title 45 of the Revised Statutes.

"Significant beneficial interest" means any financial interest that equal to or greater than the lesser of: (1) 5% of the whole, or (2) \$5,000.00 but does not include ownership of a building wherein the space is lease

to a person at the prevailing rate under a straight lease agreement, or any interest held in publicly traded securities.

2. A practitioner shall not refer a patient or direct an employee of the practitioner to refer a patient to a health care service in which the practitioner, or the practitioner's immediate family, or the practitioner in combination with practitioner's immediate family has a significant beneficial interest unless the practitioner discloses the significant beneficial interest to the patient.

The practitioner shall provide the patient with a written disclosure form, prepared pursuant to section 3 of this act, and post a copy of this disclosure form in a conspicuous public place in the practitioner's office.

3. The written disclosure form required pursuant to section 2 of this act shall be in the following form:

Public law of the State of New Jersey mandates that a physician, chiropractor or podiatrist inform his patients of any significant financial interest he may have in a health care service.

Accordingly, I wish to inform you that I do have a financial interest in the following health care service(s) to which I refer my patients:

(list applicable health care services)

You may, of course, seek treatment at a health care service provider of your own choice. A listing of alternative health care service providers can be found in the classified section of your telephone directory under the appropriate heading.

4. The disclosure requirements of this act do not apply in the case of a practitioner who is providing health care services pursuant to a prepaid capitated contract entered into with the Division of Medical Assistance and Health Services in the Department of Human Services.

5. A practitioner who violates the provisions of this act is liable for a penalty pursuant to section 12 of P.L. 1978, c.73 (C.45:1-25).

6. The State Board of Medical Examiners established pursuant to R.S.45:9-1 shall adopt rules and regulations necessary to carry out the purposes of this act pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.).

7. This act shall take effect immediately.

HEALTH

Regulated Professions

Requires physicians, chiropractors and podiatrists to disclose their financial interest in health care services to patients.

(a)

DIVISION OF MOTOR VEHICLE SERVICES

Notice of Contract Carrier Applicant

Take notice that Glenn Paulsen, Director, Division of Motor Vehicle Services, 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 a Contract Carrier Permit.

CONTRACT CARRIER (NON-GRANDFATHER)
 Enzie Transport, Inc.
 P.O. Box 1268
 River Road
 Burlington, NJ 08016

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicle Services, 25 South Montgomery Street, Trenton, New Jersey 08666, within 20 days (June 25, 1989) following the publication date of an application.

PERSONNEL

(b)

MERIT SYSTEM BOARD

Petition for Rulemaking Promotional Examinations

N.J.A.C. 4A:4-2

Petitioner: William Seip.

Authority: N.J.S.A. 11A:4-14.

Take notice that on April 26, 1989, William Seip filed a petition with the Department of Personnel requesting a new rule on promotional examinations.

In particular, the petitioner proposes a rule requiring the Department of Personnel to administer promotional examinations and certify a list of eligibles within one year after the closing date for the filing of applications. If the Department of Personnel fails to certify a promotional list within one year from the closing date, the promotional examination would have to be announced to allow additional employees to apply. In support of this proposal, Mr. Seip describes a situation whereby he was found ineligible for a promotional examination due to the lack of eight months of experience as of the June, 1987 closing date. However, due to delays in the examination process, a list of eligibles was not issued until May, 1989. By that time, petitioner asserts that he exceeded the experience requirements by one year and three months.

Notice of further action on this petition will be given pursuant to N.J.A.C. 4A:1-1.4.

TREASURY-GENERAL

(c)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection

Notice of Assignments—Month of April 1989

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, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated April 3, 1989.

The following assignments have been made:

DBC#	PROJECT	A/E	CCE
I057	Renovations & Additions Industrial Technology Building Kean College Union, NJ	Leslie M. Dennis & Son	\$1,000,000
T206	6,000 Gallon Fuel Tank DOT Maintenance Facility Hanover Township, NJ	Woodward-Clyde Consultants	\$65,000
C402	Switchgear Controls As-Built Trenton State Prison Trenton, NJ	Frank R. Holtaway & Son, Inc.	\$4,000 Services
C392	Soils & Foundation Investigation 600 Minimum Security Beds Newark, Leesburg, Annandale & Bordentown	Melick-Tully & Assoc., Inc.	\$27,470 Services
C392	Topo Surveys 600 Minimum Security Beds Newark, Leesburg, Annandale & Bordentown	Chester Partnership	\$33,000 Services
C392	Environmental Assessment Statement 600 Minimum Security Beds Newark, Leesburg, Annandale & Bordentown	Environmental Health Science, Inc.	\$20,000 Services
B007	DEC/Capital Complex Cooling Systems Analysis Trenton, NJ	Empire Testing & Balancing, Inc.	\$174,000 Services
A582	Study—HVAC & Electric Systems Richard J. Hughes Justice Complex Trenton, NJ	London Kantor Umland & Assoc.	\$25,500 Services
P610	Renovation Work & New Maintenance Complex Cape May Point State Park Cape May County, NJ	Lammy & Girogio, PA	\$300,000
P595	Structural Evaluation Craig House Monmouth Battlefield State Park Monmouth County, NJ	Leon Fuller Parham Assoc.	\$2,500 Services
M1010	Renovations to Maple Hall New Lisbon Developmental Center New Lisbon, NJ	John C. Morris Assoc., Inc.	\$215,000

