

# NEW JERSEY REGISTER



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## THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 21 NUMBER 22

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(Includes adopted rules filed through October 26, 1989)

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: SEPTEMBER 18, 1989**

See the Register Index for Subsequent Rulemaking Activity.

**NEXT UPDATE: SUPPLEMENT OCTOBER 16, 1989**

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# INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **December 20, 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

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW

#### Uniform Administrative Procedure Rules Ordering a Transcript; Cost

#### Proposed Amendment: N.J.A.C. 1:1-14.11

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1989-603.

Submit comments by December 20, 1989 to:

Steven L. Lefelt, Deputy Director  
Office of Administrative Law  
Quakerbridge Plaza, Bldg. 9  
CN 049  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Office of Administrative Law (OAL) pre-proposed a substantial amendment of N.J.A.C. 1:1-14.11 on May 15, 1989 at 21 N.J.R. 1181(b). The pre-proposed amendment was intended to conform OAL practice to the 1989 revision of New Jersey Court Rule 2:5-3, which relates to transcripts ordered for appeals. At the same time, the pre-proposal suggested changes in the current process for ordering transcripts of OAL hearings, whether or not the transcript was needed for an appeal to a court. Numerous comments were submitted in response to the pre-proposal. After considering these comments, the OAL has decided to propose amendments to N.J.A.C. 1:1-14.11 which differ in several respects from the pre-proposal.

Comments were received from court reporting firms, including Rosenberg & Associates, Silver and Renzi and Buehrer Associates; the Department of Human Services; the Board of Public Utilities; the Department of Public Advocate, Division of Rate Counsel; the Division of Pensions; the Department of Personnel; Atlantic Electric; PSE&G; Daniel Duthie, Esq.; Joan Gelber, DAG, and the Supreme Court Civil Practice Committee.

Many commenters objected to the pre-proposal because it required all requests for transcripts to be made through the OAL. Their reasons included the following: (1) the current system of ordering stenographic transcripts directly from court reporting firms works well and should not be changed; (2) requiring requests to be processed by the OAL might cause delays; (3) the pre-proposed system would make it difficult to arrange next-day copy; (4) the OAL would need additional personnel to handle transcript requests, thus raising the cost to taxpayers; and (5) the Court Rule only applies when transcripts are being ordered for a court appeal. The OAL believes the practical implementation of the pre-proposal could have been managed. However, in light of the sentiment in favor of retaining the current system, the OAL has decided to propose only those changes in the current system which are necessary to conform its practice with R. 2:5-3. A separate process is proposed only for the preparation of transcripts needed for a court appeal. This process is covered by subsection (d) and constitutes the minimum revision necessary to conform OAL's transcript rule with Court Rule 2:5-3. Thus, for the most part, transcripts of audiotaped hearings may continue to be ordered from the clerk of the agency in which the hearing was conducted and stenographically recorded transcripts may continue to be ordered directly from the reporting service. Therefore, transcript processing delays should be minimal and next-day copy will remain available for most administrative hearings.

Under the proposed amendment, for cases heard by an administrative law judge (ALJ), transcript requests for an appeal to court must be made to the OAL Clerk. For cases heard by an agency head, the request shall be made to the Clerk of that agency. This process for ordering transcripts for court appeals would apply for interlocutory appeals as well as appeals after an agency final decision. The court rules relating to transcripts do not distinguish between these types of appeals. Subsection (e) specifically

incorporates for this process the certification, deposit, billing and copy requirements of R. 2:5-3.

Reporting services which commented on the pre-proposal strongly objected to the provision that existing transcripts must be made available for copying. They claimed the loss of copy sales would threaten their financial position. In addition, they argued that the Right to Know Law requirement that public documents be made available for copying should not be applied to the reporting firms' product.

R. 2:5-3(a) states: "If the appeal is from an administrative agency or officer which has had the verbatim record transcribed, such transcript shall be made available to the appellant on his request for reproduction for filing and service." Therefore, if a transcript is needed for a court appeal, the Court Rule requires that an agency's copy of an existing transcript must be provided to the appellant. In the proposed amendment, this requirement has been included in subsection (f). The amendment also includes a new subsection (g), which provides that any transcript that is required by law to be filed with a Clerk shall be considered a public document under the Right to Know Law and therefore available for inspection and copying. Subsection (g) thus applies whether or not the transcript was ordered for a court appeal. Whenever a transcript is ordered under the rule as amended, a copy must be filed with the Clerk by the preparer. The Attorney General's Office has advised the OAL that this transcript copy is a public document under the Right to Know Law and that the OAL is required by law to make it available for inspection and copying.

Two commenters focused on privacy issues. Currently, N.J.A.C. 1:1-14.11 permits "any party, or any person with a legitimate need" to obtain transcripts of OAL hearings. This language was eliminated in the pre-proposal because there were no standards for defining "legitimate need." The commenters were concerned that the absence of this language failed to protect the privacy interests of parties in cases where there was a right to confidentiality, either because of the subject matter or because a proceeding was sealed. To address this concern, the OAL added paragraphs (h)2 and 3. Paragraph (h)2 requires a non-party requesting a transcript to notify parties, who may file objections with the Clerk. Objections will be considered on a case-by-case basis by the judge who presided at the hearing. Paragraph (h)3 provides that only parties may obtain the verbatim record of sealed proceedings and the contents of the transcript or recording may not be disclosed to anyone except in accordance with the order sealing the proceeding.

One commenter objected to the deposit requirement, saying that the rate was too high for lengthy transcripts and should not be necessary for established customers or large corporations whose credit would not be questioned. The OAL acknowledges that a court reporting firm should be permitted to reduce the deposit requirement in some cases. Therefore, the proposed amendment pertaining to transcripts not for court appeals has been drafted to require a reasonable security deposit "not to exceed" \$300.00 per day or the estimated cost of the transcript. This will give court reporting firms flexibility when requiring deposits from established customers, while restricting the maximum deposit to the same level set by the Court rules. The deposit requirement specified in Court Rule 2:5-3(d) will cover all transcripts being requested for an appeal to court.

The proposed amendment includes some specific references to Court Rule requirements, as suggested by the Civil Practice Committee. These include the requirements that the transcript request conform with R. 2:5-3(a) and that the transcripts be prepared in accordance with State standards, as well as the reference to copies required by R. 2:6-12. The OAL believes these references will be helpful to litigants appealing administrative actions.

The OAL appreciates these comments, which helped identify potential problems with the suggested rule amendment. As in the past, the pre-proposal process has proved to be an extremely useful means of obtaining input from the many agencies and individuals who participate in OAL hearings.

#### Social Impact

By incorporating the requirements of revised R. 2:5-3 regarding transcripts for court appeals of administrative actions, the proposed amendment provides a process by which litigants appealing the results of administrative hearings may obtain the necessary transcripts in a manner which complies with the Court Rules. The proposed amendment also contributes to the efficiency of court appeals by centralizing within the OAL the responsibility for obtaining transcripts of all matters heard by ALJs

and certifying them to the courts. Thus, upon the request of the Attorney General's Office, the OAL has assumed this responsibility for all agencies transmitting cases for hearing to the OAL. This should assist agencies for whom the OAL hears cases, but who are not frequently involved with appellate courts. Since the OAL has restricted the process changes in this amendment to those transcripts needed for court appeal, any delay caused by the Clerk forwarding transcript requests to reporter firms should be minimized.