P612	Structural Evaluation Ackerman-Zabriskie-Steuben House River Edge, NJ Bergen County	Albin H. Rothe, AIA	\$2,500 Services						
M1009	Steamline Repair/Replacement New Lisbon Developmental Center New Lisbon, NJ	John C. Morris Assoc., Inc.	\$85,000	I054	Upgrade Domestic/Fire Water Sys. Stockton State College	Roy Larry Schlein & Assoc.	\$320,000		
W046	Facility Consultant—FY '89 Division of Parks and Forestry Dept. of Environmental Protection	Frederic R. Harris, Inc.	\$30,000 Services						
P606	Statewide Dam Inspections Division of Parks & Forestry Dept. of Environmental Protection	Frederic R. Harris, Inc.	\$57,500 Services						
	COMPETITIVE PROPOSALS								
	Frederic R. Harris, Inc.	\$57,500 Lump Sum							
	Woodward Clyde Consultants	113,500 Lump Sum							
	Ebasco Services, Inc.	141,025 Lump Sum							
I053	Experimental Theater Renovations Stockton State College Pomona, NJ	Wasleski Steelman Sindoni Wertz	\$334,000						
	COMPETITIVE PROPOSALS								
	John C. Weldin, PE, PA	\$39,000 Lump Sum							
	Henkels & McCoy	48,608 Lump Sum							
	Syska & Hennessy	No proposal received							

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	N.J.A.C.	Expiration Date
:1	5/4/92	3:21	2/2/92
:5	10/20/91	3:22	5/12/94
:6	5/4/92	3:23	7/6/92
:6A	5/4/92	3:24	8/20/89
:7	5/4/92	3:25	8/17/92
:10	5/4/92	3:26	12/31/90
:10A	5/4/92	3:27	9/16/90
:10B	10/6/91	3:28	12/17/89
:11	5/4/92	3:30	10/17/88
:13	5/4/92	3:32	10/1/93
:13A	4/3/94	3:38	10/5/92
:20	5/4/92	3:41	10/16/90
:21	5/4/92	3:42	4/4/93
:30	2/14/91		
:31	6/17/92		

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
:1	9/3/90
:2	1/17/94
:3	6/18/89
:5	6/18/89
:6	9/3/90
:9	7/7/91
:16	5/7/90
:22	7/6/92
:23	7/18/93
:24	2/11/90
:32	6/1/92
:33	3/6/94
:48	11/27/90
:50	5/1/92
:52	6/7/90
:53	3/3/91
:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
:68	11/7/93
:69	11/7/93
:70	5/7/90
:71	7/8/93
:72	7/8/93
:73	7/8/93
:74	7/8/93
:76	8/29/89
:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
:1	1/6/91
:2	4/15/90
:6	3/3/91
:7	9/16/90
:11	5/1/94
:13	11/17/91
:17	6/18/91
:18	1/19/93
:19	3/17/91

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
5:2	4/10/94
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/10/94
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:15	5/1/94
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	10/27/93
5:51	9/1/93

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
5:70	7/9/92	7:19	4/15/90
5:71	3/1/90	7:19A	2/19/90
5:80	5/20/90	7:19B	2/19/90
5:91	6/16/91	7:20	5/6/90
5:92	6/16/91	7:20A	12/16/93
5:100	5/5/94	7:22	1/5/92
		7:23	6/18/89
		7:24	5/19/91
		7:25	2/18/91
		7:25A	5/6/90
		7:26	11/4/90
		7:26B	12/21/92
		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	11/21/93
		7:37	Exempt
		7:38	9/18/90
		7:45	2/6/94

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	2/6/94
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
6:22A	12/19/93
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	4/10/94
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
6:78	11/7/93
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	11/28/93
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	5/12/94
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	4/27/94
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

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	4/12/94
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
8:31C	1/20/92
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
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	4/24/94
8:33K	3/27/94
8:33N	5/15/94
8:34	11/15/93
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	11/2/93
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