One purpose of the Court Rule revision was to ensure that transcripts are sent to courts only when complete, not piecemeal as volumes of the transcript are prepared. The proposed amendment provides that only completed transcripts will be submitted because the rule requires the Clerk to certify the transcript to the court only after being notified by the preparer that the transcript is complete. This should facilitate the appellate review of administrative matters.

#### Economic Impact

The proposed amendment may have some economic impact on court reporting firms because of the requirement that existing transcripts be made available for copying. The OAL does not know how much, if any, economic impact the amendment will have upon firms. In submitting their comments, no reporting firms disclosed any financial information to justify their assertion that being deprived of these sales will be a financial impairment. The current contract between OAL and the reporting firms which record OAL hearings contains no provision which gives the firms exclusivity in providing transcript copies. In addition, the OAL believes that court reporting firms have been subject to the Right to Know Law for some time and the fact that some parties have purchased copies from the firms rather than relying on the Right to Know Law cannot rise to a contractual right between the OAL and the firms. The Right to Know Law also predates the current contract between OAL and the reporting firms and, therefore, any State agency's, including OAL's, responsibility thereunder could not be altered by the contract. Thus, any alleged economic impact caused by these provisions is unavoidable because of R. 2:5-3 and the Right to Know Law.

#### Regulatory Flexibility Analysis

The proposed amendment does not impose reporting or recordkeeping requirements on small businesses, but does include some compliance requirements which apply to court reporting firms, some of which may be considered small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 to 21.

It is not possible to quantify accurately the number of small businesses to which the rule applies. The Directory of Certified Shorthand Reporters in the 1989 New Jersey Lawyers Diary and Manual is seven pages long, with each page containing two columns of single-spaced entries. Any or all of these reporters may be affected by the rule, although generally the OAL contracts with three to six reporting firms. Any or all of the reporters on the seven-page list may be small businesses as defined by the Regulatory Flexibility Act.

The compliance requirements in the proposed amendment are as follows: (1) all transcripts must be prepared in accordance with State standards established by the Administrator Director of the Courts; (2) reporter firms are limited to the deposit required by R. 2:5-3(d) for transcripts requested for court appeals; and (3) when the last volume of an entire transcript ordered for appeal to a court has been delivered by the reporter firm to the appellant, the firm under R. 2:5-3(e) must then forward to the Clerk a copy of the entire transcript for delivery to the court. There are no other compliance requirements that change prior practices.

The kinds of professional services likely to be needed to comply with the rule are those used in the ordinary course of business by court reporting firms. The proposed amendment incorporates aspects of Court Rule 2:5-3, which already requires reporting firms to comply with State standards for transcripts to be used by the judicial branch of State government. It is probably easier and less costly for reporting firms to produce administrative transcripts based upon the judicial format than to produce transcripts with different formats depending upon whether they are administrative or judicial. Additionally, the OAL had no choice but to recognize and incorporate the deposit requirements of R. 2:5-3(d) and the transcript processing requirements of R. 2:5-3(e) into its amendment.

There should be no initial capital costs for compliance, since reporting firms are required to comply with State standards when preparing transcripts for courts and, in addition, regularly file copies of transcripts with clerks. Likewise, the annual compliance cost should be no greater than

the current cost of doing business. These costs would not vary for different types and sizes of reporting firms.

The proposed amendment does not include any provisions to minimize adverse economic impact on small businesses. First, the compliance requirements are performance oriented and are not likely to have an adverse economic impact. Second, since it is possible that all reporting firms are small businesses, providing an exemption, variance or different standard for small businesses would negate the effectiveness of the rule. Third, the alleged adverse economic impact cited by court reporting firms relates to their charge that the amendment unfairly eliminates transcript copy sales. The amendment provision permitting copying of the Clerk's transcript copy is not a compliance requirement placed on small businesses.

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

#### 1:1-14.11 Ordering a transcript; cost; certification to court; copying

(a) [Any party, or any person with a legitimate need, may obtain a] **A transcript of any proceeding which has been sound recorded may be obtained** by filing a request with the Clerk [and by notifying all parties]. **The requesting party shall notify all other parties of the request.** Unless the requesting party is the State or a political subdivision thereof, the request shall be accompanied by a [\$200.00] **reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the preparer or \$300.00** for each day or fraction thereof of the proceeding, **the deposit to be made payable to the preparer.** The Clerk shall promptly arrange for the preparation of the transcript with a copy for the case file. Upon completion of the transcript, the [Clerk] **preparer shall forward the transcript to the requesting party and the copy to the Clerk.** **The preparer shall bill the requesting party for any amount due for the preparation of the transcript and the copy.** Upon receipt of payment, the Clerk shall forward the original transcript to the requesting party and shall return the deposit] **or shall reimburse the requesting party for any overpayment.**

(b) [Any party may obtain an] **An unofficial copy of a sound recorded proceeding may be obtained** by making a request to the Clerk accompanied by a blank standard cassette of appropriate length.

(c) [Any party, or any person with a legitimate need, may request] **A transcript of any stenographically recorded proceeding may be obtained by requesting** the appropriate stenographic firm to prepare a transcript, **except as specified in (d) below.** [of any stenographically recorded proceeding and] **The requesting party shall provide notice of the request to the Clerk and to all other parties.** Unless the requesting party is the State or a political subdivision thereof, the stenographic firm may require a reasonable security deposit **not to exceed either the estimated cost of the transcript as determined by the preparer or \$300.00 for each day or fraction thereof of the proceeding.** The reporter shall promptly prepare the transcript [in accordance with standards established by the State] and shall file a copy with the Clerk at the time the original is delivered to the requesting party. **The reporter shall bill the requesting party for any amount due for the preparation of the transcript and the copy or shall reimburse the requesting party for any overpayment.** [The requesting party shall be charged for the copy filed with the Clerk at a rate not to exceed State contract rates.]

(d) **When the preparation of a transcript is being requested for an appeal to court, whether the proceeding was sound or stenographically recorded, the request shall be made as follows:**

1. **For cases heard by an Administrative Law Judge, the request shall be made to the Clerk of the Office of Administrative Law;**

2. **For cases heard by an agency head, the request shall be made to the Clerk of that agency.**

(e) **All transcript preparation requests pursuant to (d) above for appeal to a court shall include one copy of the transcript for the Clerk and any additional copies required by R. 2:6-12. The form of the transcript request shall conform with the requirements of R. 2:5-3(a) and be accompanied by the deposit required by R. 2:5-3(d).**

1. **The Clerk shall promptly arrange for the preparation of the transcript. Upon completion of the transcript, the preparer shall bill the requesting party for any sum due or shall reimburse the requesting party for any overpayment and shall forward the original and any copies**

ordered pursuant to R. 2:6-12 to the requesting party. When the last volume of the entire transcript has been delivered to the appellant, the preparer shall forward to the Clerk the copy of the transcript prepared for the Clerk.

2. The Clerk shall transmit the transcript copy to the court and comply with the requirements of R. 2:5-3.

(f) For cases in which an agency possesses a transcript of the hearing being appealed, the request for copying under R. 2:5-3(a) shall be made to the Clerk of that agency. Upon receiving such a request, the Clerk shall make the existing transcript available to the appellant for reproduction for filing and service.