N.J.A.C.	Expiration Date
8:57	6/18/90
8:59	10/1/89
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	8/19/93
8:71	2/17/94

N.J.A.C.	Expiration Date
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
10:83	1/19/94
10:85	1/30/90
10:87	1/27/94
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	6/17/90
9:3	9/27/93
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	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	5/20/90
9:15	10/25/88

N.J.A.C.	Expiration Date
10:95	8/23/89
10:97	5/15/94
10:99	2/19/90
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	5/15/94
10:122A	Exempt
10:122B	9/10/89
10:123	7/29/90
10:124	12/7/92
10:125	7/16/89
10:126	11/7/93
10:127	8/26/93
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:6	2/21/89
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:31	6/5/94
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	2/21/94
10:40	5/11/94
10:41	3/20/94
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	11/21/93
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	12/15/93
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93

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	5/2/94
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	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:15	12/3/89
11:16	2/3/91
11:17	4/18/93

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
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
12:41	1/17/94
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	11/28/93
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

N.J.A.C.	Expiration Date
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	10/26/93
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	10/31/93
13:43	9/1/93
13:44	8/20/89
13:44B	11/2/92
13:44C	7/18/93
13:45A	12/16/90
13:45B	4/17/94
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	8/20/89
13:48	1/21/91
13:49	12/16/93
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
13:78	3/20/94

COMMERCE, ENERGY, 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:60	11/21/93
12A:80	2/6/94
12A:81	2/6/94
12A:82	2/6/94
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

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	4/24/94
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:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	3/27/94
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	9/26/93
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90

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
16:5	3/6/94
16:6	9/3/90
16:6	3/6/94
16:13	5/7/89
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	5/3/94
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	2/6/94
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93

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	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	9/26/93
17:25	6/18/89
17:27	10/7/93

N.J.A.C.	Expiration Date
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
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	3/14/94
18:19	3/14/94
18:22	2/24/94
18:23	2/24/94
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	10/17/93
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	4/27/94
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
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
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/13/94

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 April 3, 1989 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.1989 d.1 means the first rule adopted in 1989.

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 MARCH 20, 1989

NEXT UPDATE: SUPPLEMENT APRIL 17, 1989

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
20 N.J.R. 1127 and 1316	June 6, 1988	20 N.J.R. 3047 and 3182	December 19, 1988
20 N.J.R. 1317 and 1500	June 20, 1988	21 N.J.R. 1 and 88	January 3, 1989
20 N.J.R. 1501 and 1594	July 5, 1988	21 N.J.R. 89 and 224	January 17, 1989
20 N.J.R. 1595 and 1758	July 18, 1988	21 N.J.R. 225 and 364	February 6, 1989
20 N.J.R. 1759 and 1976	August 1, 1988	21 N.J.R. 365 and 588	February 21, 1989
20 N.J.R. 1977 and 2122	August 15, 1988	21 N.J.R. 589 and 658	March 6, 1989
20 N.J.R. 2123 and 2350	September 6, 1988	21 N.J.R. 659 and 810	March 20, 1989
20 N.J.R. 2351 and 2416	September 19, 1988	21 N.J.R. 811 and 954	April 3, 1989
20 N.J.R. 2417 and 2498	October 3, 1988	21 N.J.R. 955 and 1036	April 17, 1989
20 N.J.R. 2499 and 2610	October 17, 1988	21 N.J.R. 1037 and 1178	May 1, 1989
20 N.J.R. 2611 and 2842	November 7, 1988	21 N.J.R. 1179 and 1472	May 15, 1989
20 N.J.R. 2843 and 2948	November 21, 1988	21 N.J.R. 1475 and 1598	June 5, 1989
20 N.J.R. 2949 and 3046	December 5, 1988		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-8.2	Transmission of contested cases to OAL	21 N.J.R. 1181(a)		
1:1-10.4	Discovery: requests for admissions	20 N.J.R. 2845(b)	R.1989 d.190	21 N.J.R. 889(a)
1:1-14.11	Transcripts of OAL proceedings: pre-proposal	21 N.J.R. 1181(b)		
1:13A	Lemon Law hearings	21 N.J.R. 91(a)	R.1989 d.189	21 N.J.R. 889(b)

Most recent update to Title 1: TRANSMITTAL 1989-2 (supplement March 20, 1989)

AGRICULTURE—TITLE 2				
2:5-2.1, 2.3, 2.5, 2.6, 2.8	Equine infectious anemia	21 N.J.R. 92(a)	R.1989 d.270	21 N.J.R. 1384(a)
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)		
2:69-1.11	Commercial values of primary plant nutrients	21 N.J.R. 813(a)		
2:71-2.2, 2.4	"Jersey Fresh" logo program	21 N.J.R. 591(a)	R.1989 d.235	21 N.J.R. 1118(a)
2:71-2.4, 2.5, 2.6	"Jersey Fresh" logo program	21 N.J.R. 227(a)	R.1989 d.234	21 N.J.R. 1118(b)
2:76-3.12	Farmland preservation programs: deed restrictions	21 N.J.R. 1183(a)		
2:76-4.11	Municipally-approved farmland preservation programs: deed restrictions	21 N.J.R. 1183(b)		
2:76-5.3	Soil and water conservation projects: cost sharing	21 N.J.R. 230(a)	R.1989 d.213	21 N.J.R. 981(a)
2:76-9.1, 9.2	Emergency acquisition of development easements on farmland	21 N.J.R. 231(a)	R.1989 d.214	21 N.J.R. 981(b)

Most recent update to Title 2: TRANSMITTAL 1989-3 (supplement March 20, 1989)

BANKING—TITLE 3				
3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)	R.1989 d.191	21 N.J.R. 981(c)
3:1-16.1	Mortgage loan practices	21 N.J.R. 957(a)		
3:11	Lending and investments by State banks	21 N.J.R. 367(a)	R.1989 d.236	21 N.J.R. 1121(a)
3:22-1	Insurance premium finance agreements	21 N.J.R. 661(a)	R.1989 d.307	21 N.J.R. 1516(a)
3:24-5.1	Licensed check cashing	20 N.J.R. 2353(a)	R.1989 d.219	21 N.J.R. 990(a)
3:33-1	Proposed interstate acquisition: determination of eligibility	21 N.J.R. 814(a)		
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)	R.1989 d.191	21 N.J.R. 981(c)

Most recent update to Title 3: TRANSMITTAL 1988-7 (supplement November 21, 1988)

CIVIL SERVICE—TITLE 4				
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:2-7.7(c)	Repeal (see 4A:3-4.11)	21 N.J.R. 1184(a)		
4:2-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:3-16	Layoffs in local service	21 N.J.R. 1185(a)		
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		

Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)

PERSONNEL—TITLE 4A				
4A:3-2.2	Designation of SES positions: administrative correction			21 N.J.R. 1331(a)
4A:3-4.11	State service: downward title reevaluation pay adjustments	21 N.J.R. 1184(a)		
4A:8	Layoffs	20 N.J.R. 2955(b)		
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		

Most recent update to Title 4A: TRANSMITTAL 1989-1 (supplement January 17, 1989)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
COMMUNITY AFFAIRS—TITLE 5				
5:2-1	Organization of department (see also 5:51-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:2-2	Petitions for rules (recodified from 5:29-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:10-11.1	Hotels and multiple dwellings: correction to text			21 N.J.R. 1123(a)
5:11	Relocation assistance and eviction	21 N.J.R. 231(b)	R.1989 d.188	21 N.J.R. 891(a)
5:11	Relocation Assistance and Eviction rules: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 592(a)		
5:11-8.5	Recovery of relocation assistance costs	21 N.J.R. 1039(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)	R.1989 d.10	21 N.J.R. 1123(b)
5:17	Retirement community full disclosure	21 N.J.R. 958(a)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:26-1.3, 11.7	Retirement community full disclosure	21 N.J.R. 958(a)		
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:29-1	Petitions for rules (see 5:2-2)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:29-2	Landlord-tenant relations	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:50	Administration of funds received under Higher Education Act of 1965	21 N.J.R. 367(b)	R.1989 d.227	21 N.J.R. 1133(a)
5:51-1	Handicapped Persons' Recreational Opportunities Act (recodified from 5:2-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:70-6.3	Congregate Housing Services Program: service subsidies formula	21 N.J.R. 816(a)		
5:80-3.3	Housing and Mortgage Finance Agency: return on housing sponsors' equity	21 N.J.R. 94(a)	R.1989 d.259	21 N.J.R. 1331(b)
5:91-5.2, 6.2, 7.1, 7.3	Council on Affordable Housing: mediation process	20 N.J.R. 3050(a)		
5:92-1.3, 11.2, 14.3	Council on Affordable Housing: alternative living arrangements	21 N.J.R. 595(a)	R.1989 d.264	21 N.J.R. 1331(c)
5:92-1.3, 12	Council on Affordable Housing: controls on affordability	21 N.J.R. 592(b)		
5:92-8.4	Council on Affordable Housing: developer agreements	21 N.J.R. 1185(c)		
5:92-14.4	Council on Affordable Housing: rental unit credit	21 N.J.R. 234(a)	R.1989 d.265	21 N.J.R. 1332(a)
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for the institutionalized elderly	21 N.J.R. 368(a)	R.1989 d.295	21 N.J.R. 1516(b)
5:100	Ombudsman for the institutionalized elderly: extension of comment period	21 N.J.R. 958(b)		