(g) Any transcript that is required by law to be filed with a Clerk shall be considered a public document which is available upon request for copying, as required by the Right to Know Law, N.J.S.A. 47:1A-1 et seq.

(h) The following shall apply to all transcripts:

1. Transcripts must be prepared in accordance with State standards established by the Administrative Director of the Courts.

2. Unless a proceeding has been sealed, any person may request a transcript or a recording of the proceeding. However, if the person requesting a transcript or tape recording was not a party to the proceeding, the requester when making the request must also notify all parties of the request. If a party objects to the request, a written objection must be filed immediately with the Clerk and served on the requester and all other parties to the proceeding. This objection shall be reviewed by the judge who presided over the proceeding.

3. If a proceeding was sealed, only parties to the proceeding may request a transcript or a tape recording and the contents of the transcript or recording shall not be disclosed to anyone except in accordance with the order sealing the proceeding.

[(d)](i) Any party or person entitled by Federal statute or regulation to copy and inspect the verbatim transcript may arrange with the Clerk to review any transcript filed under (a) or (c) above and shall also be permitted to hear and receive a copy of any sound recorded proceeding pursuant to (b) above. All applications to obtain a transcript of any proceeding at public expense for use on appeal shall be made to the Appellate Court pursuant to New Jersey Court Rule R. 2:5-3 or in case of Federal appeals pursuant to applicable Federal Court Rules.

[(e)](j) [State agencies requesting official transcripts shall make provision for payment or shall pay the cost of production at rates established under the prevailing State contract rates; provided that where] Where the Public Advocate's office is representing the public interest in a proceeding and another party to the proceeding[s] is entitled by law to recover the costs thereof from others, such other party shall obtain, pay for and furnish to the Public Advocate upon request the official transcript.

**(a)**

**OFFICE OF ADMINISTRATIVE LAW  
Uniform Administrative Procedure Rules  
Withdrawals**

**Proposed Amendment: N.J.A.C. 1:1-19.2**

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1989-626.

Submit comments by December 20, 1989 to:

Steven L. Lefelt, Deputy Director  
Office of Administrative Law  
Quakerbridge Plaza, Bldg. 9  
CN 049

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

When the Office of Administrative Law (OAL) adopted revised Uniform Administrative Procedure Rules in 1987, one of the changes was to require the administrative law judge to enter an initial decision approv-

ing a withdrawal when a party wanted to withdraw a request for a hearing or a defense raised (see 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a)). In the time that rule has been in effect, the OAL has determined that the initial decision is not routinely necessary. The filing of decisions in all withdrawals creates additional paperwork and adds to the time spent processing the cases. Therefore, the OAL is proposing to eliminate the initial decision requirement when a party wishes to withdraw. The proposed amendment provides that a party who wants to withdraw a request for a hearing or a defense raised may do so simply by notifying the Clerk or the judge in writing. Upon notification, the Clerk shall immediately return the matter to the transmitting agency.

Because there may be some cases where the judge perceives a need to memorialize the circumstances surrounding a withdrawal, the proposed amendment permits a judge to enter an initial decision when that is deemed advisable. One possible example is when the option to withdraw in a particular type of case is limited by statute or rule. In Casino Control Commission license application hearings, for instance, regulations require Commission approval of requests to withdraw applications. The proposed amendment would give the judge the latitude in such a case to enter an initial decision noting that the party did not wish to continue with the proceeding and that the case was consequently being returned for disposition in accordance with Commission regulations. The OAL prefers not to deny requests for withdrawal, since a party should not be forced to continue litigation. However, in some cases the judge may want to indicate in an initial decision the circumstances of a withdrawal so that some further regulatory action may be taken by the transmitting agency head. Based on OAL's experience, these types of cases should be rare and, therefore, few initial decisions are expected to be filed in withdrawals under the proposed amendment.

**Social Impact**

The proposed amendment permits the OAL to more quickly and informally process cases in which a party decides to withdraw the request for the hearing or a defense raised. The time and efforts of OAL judges will be more productively used in cases that are not being withdrawn.

**Economic Impact**

The proposed amendment should result in savings to the taxpayer because it eliminates unnecessary judicial paperwork and permits more productive use of time by OAL judges who would have been involved in the preparation of initial decisions in cases which have been withdrawn.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses. The amendment changes the action required of an administrative law judge in the withdrawal of a hearing request or defense raised.

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

**1:1-19.2 Withdrawals**

(a) A party may withdraw a request for a hearing or a defense raised by notifying the judge and all parties in writing. Upon receipt of such notification, the judge shall [enter an initial decision granting the withdrawal.] **discontinue all proceedings and return the case file to the Clerk. If the judge deems it advisable to state the circumstances of the withdrawal on the record, the judge may enter an initial decision memorializing the withdrawal and returning the matter to the transmitting agency for appropriate disposition.**

(b) [Upon entry of a decision granting a withdrawal] **When a party withdraws, the Clerk shall return the matter to the agency [for an appropriate disposition] which transmitted the case to the Office of Administrative Law.**

(c) After [a decision granting a withdrawal has been entered] **the Clerk has returned the matter, a party shall address to the transmitting agency head any motion to reopen a withdrawn case.**

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF WATER RESOURCES

#### New Jersey Pollutant Discharge Elimination System Fee Schedule for NJPDES Permittees and Applicants

##### Proposed Amendment: N.J.A.C. 7:14A-1.8

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

Authority: N.J.S.A. 58:10A-1 et seq., specifically 58:10A-9.

DEP Docket Number: 048-89-10.

Proposal Number: PRN 1989-623.

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

December 20, 1989 at 10:00 A.M.  
Labor Education Center Auditorium  
Cook College  
Ryders Lane  
Rutgers University  
New Brunswick, New Jersey

Submit written comments by December 29, 1989 to:

Thomas A. Borden, Esq.  
Division of Regulatory Affairs  
Department of Environmental Protection  
CN-042  
Trenton, New Jersey 08625

The agency proposal follows:

##### Summary

The New Jersey Department of Environmental Protection ("Department") is responsible for administering a program that regulates the discharge of pollutants to the surface and ground waters of the State. The Department's authority is derived from the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. ("State Act"), pursuant to which New Jersey qualified for and has primary enforcement responsibility under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) for the administration of the New Jersey Pollutant Discharge Elimination System ("NJPDES") permitting program. The NJPDES rules are set forth at N.J.A.C. 7:14A. Pursuant to Section 9 of the State Act, the Department is authorized to "establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits." The Department assesses fees to provide funds for the review of NJPDES permit applications, the development of specific permit terms and conditions (including wasteload allocations, water quality based effluent limitations, stream monitoring and computer modeling), conducting compliance and 24-hour sampling inspections, conducting ground water compliance sampling, bioassay testing, supervising the installation of ground water monitoring wells, evaluating and approving ground water remediation alternatives, evaluating compliance with the terms and conditions of each NJPDES permit, and providing for the general administrative costs of the NJPDES program. N.J.S.A. 58:10A-10 provides the Department with the authority to seek civil and administrative penalties for failure to pay assessed NJPDES permit fees.

The Department is proposing to amend N.J.A.C. 7:14A-1.8 for the purpose of clarifying the formulas used to calculate permit fees for discharges to surface water and ground water in order to provide for a more equitable distribution of the cost of managing the NJPDES program. In N.J.A.C. 7:14A-1.8(a)9, the annual fee for all dischargers is calculated through the application of the following equation: the annual fee is equal to the environmental impact of the discharge to surface water or ground water multiplied by the rate established by the Department for the category of discharge plus a base minimum fee. A hearing on the 1989-1990 ("FY90") NJPDES Annual Fee Report and Fee Schedule will be held on the same day as the hearing on the proposed amendment to N.J.A.C. 7:14A-1.8. The hearing on the NJPDES Annual Fee Report and Fee Schedule will be held after the hearing on the proposed rule amendment in order to distinguish those comments received by the Department on the rule proposal from those comments received on the NJPDES Annual Fee Report and Fee Schedule.

In N.J.A.C. 7:14A-1.8(d)1, the Department is proposing to take into account the level of ground water monitoring required by the NJPDES

permit at the regulated facility to determine the fee assessment formula. In general, initial or interim permits are issued to a facility to establish a detection monitoring program. The detection monitoring program is designed to determine if the regulated active discharge to ground water or a past discharge activity has impacted ground water. The environmental impact factor for facilities conducting detection monitoring will be calculated based on the quantity and type of pollutants discharged and the ground water rating factor described in N.J.A.C. 7:14A-1.8(d)1iii. Therefore, a permittee who does not have an active regulated ground water discharge and is simply monitoring their site to detect the possibility of contamination has a discharge quantity of zero. A permittee such as this with no active discharge will not be assessed an environmental impact fee and therefore will only be assessed the minimum fee.

Once environmental impact has been detected through a detection monitoring program or other ground water assessment programs such as the Environmental Cleanup Responsibility Act ("ECRA") N.J.S.A. 13:1K-6 et seq., N.J.A.C. 7:26B, Underground Storage Tank Program ("UST") N.J.S.A. 58:10A-21 et seq., N.J.A.C. 7:14B or other permit applications, the facility will be notified by the Department or issued a permit which will require the permittee to initiate a compliance monitoring program, a ground water remediation program, and/or a source removal program. Under a compliance monitoring program, the permittee will delineate the extent of ground water impact and develop a ground water remediation strategy. The Department is proposing to amend N.J.A.C. 7:14A-1.8(d)2, so that for facilities with known environmental impacts which are required to conduct activities other than a detection monitoring, including compliance monitoring, ground water remediation, hydraulic source control, soil, waste, tank removals, or monitoring with established alternative concentration limits, their environmental impact will be based on total weighted concentration, area and ground water rating factor. Area, as proposed by N.J.A.C. 7:14A-1.8(d)2i, is either the area of the site or the area of the plume. Total weighted concentration, as proposed in N.J.A.C. 7:14A-1.8(d)2ii, is either the sum of the highest average concentration of all pollutants identified in any well or the average concentration of all pollutants multiplied by the risk associated with each pollutant. To encourage facilities to accurately define the extent of ground water impact, the Department is proposing to amend N.J.A.C. 7:14A-1.8(d)2 to utilize the average pollutant concentrations and the actual area of the plume, once the permittee has delineated the plume in accordance with the NJPDES permit requirements, rather than the highest average concentration and the area of the site.

Upon adoption of the fee rules in N.J.A.C. 7:14A-1.8 in 1987, published in the New Jersey Register (19 N.J.R. 1191(a)) on July 6, 1987, the Department included a "Department Note" at 19 N.J.R. 1196 which gave notice that the Department would utilize the cube root of the risk factors in Table I of N.J.A.C. 7:14A-1.8 to maintain the relative ranking of pollutants. The Department has determined that this procedure does not in fact maintain the relative ranking of pollutants. Therefore, until further technical assessments can be performed, the Department will utilize the original risk factors as listed in Table I.

As established in the existing rule at N.J.A.C. 7:14A-1.8(a)10, the Department will calculate the environmental impact by taking the square root of the total pollutant load for FY90, July 1, 1989 to June 30, 1990. The total pollutant load, as set forth in N.J.A.C. 7:14A-1.8(c)1i for surface water discharges, is the sum of individual pollutant loadings multiplied by the original risk factors listed in Table I. The Department is proposing to amend N.J.A.C. 7:14A-1.8(a)10 to state that for ground water fee calculations, the Department will take either the square root of the total weighted concentration or the square root of the quantity depending on the level of monitoring being conducted by the permittee. In N.J.A.C. 7:14A-1.8(d)1ii, the quantity is used in the environmental impact calculation for those permittees not required to conduct ground water remediation or those conducting a detection monitoring program. In N.J.A.C. 7:14A-1.8(d)2ii, the total weighted concentration is used in the environmental impact calculation for ground water facilities conducting compliance monitoring source removal and/or ground water remediation at the site.

The Department is also proposing to amend N.J.A.C. 7:14A-1.8(d)1 and incorporate the use of a ground water rating factor which is similar to the current stream rating factor found at N.J.A.C. 7:14A-1.8(c). The ground water rating factor includes the existing aquifer rating, permeability rating, and monitoring status factor, although the rating numbers have been changed. A ground water use factor has been included which is based on the percentage of the local population who rely on ground water for drinking water supplies and on the volume of ground

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water withdrawn by the municipality for potable water supplies. The highest ground water use rating is assigned to municipalities which withdraw more than three million gallons per day or service more than 50 percent of the population. A total of 149 municipalities fall into this category and have been assigned a ground water use rating of A, which is equal to a rating number of 5. The middle category includes municipalities which withdraw between 0.1 and three million gallons per day or supply drinking water for 10 to 50 percent of the municipality. A total of 254 municipalities in this category have been assigned a rating of B and a rating number of 3. A ground water use rating of C, which has a rating number of 1, was assigned to 164 municipalities which withdraw less than 0.1 million gallons per day or serve less than 10 percent of the municipality. A complete list of municipalities and their respective ratings will be included in the FY90 NJPDES Annual Fee Report and Fee Schedule. To calculate the ground water rating factor in N.J.A.C. 7:14A-1.8(d)l, the aquifer, permeability, monitoring status and ground water use ratings will be summed together and divided by 10, rather than multiplied together. For landfills only, the Department is proposing to amend N.J.A.C. 7:14A-1.8(f)1, and add a closure status to the ground water rating factor. The waste factors, WI and W2, will continue to be calculated as before.

The Department is also proposing to amend the minimum fee schedule as established at N.J.A.C. 7:14A-1.8(h). The minimum fee for all surface water discharges is \$500.00. A minimum fee of \$250.00 has been added for those facilities that are issued a ground water permit-by-rule pursuant to N.J.A.C. 7:14A-5.5(a). The minimum fee for facilities which are considered Industrial Waste Management Facilities ("IWMF") or Hazardous Waste Facilities ("HWF") has been increased from \$10,000 to \$20,000; these facilities which are regulated by the Department's Bureau of Pollution Abatement, require a higher level of regulation than other ground water permits. The minimum fee for facilities conducting detection monitoring is \$500.00. Once evidence of ground water contamination has been established through the detection monitoring program or through other environmental assessment programs, the minimum fee increases to \$5,000. If the permittee subsequently implements ground water remediation activities at the site, the minimum fee decreases to \$1,500.