Most recent update to Title 5: TRANSMITTAL 1989-3 (supplement March 20, 1989)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

EDUCATION—TITLE 6

6:3-5	Reporting of allegations of child abuse	21 N.J.R. 3(b)	R.1989 d.193	21 N.J.R. 892(a)
6:3-6	Enforcement of drug free school zones	21 N.J.R. 817(a)		
6:8-1.1, 4.3, 7.1	High school core proficiencies	21 N.J.R. 235(a)	R.1989 d.240	21 N.J.R. 1134(a)
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:28	Special education	21 N.J.R. 239(a)	R.1989 d.239	21 N.J.R. 1385(a)
6:30-1.7, 2.3, 2.6	Adult education programs: monitoring and funding	21 N.J.R. 1039(b)		
6:39	High school core proficiencies	21 N.J.R. 235(a)	R.1989 d.240	21 N.J.R. 1134(a)
6:46-4.1, 4.4-4.20, 5.2	Private vocational schools and correspondence schools	21 N.J.R. 262(a)	R.1989 d.241	21 N.J.R. 1137(a)

Most recent update to Title 6: TRANSMITTAL 1989-3 (supplement March 20, 1989)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-1.2	Petition for rulemaking procedure	21 N.J.R. 102(a)		
7:1-1.2	Petition for rulemaking procedure: extension of comment period	21 N.J.R. 1289(a)		
7:1C-1.2-1.5, 1.7-1.9, 1.13, 1.14	90-day construction permits	21 N.J.R. 819(a)		
7:4A	Historic Preservation Grant Program	21 N.J.R. 958(c)		
7:6	Boating rules	Emergency (expires 6-11-89)	R.1989 d.244	21 N.J.R. 1157(a)
7:6-1.44, 4.7, 9	Lanyard cut-off switch; Greenwood Lake boating; personal watercraft	Emergency (expires 6-11-89)	R.1989 d.245	21 N.J.R. 1157(b)
7:7	Coastal Permit Program	21 N.J.R. 369(a)	R.1989 d.309	21 N.J.R. 1526(a)
7:7	Coastal Permit Program: extension of comment period	21 N.J.R. 1041(a)		
7:7-2.3	Waterfront development	21 N.J.R. 4(a)	R.1989 d.243	21 N.J.R. 1141(a)
7:7-2.3	Waterfront development: extension of comment period	21 N.J.R. 267(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:7A-1.4, 2.5, 6, 7	Freshwater wetlands transition areas	21 N.J.R. 596(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)	R.1989 d.271	21 N.J.R. 1332(b)
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	Surface water quality standards: extension of comment period	20 N.J.R. 2427(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)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:11-2.1-2.5, 2.8-2.14	Sale of water from Delaware and Raritan Canal, Spruce Run/Round Valley system	21 N.J.R. 103(a)	R.1989 d.310	21 N.J.R. 1527(a)
7:12-1.1, 2.1, 3.2, 4.1, 4.2, 5.1, 9.1, 9.7, 9.8, 9.9, 9.12	Shellfish-growing water classification	21 N.J.R. 1041(b)		
7:13	Flood hazard area control	21 N.J.R. 371(a)		
7:13	Flood hazard area control: extension of comment period	21 N.J.R. 1046(a)		
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
7:13-7.1(d)	Redelineation of West Branch Rahway River, West Orange	21 N.J.R. 605(a)		
7:13-7.1(d)	Redelineation of Ramapo River in Mahwah	21 N.J.R. 1046(b)		
7:14	Water pollution control	21 N.J.R. 373(a)	R.1989 d.282	21 N.J.R. 1530(a)
7:14A	New Jersey Pollutant Discharge Elimination System (NJPDDES)	21 N.J.R. 707(a)		
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:14A-5.12	Closure of hazardous waste facilities	20 N.J.R. 2650(a)	R.1989 d.206	21 N.J.R. 991(a)
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:23	Emergency flood control	21 N.J.R. 1051(a)		
7:25-2.18	New Sweden and Oyster Creek wildlife management areas	21 N.J.R. 267(b)	R.1989 d.215	21 N.J.R. 1002(a)
7:25-5	1989-1990 Game Code	21 N.J.R. 1289(b)		
7:25-7.13	Taking of blue crabs	21 N.J.R. 268(a)	R.1989 d.269	21 N.J.R. 1333(a)
7:25-22.1-22.4	Harvesting Atlantic menhaden	21 N.J.R. 107(a)		
7:26-1.1, 1.4, 2.7, 2.11, 2.12, 2.13, 2A.8, 2B.4, 2B.8, 3.1-3.5, 3.7, 4.1-4.5, 4.7-4.10, 16.2, 16.3, 16.13	Solid waste facility and transporter registration fees	20 N.J.R. 2668(a)	R.1989 d.216	21 N.J.R. 1002(b)
7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:26-1.4, 9.8, 9.9, 9.10, 9.11, 9.13, App. A, 12.3, 12.5	Closure of hazardous waste facilities	20 N.J.R. 2650(a)	R.1989 d.206	21 N.J.R. 991(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)	R.1989 d.308	21 N.J.R. 1558(a)
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)	R.1989 d.173	21 N.J.R. 893(a)
7:26-8.2, 12.3	Radioactive mixed wastes	21 N.J.R. 1053(a)		
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)		
7:26-10.6, 11.3	Interim status hazardous waste facilities: closure and post-closure requirements	21 N.J.R. 1054(a)		
7:26-12.4	Hazardous waste management: permit standards	21 N.J.R. 108(a)	R.1989 d.217	21 N.J.R. 1010(a)
7:26B-1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 3.3, 5.2, 7.5, 9.2, 10.1, 13.1	Environmental Cleanup Responsibility Act rules	21 N.J.R. 402(a)		
7:27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)		
7:27-23.2, 23.3, 23.4, 23.5	Volatile organic substances in consumer products	21 N.J.R. 1055(a)		
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)		
7:28-25	Radiation laboratory fee schedule	21 N.J.R. 826(a)		