**Social Impact**

The Department's proposal to amend the NJPDES rules to clarify the fee provisions in order to provide for a more equitable distribution of the assessed fees will have a positive social impact. The Department, in amending the fee schedule, is adjusting the fees to insure that those who do the most to introduce pollutants to the environment bear a greater share of the administrative cost. The proposed amendment provides a lower monitoring status factor and base minimum fee for dischargers to ground water which are actively reducing the level of pollutants in the environment. This should encourage more facilities to initiate ground water remediation.

The Department's action reflects the opinion of the Appellate Division of the New Jersey Superior Court in *Public Service Electric & Gas v. Department of Environmental Protection*, 193 N.J. Super. 676 (App. Div. 1984), *aff'd* 101 N.J. 95 (1985) and *GAF Corp. v. New Jersey Department of Environmental Protection*, 214 N.J. Super. 446 (App. Div. 1986), that the fee schedule assess a greater portion of the cost of the NJPDES program to those facilities which create the need for regulation. Consistent with the Court's opinion, the Department is proposing to implement a fee schedule which graduates fees in proportion to the deleterious impact of the permittee's discharge.

**Economic Impact**

The proposed amendment is not intended to increase the revenue generated through the annual NJPDES fee assessment process. The amendment will allow the Department to calculate an environmental impact for a ground water permittee which has caused environmental degradation but no longer has an active ground water discharge. Under the existing rule, facilities conducting hydraulic source control, ground water remediation or compliance monitoring that had not delineated the extent of contamination were assessed a minimum fee, which in turn increased the fees paid by those permittees with regulated ground water discharge units such as septic systems, infiltration percolation lagoons, surface impoundments and spray irrigation systems. This amendment will distribute a proportional share of the administrative costs associated with the NJPDES program to those facilities which have impacted ground water quality but no longer discharge wastewater to the ground waters of the State.

Notwithstanding the proposed amendment, the fees imposed by N.J.A.C. 7:14A-1.8 are expected to provide approximately \$17.8 million in fiscal year 1990. This represents approximately an 11 percent increase over the initial billing for fiscal year 1989. These fees will cover the costs for 246 work years (87 percent professional, 13 percent clerical staff) to process, monitor and administer the NJPDES permit program. Salaries are based on the current salary cost as of August 1989 plus five percent to cover anticipated salary increases in FY90. The fringe benefit rate of 27.51 percent has been established by Treasury in their OMB Circular Letter: 90-06. The indirect rate of 32.7 percent, of salary plus fringe, has been established by the Department for FY90. The positions to be funded in FY90 and the associated costs are as follows:

NJPDES Program Staff	Number
Assistant Director	1
Senior Executive Service Manager IV	1
Project Specialist	5
Program Development Specialist	3
Section Chief	1
Administrative Analyst I	11
Administrative Analyst II	1
Administrative Analyst III	1
Administrative Assistant III	3
Regulatory Officer II	2
Regulatory Officer III	1
Environmental Scientist I	4
Geologist Trainee	2
Assistant Geologist	5
Senior Geologist	14
Principal Geologist	12
Supervising Geologist	4
Environmental Engineer Trainee	6
Assistant Environmental Engineer	2
Senior Environmental Engineer	7
Principal Environmental Engineer	15
Supervising Environmental Engineer	10
Environmental Specialist Trainee	16
Environmental Specialist	22
Senior Environmental Specialist	14
Principal Environmental Specialist	8
Supervising Environmental Specialist	6
Compliance Investigator I	6
Supervising Compliance Investigator	3
Environmental Technician	1
Senior Environmental Technician	1
Principal Environmental Technician	1
Principal Biologist	1
Computer Operator I	1
Computer Operator II	1
Data Processing Programmer II	1
Geographic Information Specialist	1
Assistant Technician MIS	3
Technician MIS	8
Senior Technician MIS	11
Principal Technician MIS	2
Secretarial Assistant II	2
Secretarial Assistant III	4
Clerk Typist	4
Senior Clerk Typist	7
Principal Clerk Typist	7
Principal Engineering Aide	1
Head Clerk	1
Head File Clerk	1
<b>TOTAL Work Years</b>	<b><u>246</u></b>
Total Salaries	\$7,689,192
Salary Adjustment (5%)	384,460
Fringe Benefits (27.51%)	2,221,061
Indirect Rate (32.7%)	3,366,371
Overtime	720,000
Total Personnel Costs	14,381,084
Office Supplies	66,686
Photocopier	80,000
Gas & Oil	74,370

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Protective Clothing	21,625
Other Supplies	24,400
Travel	74,370
Protective Clothing	51,125
Telephones	202,000
Postage	60,000
Data Processing Supplies	42,450
Professional Services/USGS	110,000
Professional Services/Optical Disk	50,000
Temporary Services	427,000
Laboratory Services	340,000
Training	182,000
Advertising	65,000
Moving Expenses	237,980
OTIS Charges	600,000
Tools	4,150
Maintenance Data Processing Equipment	20,000
Vehicles	414,550
Vehicular Equipment	88,400
Office Equipment	59,938
Data Processing Equipment	217,000
Total Operating Costs	<u>\$3,411,524</u>
<b>TOTAL NJPDES PROGRAM COST</b>	<b><u>\$17,792,608</u></b>

Facilities which discharge industrial waste, sanitary wastewater, non-contact cooling water, decontaminated ground water, stormwater runoff or other treated and untreated types of wastewater to the surface waters of the State will be assessed a surface water discharge permit fee. The total of the NJPDES program budget to be assessed against industrial/commercial surface water permittees is \$6 million. Sanitary surface water dischargers will be assessed \$5.2 million of the total NJPDES program cost. Facilities classified as a Significant Indirect User ("SIU") will be assessed \$0.85 million of the total NJPDES program cost. Fees are assessed based on the facility's potential impact on the environment. The average fee for a surface water discharge will be approximately \$8,600. Surface water permittees which receive a NJPDES permit to construct a treatment works that have not begun discharging will be assessed the minimum fee of \$500.00.

Under the proposed amendment, facilities which actively discharge sanitary wastewater, industrial process wastewater, non-contact cooling water, filter backwash, treated ground water, stormwater runoff, or other types of wastewater to the ground waters of the State will be assessed a fee based on the potential environmental impact of the discharge plus a base minimum fee of \$500.00. Where the Department has issued a ground water detection monitoring permit to evaluate the impact of a past discharge activity, only a minimum fee of \$500.00 will be assessed.

Once environmental impact has been established through a detection monitoring program or other ground water assessment program, the permit fee will be assessed based on the magnitude of ground water contamination as measured by the area of the site and the maximum concentration of all pollutants detected in the monitoring wells and the risk associated with each pollutant plus the base minimum fee. The Department will use the area of the plume and the average pollutant concentrations after the permittee has defined the extent of ground water impact in accordance with their NJPDES permit requirements.

This proposed amendment provides for lower fee assessments for those facilities that institute a ground water remediation, hydraulic source control or receive alternative concentration limits from the Department, through the use of a lower monitoring status factor and lower base minimum fee. The base minimum fees for facilities which institute corrective action to mitigate further environmental impact is \$1,500 while the base minimum fee for facilities in the compliance monitoring phase is \$5,000.

Permittees with ground water permits for discharges from sources other than landfills will be assessed a total of \$3.6 million. Landfills permittees will be assessed \$1.9 million. The average ground water discharge permit fee will be approximately \$7,500 while the average landfill permit fee will be approximately \$11,500.

#### Environmental Impact

The proposed amendment reflects the Department's policy of funding the NJPDES program with fees assessed to permittees. The fees provide the Department with the financial means to protect, through enhanced technical evaluation, inspection and monitoring, the quality of the State's surface and ground waters. The proposed amendment to N.J.A.C. 7:14A-1.8 is designed to proportionally assess the cost of the NJPDES

program to those facilities whose activity has the greatest negative impact on the environment. The proposed fee schedule will have a positive environmental impact and encourage ground water remediation and proper landfill closure.

#### 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 this proposed amendment will not impose additional reporting, recordkeeping or other compliance requirements on small businesses because the Department, in establishing each discharger's fee, will use the information currently reported by each discharger on discharge monitoring reports ("DMR"), monitoring report forms and/or information submitted to the Department as part of the NJPDES permit application or any other permit issued by the Department as required at N.J.A.C. 7:14A. The Department's use of the existing permitting process allows all NJPDES permittees to fully comply with these fee requirements without the administrative burden or financial expense of retaining any additional professional services.

The fees will be assessed to all NJPDES permittees, including the estimated 225 permittees which are considered to be small business as defined by N.J.S.A. 52:14B-16 et seq. The fee schedule takes into consideration the negative environmental impact of the permittee's discharge; those permittees who do the most to create a negative impact on the environment or do not remediate the negative environmental impact will bear the greater share of the Department's administrative costs. The Department has determined that all businesses, be they large or small businesses, which cause a negative impact on the environment must be required to pay fees in proportion to the facility's impact on the environment.

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

#### 7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) The general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1.-6. (No change.)

7. The Department, in calculating Environmental Impact, shall use information reported by the permittee on Discharge Monitoring Reports (DMRs) and/or Monitoring Report Forms (MRFs) for the 12 month period for which data is available on the Department's computer. **The selected 12 month monitoring period will be documented in the Annual NJPDES Fee Schedule Report. Where this information is not available, the Department shall use permit limitations, information submitted in permit applications, technical reports prepared by the Department or submitted by the permittee, or other permits issued by the Department.**

8. (No change.)

9. The annual fee for all discharges is calculated by applying the formula: Fee = (Environmental Impact x Rate) + Minimum Fee, where:

i.-ii. (No change.)

iii. Minimum [Fee] fee is a base cost [as] which is added to the calculated individual fee. **The minimum fees are set forth in (h) below.**

10. [The Department shall calculate environmental impact by taking the cube root of the total pollutant load for the period July 1, 1987 to June 30, 1989.] The Department shall take either the square root of the total pollutant load **as calculated in (c)1i below for surface water discharges, the quantity discharged as calculated in (d)1ii below for permittees subject to (d)1 below, or the total weighted concentration as calculated in (d)2ii below for permittees subject to (d)2 below** to calculate the environmental impact for the period July 1, 1989 to June 30, 1990. The Department shall use the total pollutant load, **total weighted concentration or quantity discharged** in all subsequent fee years.

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

(d) The annual fee for discharges to ground water, except for residuals and landfills covered in (e) and (f) below, is [calculated by using the following Environmental Impact in the annual fee formula:] **based upon the level of monitoring and/or remedial activity required by the Department at the permitted site. Permittees not required to conduct ground water monitoring shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees required by the Department to conduct detection monitoring, which is defined as monitoring performed by the permittee to determine whether current or past discharges have resulted in environmental impact, shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees which are required by the Department, in a NJPDES permit, administrative order, administrative consent order, directive letter, or other form of notice, to conduct compliance monitoring in accordance**

with N.J.A.C. 7:14A-6.15, source removal, and/or ground water remediation, shall use the Environmental Impact in d(2) below in the annual fee formula.

1. The Environmental Impact of a Discharge to Ground Water for permittees not required to conduct ground water monitoring or permittees required to conduct detection monitoring is derived by applying the formula: Environmental Impact = [Pollutant Type x Volume Discharged x Ground Water Status Factor x Aquifer Factor x Permeability Factor x Total Weighted Pollutant Load (Total Weighted Pollutant Load is applicable during corrective action under N.J.A.C. 7:14A-6.15),] (Risk x Quantity x Ground Water Rating Factor) where:

i. [Pollutant Type] Risk is the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each type of waste stored, treated or discharged. The rating numbers are assigned as follows:

Rating	[Pollutant Type] Risk
1	Non-contact cooling water, treated ground water, filter backwash, sanitary wastewater with at least secondary treatment.
2	Other treated and untreated [Sanitary] sanitary wastewater, food processing waste, stormwater runoff including runoff from non-hazardous waste storage areas, sanitary sludge.
5	Non-hazardous industrial process waste.
15	Metal plating waste, hazardous industrial process waste, [stormwater including runoff from hazardous substance storage areas,] landfill leachate, or ground water, wastewater, stormwater runoff or sludge containing hazardous constituents.

[ii. Volume Discharged is:

(1) For active dischargers, the average daily volume of effluent discharged by the permittee; and

(2) For all other dischargers, the maximum capacity of the facility (in million gallons). Where capacity is not provided to the Department by the permittee, the Department will, on the basis of site specific parameters, make a reasonable estimate of the volume;]

ii. Quantity is the average daily volume in millions of gallons discharged by the permittee for the monitoring period selected by the Department in (a)7 above.

[iii. Ground Water Status Factor is the rating number, based on the level of monitoring required at the facility, as set forth in the NJPDES permit in accordance with N.J.A.C. 7:14A-6.15, as follows:]

iii. Ground Water Rating Factor is the sum of the Ground Water Monitoring Status Factor, the Aquifer Factor, Ground Water Use Factor and Permeability Rating divided by 10 where:

(1) Ground Water Monitoring Status Factor is the rating number, assigned to the facility based on the level of monitoring and/or remediation required at the facility, as set forth in the NJPDES permit, administrative order, administrative consent order or directive letter in accordance with N.J.A.C. 7:14A-6.15, as follows:

Rating	Status
1	Permittee is not required to conduct [groundwater] ground water monitoring under the NJPDES permit.
[1]2	Permittee is conducting post-closure or post remediation monitoring [at a closed and clean site].
2	Permittee is required to conduct[ing] detection monitoring.
5	[Permittee is conducting compliance monitoring. Groundwater pollution has been identified in the detection phase and further monitoring is required to identify the source] Ground water remediation and/or hydraulic source control is being performed at the site.
5	Alternative concentration limits have been established.

10

[Permittee is conducting corrective action as a direct result of known groundwater contamination] Compliance monitoring is required as ground water contamination has been identified in detection monitoring phase and/or ground water remediation is required.

[iv.](2) Aquifer Factor is the rating number, based on [groundwater] ground water yield potential, assigned to each aquifer formation listed in Table II. Where a facility is located on an unlisted aquifer, the Department will determine the aquifer factor. Where the facility is located on more than one aquifer the highest rating number will be assigned.