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7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)		

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8:8	Collection, processing, storage and distribution of blood	21 N.J.R. 407(a)	R.1989 d.246	21 N.J.R. 1412(a)
8:31B-3.16	Hospital reimbursement: labor cost component	21 N.J.R. 661(b)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.51-3.55, 3.58, 3.59, 3.73, App. II, IX, 5.1-5.3	Hospital reimbursement: extension of comment period for proposed changes published January 17, 1989	21 N.J.R. 606(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	Hospital reimbursement: 1989 rate setting	21 N.J.R. 135(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	1989 hospital rate setting: correction to Summary statement	21 N.J.R. 413(a)		
8:31B-3.22, 3.23, 3.24, App. XI	Hospital reimbursement: graduate medical education	21 N.J.R. 1059(a)		
8:31B-3.51-3.55, 3.58, 3.59	Hospital reimbursement: appeals	21 N.J.R. 131(a)		
8:31B-5.1, 5.2, 5.3	Hospital reimbursement: Diagnosis Related Groups	21 N.J.R. 138(a)		
8:31C	Residential alcoholism treatment: facility rate setting	20 N.J.R. 2960(a)	R.1989 d.272	21 N.J.R. 1419(a)
8:33-1.5, 2.8	Applications to convert licensed acute care beds to non-acute categories	21 N.J.R. 272(a)		
8:33C	Perinatal services: Certificate of Need review process	21 N.J.R. 1187(a)		
8:33G	Computerized tomography services: certificate of need process	21 N.J.R. 1061(a)		
8:33J	Nuclear magnetic resonance services	21 N.J.R. 416(a)	R.1989 d.276	21 N.J.R. 1423(a)
8:33J-1.1-1.2	Magnetic resonance imaging services	21 N.J.R. 413(b)	R.1989 d.274	21 N.J.R. 1423(b)
8:33K	Residential alcoholism treatment facilities: bed standards	21 N.J.R. 150(a)	R.1989 d.218	21 N.J.R. 1011(a)
8:33M	Rehabilitation hospitals and comprehensive rehabilitation services: need review process	21 N.J.R. 1062(a)		
8:33N	Advanced life support programs: mobile intensive care units and critical care transport units	21 N.J.R. 268(b)	R.1989 d.273	21 N.J.R. 1425(a)
8:38-1.1, 1.4	HMOs and vision care services	21 N.J.R. 6(a)	R.1989 d.180	21 N.J.R. 895(a)
8:39-19.7	Hot water temperature in long-term care facilities	21 N.J.R. 417(a)		
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)		
8:42A	Licensure of alcoholism treatment facilities: correction to proposal	21 N.J.R. 833(a)		
8:43B-11.1, 11.3, 11.4	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)		
8:43H	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)		
8:43H-23, 24	Licensure of comprehensive rehabilitation hospitals: physical plant; functional requirements	21 N.J.R. 1188(a)		
8:59	Worker and Community Right to Know Act rules	21 N.J.R. 1253(a)		
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:60-1.4, 2.1 (12:120-1.4, 2.1)	Asbestos removal defined	20 N.J.R. 1049(a)	R.1989 d.247	21 N.J.R. 1333(b)
8:61-2.4	Retrovir reimbursement program	21 N.J.R. 606(b)	R.1989 d.275	21 N.J.R. 1429(a)
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 2769(a); 21 N.J.R. 63(b), 756(b))	20 N.J.R. 1766(a)	R.1989 d.257	21 N.J.R. 1430(a)
8:71	Interchangeable drug products (see 21 N.J.R. 63(c), 756(a))	20 N.J.R. 2356(a)	R.1989 d.256	21 N.J.R. 1429(c)
8:71	Interchangeable drug products (see 21 N.J.R. 755(b))	20 N.J.R. 3078(a)	R.1989 d.255	21 N.J.R. 1429(b)
8:71	List of Interchangeable Drug Products (see 21 N.J.R. 755(a))	21 N.J.R. 7(a)		
8:71	Interchangeable drug products	21 N.J.R. 662(a)		