(3) Ground Water Use is the rating number assigned to the municipality where the permitted facility is located based on the percentage of the municipality that relies on public or private wells for drinking water and the volume of ground water withdrawn in million gallons per day (MGD). The Department, in the Annual NJPDES Fee Schedule Report, prepared pursuant to (b) above, shall set forth the individual ratings assigned to each municipality. Where a municipality's percent use and volume result in different ratings, the highest Ground Water Use rating number derived below shall apply. Ground Water Use rating numbers are assigned as follows:

Rating	Ground Water Use	Percent Use	Volume in MGD
5	A	>50%	>3
3	B	10%-50%	.1-3
1	C	<10%	<.1

[v.](4) Permeability Factor is the rating number, based on hydraulic conductivity in centimeters per second, of the geological formation immediately beneath the regulated unit or if present, the facility liner material for facilities in detection monitoring. For all other facilities, the permeability factor is based on the hydraulic conductivity of the geologic material contaminated. Where permeability [is] has not been provided to the Department by the permittee, the Department shall assume a permeability [factor] of 10<sup>-2</sup>. The rating numbers are assigned as follows:

Rating	Permeability
[.1<]10	<10 <sup>-7</sup>
[1]11	10 <sup>-6</sup>
[2]12	10 <sup>-5</sup>
[4]14	10 <sup>-4</sup>
[8]18	10 <sup>-3</sup>
[10]20	10 <sup>-2</sup>
[12>]22	>10 <sup>-2</sup>

[vi. Total Weighted Pollutant Load (applicable during corrective action) is the sum of all the pollutants in the groundwater (in kilograms per day) multiplied by their associated risk factors as listed in Table I. Where the permittee has not provided pollutant concentrations and the areal extent of ground water contamination to the Department, the Department shall make reasonable estimates of the Total Weighted Pollutant Load.]

2. The Environmental Impact of a Discharge to Ground Water for permittees required to conduct compliance monitoring, source removal and/or ground water remediation is derived by applying the formula: Environmental Impact = (Area x Total Weighted Concentration x Ground Water Rating Factor) where:

i. Area is:

(1) The total acres of the permitted site; or

(2) Where the permittee has delineated the plume, in accordance with the requirements of the NJPDES permit, the total area in acres affected by the plume based on a surface projection.

ii. Total Weighted Concentration is the sum of all monitored pollutant concentrations multiplied by their associated risk as listed in Table I. The highest average pollutant concentration detected in any well during the monitoring period selected by the Department in (a)7 above shall be used unless the permittee has delineated the extent of

the plume as required by their NJPDES permit. Where plume has been delineated, the Department shall use the average pollutant concentrations for all wells for the monitoring period selected by the Department in (a)7 above.

iii. Ground Water Rating Factor is the number derived in (d)liii above.

(e) (No change.)

(f) The annual fee for discharges to ground water from sanitary landfills and sites containing wrecked or discarded equipment is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Ground Water from sanitary landfills and sites containing wrecked or discarded equipment is derived by applying the formula: Environmental Impact = (W1 + W2) x [Closure Status Factor x Ground Water Status Factor x Aquifer Factor x Permeability Factor x Total Weighted Pollutant Load (applicable during corrective action).] (Closure Status Factor + Ground Water Rating Factor) where:

i. (No change.)

ii. W2 is the total cumulative amount of each waste type received (in cubic yards) since January 1, 1985 divided by 4,840 (the square yards in an acre) and multiplied by the rating number assigned to each waste type as set forth in (f)li above.

iii. Closure Status Factor is the rating number, based on the operating status of the landfill, assigned by the Department to each facility. The rating numbers are assigned as follows:

Rating	Closure Status
[10]1.0	Operating landfill and sites containing wrecked or discarded equipment.
[5]0.5	Landfill terminated after January 1, 1982 without a Department approved closure plan.
[2]0.2	Landfill terminated prior to January 1, 1982.
[1]0.1	Landfill terminated and properly closed in accordance with [an] a Department approved closure plan.

iv. Ground Water [Status] Rating Factor is the number derived under (d)liii above.

[v. Aquifer Factor is the number derived under (d)liv above.

vi. Permeability Factor is the number derived under (d)lv above.

vii. Total Weighted Pollutant Load is the number derived under (d)lvi above.]

(g) (No change.)

(h) Minimum fees are as follows:

1. (No change.)

2. The minimum fee for Discharge to Ground Water (DGW) permits shall be assessed as follows:

i. Facilities assigned a Ground Water Monitoring Status Factor of 1 or 2 under (d)liii(1) above shall be assessed a minimum fee of \$500.00;

ii. Facilities assigned a Ground Water Monitoring Status Factor of 5 under (d)liii(1) above shall be assessed a minimum fee of [\$2,000.00] \$1,500;

iii. Facilities assigned a Ground Water Monitoring Status Factor of 10 under (d)liii(1) above [and conducting corrective action for a non-hazardous constituent] shall be assessed a minimum fee of [\$3,000.00] \$5,000;

iv. Facilities [assigned a Ground Water Status Factor of 10 under (d)liii above and conducting corrective action for a hazardous constituent as defined in N.J.A.C. 7:26-8.16 shall be assessed a minimum fee of \$5,000.00; and] who have obtained a ground water discharge permit-by-rule pursuant to N.J.A.C. 7:14A-5.5(a) shall be assessed a minimum fee of \$250.00; and

v. Hazardous Waste Facilities regulated by N.J.A.C. 7:26 and Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4 or facilities that have been issued a NJPDES DGW/IWMF permit or a DGW/IWMF permit-by-rule shall be assessed a minimum fee of [\$10,000.00] \$20,000.

3.-6. (No change.)

7. The minimum fee for [all] an emergency permit[s] issued pursuant to N.J.A.C. 7:14A-2.2 shall be determined based on (h)1 and 2 above but in no case will it be less than \$1,000.00., except that the fee for temporary storage of sludge shall be calculated as follows:

Average Flow	Fee
.999 MGD	\$ 500.00
1 MGD- 4.999 MGD	\$ 800.00
5 MGD-19.999 MGD	\$1,600.00
20 MGD	\$3,200.00]

TABLES I and II (No change.)

(a)

**DIVISION OF WATER RESOURCES**

**Water Supply Allocation Permits**

**Proposed Readoption with Amendments: N.J.A.C. 7:19**

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

Authority: N.J.S.A. 13:1D-9, 58:1A-1 et seq. and 58:4A-4.1 et seq. and N.J.S.A. 58:12A-1 et seq.

DEP Docket Number: 049-89-10.

Proposal Number: PRN 1989-624.

Public hearings concerning this proposed readoption with amendments will be held on:

December 7, 1989 from 1:00 P.M. to close of comments  
Atlantic County Public Library  
250 Farragut Avenue  
Mays Landing, New Jersey

December 8, 1989 from 1:00 P.M. to close of comments  
East Brunswick Public Library  
2 Jem Walling Civic Center  
East Brunswick, New Jersey

Submit written comments by December 20, 1989 to:  
Mark Benevenia, Esq.

Department of Environmental Protection  
Division of Regulatory Affairs  
CN 402  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Department of Environmental Protection (Department) proposes to amend its rules governing water supply allocation permits, pursuant to N.J.S.A. 58:1A-1 et seq., 58:4A-4.1 et seq., 58:12A-1 et seq., and 13:1D-9. The rules applicable to this program are being proposed for re-adoption as codified with the exception of several amendments as described below.

The Department's review of the current rules has resulted in the conclusion that they remain necessary and adequate, except as noted in the discussion of proposed changes. Under the Water Supply Management Act, the Department is directed to provide a regulatory program to ensure that the ground and surface water supplies of the State are managed in a way that will protect their quality and quantity. The water supply allocation permitting program is the central mechanism through which many of the water supply management objectives of the Department are being realized.