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9:2-4.1	Alternate benefit program: eligibility for enrollment	21 N.J.R. 1268(a)		
9:4-1.3, 1.9, 1.10, 2.1-2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)		
9:6A-4.3	Managerial employees at State colleges: annual salary increases	20 N.J.R. 3079(a)	R.1989 d.220	21 N.J.R. 1011(b)
9:7-3.2	1989-90 Tuition Aid Grant Award Table	21 N.J.R. 109(a)	R.1989 d.185	21 N.J.R. 897(a)

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9:7-4.4	Garden State Scholarships supplemental awards eligibility	21 N.J.R. 110(a)	R.1989 d.186	21 N.J.R. 898(a)
9:7-6.4	Garden State Graduate Fellowships: approved programs	20 N.J.R. 2624(a)	R.1989 d.184	21 N.J.R. 898(b)
9:7-8.1	Vietnam Veterans Tuition Aid: eligibility	20 N.J.R. 2625(a)	R.1989 d.183	21 N.J.R. 899(a)
9:9-11	Stafford Loan Program: institution compliance standards	21 N.J.R. 963(a)		
9:11	Educational Opportunity Fund Program	20 N.J.R. 2506(a)	R.1989 d.222	21 N.J.R. 1012(a)
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)	R.1989 d.224	21 N.J.R. 1012(b)
9:11-1.6, 1.8, 1.9, 1.20	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)	R.1989 d.221	21 N.J.R. 1011(c)
9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)	R.1989 d.223	21 N.J.R. 1013(a)
9:12	Educational Opportunity Fund Program	20 N.J.R. 2506(a)	R.1989 d.222	21 N.J.R. 1012(a)
9:12-2.6, 2.9	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)	R.1989 d.221	21 N.J.R. 1011(c)
9:15	Graduate medical education program	21 N.J.R. 1271(a)		

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10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)	R.1989 d.284	21 N.J.R. 1562(a)
10:37-5.6-5.11, 5.16-5.24	Repeal (see 10:31)	21 N.J.R. 273(a)	R.1989 d.283	21 N.J.R. 1572(a)
10:40	Organization of Division of Developmental Disabilities	Exempt	R.1989 d.301	21 N.J.R. 1572(b)
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)	R.1989 d.302	21 N.J.R. 1573(a)
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)		
10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:49-1.1	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:49-1.1, 1.7-1.10, 1.14, 1.17, 1.19, 1.20, 1.22, 1.24, 1.26	Medicaid Administration Manual	21 N.J.R. 417(b)		
10:63-3.9-3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:63-3.21	Long-term care facilities: Medicaid occupancy level supplemental payment	Emergency (expires 6-17-89)	R.1989 d.254	21 N.J.R. 1456(a)
10:67-1.1, 1.6	Psychological Services: correction to text	_____	_____	21 N.J.R. 1430(b)
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
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10:81-4.5	AFDC program: voluntary restricted payments	21 N.J.R. 7(b)	R.1989 d.205	21 N.J.R. 1013(b)
10:81-6.17	Emergency fair hearings: repealed text	_____	_____	21 N.J.R. 1014(a)
10:81-8.22, 8.23	Public Assistance Manual: Medicaid coverage of newborn children	21 N.J.R. 967(a)		
10:81-11.4	Direct child support payments to AFDC clients	21 N.J.R. 423(a)		
10:81-11.6	Child Support Program: incentive payment methodology	21 N.J.R. 663(a)		
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10:85-3.2	General Assistance: residency and municipal responsibility	21 N.J.R. 835(a)		
10:85-3.2	GAM application process: correction to text	_____	_____	21 N.J.R. 1147(a)
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10:97	Vending Facility Program for blind and visually impaired	21 N.J.R. 424(a)	R.1989 d.249	21 N.J.R. 1431(a)
0:120	Youth and Family Services hearings	20 N.J.R. 2742(a)		
0:122	Requirements for child care centers	20 N.J.R. 3079(b)	R.1989 d.261	21 N.J.R. 1431(b)
0:123-3.2	Residential health care facilities/boardings homes: personal needs allowance	21 N.J.R. 788(a)	R.1989 d.285	21 N.J.R. 1575(a)
0:133	Personal Attendant Services Program	21 N.J.R. 273(b)		
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10A:16-2.9	Infirmity care	21 N.J.R. 969(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:17-8	Recreation and leisure time activities	21 N.J.R. 665(a)		
10A:18-2.5, 4.4	Correspondence between inmates at different facilities; exchange of publications	21 N.J.R. 837(a)		
10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 277(a)	R.1989 d.204	21 N.J.R. 1014(b)
10A:18-4.7	Inspection of outgoing publications	21 N.J.R. 277(b)	R.1989 d.203	21 N.J.R. 1014(c)
10A:33	Juvenile Detention Commitment Programs	21 N.J.R. 667(a)	R.1989 d.286	21 N.J.R. 1517(a)
10A:34-2.16, 2.20	Municipal detention facilities: surveillance of detainees; reporting deaths	21 N.J.R. 969(b)		

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11:1-5.1	FAIR plan surcharge: repeal rule	20 N.J.R. 2507(a)		
11:1-10	Foreign and alien property and casualty insurers: admission requirements	21 N.J.R. 426(a)		
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11:3-8.2, 8.4	Nonrenewal of automobile policies	21 N.J.R. 1306(a)		
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11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 839(a)		
11:3-20	Private passenger automobile insurers: financial disclosure and excess profits reporting	21 N.J.R. 667(b)	R.1989 d.277	21 N.J.R. 1335(a)
11:3-20	Financial disclosure and excess profits reporting: corrected responses to comments	21 N.J.R. 667(b)	R.1989 d.277	21 N.J.R. 1517(b)
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11:3-25	Automobile coverage: residual market equalization charges	21 N.J.R. 278(a)	R.1989 d.279	21 N.J.R. 1361(a)
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11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
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11:5-3, 4, 5	Formal proceedings by Real Estate Commission	21 N.J.R. 1314(a)		
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11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	20 N.J.R. 2010(a)		
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2:16-4.8	Employee remuneration for lodging and meals, room and board	21 N.J.R. 689(b)	R.1989 d.303	21 N.J.R. 1576(a)
2:17-1.6	Unemployment insurance benefits: temporary separation from work	20 N.J.R. 1333(a)		
2:17-2.4, 2.5	Requalification for unemployment insurance benefits	20 N.J.R. 1522(a)		
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2:56-2.1	Wage and hour compliance: trainees in company programs	21 N.J.R. 692(a)	R.1989 d.304	21 N.J.R. 1578(a)
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2:100-11	Public employee safety and health: control of hazardous energy sources	21 N.J.R. 620(a)	R.1989 d.238	21 N.J.R. 1144(a)
2:120-1.4, 2.1 (8:60-1.4, 2.1)	Asbestos removal defined	20 N.J.R. 1049(a)	R.1989 d.247	21 N.J.R. 1333(b)
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2A:55	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)		
2A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)		
2A:100-1.2, 1.3, 1.4	Commission on Science and Technology: Innovation/Partnership program	21 N.J.R. 433(a)	R.1989 d.225	21 N.J.R. 1146(a)
2A:120-2	Urban Enterprise Zone Program: certification for zone business benefits	21 N.J.R. 693(a)		
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3:2-21	Transportation of alcoholic beverages into, through or out of State	21 N.J.R. 1304(a)		
3:10	Multiple dwelling reports concerning racial composition	21 N.J.R. 11(b)	R.1989 d.211	21 N.J.R. 1016(a)
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3:27-8.16, 9.5	Architects and certified landscape architects: change of address; service of process	21 N.J.R. 114(b)	R.1989 d.202	21 N.J.R. 1016(b)
3:29-6	Practice of accountancy: continuing education	20 N.J.R. 2532(a)	R.1989 d.194	21 N.J.R. 908(c)
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3:39A-3.2	Unlawful practices and arrangements by physical therapists: preproposal	20 N.J.R. 2242(a)		
3:39A-5.1	Educational requirements for licensure as physical therapist	20 N.J.R. 2243(a)		
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16:28A-1.31, 1.46	Bus stop zones along Route 45 in Mannington Township and U.S. 130 in Delran Township	21 N.J.R. 701(b)	R.1989 d.289	21 N.J.R. 1523(a)
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