The proposed amendments which are described below include several major changes in the previously existing water supply allocation rules.

N.J.A.C. 7:19-1, General Provisions, sets forth the general policy considerations in the Water Allocation Program, including the scope of N.J.A.C. 7:19.

N.J.A.C. 7:19-1.1, Scope and authority, has been amended to broaden the authority of the rules. The Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the Subsurface and Percolating Waters Act, N.J.S.A. 58:4A-4.1 et seq., have been added as statutory authority in order to strengthen the enforcement and broaden the scope of the rules. N.J.A.C. 7:19-1.2 contains the construction of the rules.

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

In N.J.A.C. 7:19-1.3, Definitions, the terms "contract", "inactive well", "modification", "recall", "replacement well", "water supply critical aquifer", "water supply critical area", and "well sealing" have been added. The Department has determined that these definitions are necessary to ensure the proper understanding of the rules.

The proposed readoption includes amendments to N.J.A.C. 7:19-1.4, 1.5, 1.6, 2.2 and 2.5, related to those persons holding valid Water Policy and Supply Council permits or claiming the right to divert more than 100,000 gallons of water per day and who do not have a valid permit from the Water Policy and Supply Council. Since the deadline to apply for permits under these provisions has passed (see N.J.A.C. 7:19-1.5), these provisions have been deleted.

The proposed amendment to N.J.A.C. 7:19-1.4 shortens the length of time during which a person may divert water under emergency situations before being required to obtain a water supply allocation permit. Currently an emergency can last three months before a permit is needed. The Department's proposed amendment will require a person to obtain a water supply allocation permit if the emergency lasts more than 31 days.

N.J.A.C. 7:19-1.6 sets forth the penalties which may be assessed for violations of the rules.

N.J.A.C. 7:19-1.8, General prohibitions, has been added to insure proper enforcement authority for violations of the rules.

N.J.A.C. 7:19-2, Permit Procedure, sets forth the procedures which shall be followed by applicants and the Department when applying for and processing applications for water supply allocation permits.

N.J.A.C. 7:19-2.2, General water supply allocation permit application procedures, has been amended to include a requirement that the applicant provide certain information on the watershed in addition to a United States Geologic Survey map. This section has been further amended to require an applicant to provide information which establishes that withdrawals from an aquifer do not adversely affect other permitted ground or surface water withdrawals.

N.J.A.C. 7:19-2.5 establishes procedures which will be taken against a permittee for failure to renew an existing water supply allocation permit. The procedures include the assessment of fines and the requirement that the permittee apply for a new permit.

N.J.A.C. 7:19-2.6, Preliminary application review, has been amended to clarify the preliminary review process and make appropriate cross reference to N.J.A.C. 7:19-2.2 through 2.5. The proposed amendment at N.J.A.C. 7:19-2.7 includes a provision that the application may be reviewed by any interested party in person at the Department.

N.J.A.C. 7:19-2.8 and 2.10 are being amended to streamline the public hearing process. N.J.A.C. 7:19-2.15, Appeals, is being amended to conform it with the majority of the other procedures within the Department.

N.J.A.C. 7:19-2.16 outlines permit conditions which will be included in all water supply allocation permits.

The proposed amendment to N.J.A.C. 7:19-2.18 requires the diverter to report the amount of water diverted to the Department when there is sufficient source capacity to pump more than 100,000 gallons of water per day or more but less than this quantity is utilized.

N.J.A.C. 7:19-2.17 sets forth when and how the Department may recall a permit. The Water Supply Management Act allows the Department to modify, suspend, or terminate permits for violations of permit conditions, the Act, these rules, or when in the public interest.

N.J.A.C. 7:19-2.19 establishes the reporting requirements for inactive wells with a capacity to pump more than 100,000 gallons per day or greater.

N.J.A.C. 7:19-2.20 has been amended to include the signatory requirements for applications. This addition makes the water supply allocation program consistent with other similar programs of the Department.

N.J.A.C. 7:19-3, Fee schedule for water supply allocation permits, sets forth the fee schedule for applicants and Water Supply Allocation permittees.

The proposed amendments to N.J.A.C. 7:19-3 concern the procedures for paying fees and the types and amounts of fees. The funds generated by these fees are used to pay the expenses associated with administering the water supply allocation permitting functions of the Department. In the past, the program has been subsidized with funds provided by State appropriations. The new fee schedule will allow the program to be funded solely from the collection of fees.

The proposed amendment of N.J.A.C. 7:19-3.8 will require that the initial or modification fee be paid at the time the application is submitted. At present, an application can go through the entire review and public hearing process and if the application is withdrawn or the permit is denied, no fee is collected to pay for the expenses associated with the

review process. This amendment specifies that a partial refund of the initial or modification fee will be given if the application is withdrawn prior to the public hearing. Additionally, if a permit is approved for a smaller class allocation, the difference in the initial or modification fee will be refunded.

The proposed amendment of N.J.A.C. 7:19-3.9 establishes a fee schedule which will fully cover all expenses associated with the program and simplifies the administration of the fee schedule. The changes to the fee schedule structure include the elimination of renewal fees and a hearing fee from the initial and annual fees, and the addition of a modification fee separate from permit renewals. Separation of the hearing process fee from the initial and annual fee was a result of evaluating the expenses associated with the processing of the various permit categories.

N.J.A.C. 7:19-4, Procedures for Determining, Assessing and Collecting Payments for Water Diversion, sets forth procedures for establishing and collecting the charges required to be paid by any person diverting water from streams or lakes with outlets for the purpose of public water supply, or from subsurface, wells or percolating water supplies obtained by exercise of the State's right of eminent domain. This subchapter describes the procedures by which essential data is gathered, by which free allowances are computed, and by which the additional charges for violating passing flows are determined. The Department has determined that this subchapter is effective and is therefore being proposed for readoption without change.

N.J.A.C. 7:19-5, Small Water Company Takeover Act Regulations, is proposed for readoption without change. This subchapter implements the provisions of the Small Water Company Takeover Act, N.J.S.A. 58:11-59 et seq. N.J.A.C. 7:19-5 establishes procedures by which the most suitable public or private entity may acquire a small water company that does not comply with appropriate statutory and regulatory standards concerning actual or imminent public health problems.

N.J.A.C. 7:19-6, Water Supply Management Act Rules, provides the administrative mechanisms through which some of the objectives of the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. and more specific goals of the Water Supply Master Plan may be accomplished. The Department proposes to amend this subchapter by deleting part of N.J.A.C. 7:19-6.10(c) and all of 6.10(d)2. All other sections have been determined to be effective and are proposed for readoption without change.

N.J.A.C. 7:19-7, Procedures for Contract Review and Approval, establishes procedures for Departmental approval of contract arrangements between purveyors for the routine sale and purchase of water. These procedures will allow the Department to better evaluate and manage the water supply resources throughout the State.

**Social Impact**

New Jersey is an extremely densely populated state and requires substantial water supplies. Without effective and farsighted management of the quality and use of these water supplies, future development could be significantly impacted. The Department needs to manage the water supplies of the State to protect them for drinking water and industrial purposes. Indeed, many of the past water use practices have resulted in substantial depletion of the water supplies available. The Department has developed one of the most sophisticated and rational water supply management programs in the country. The proposed fee schedules for water supply allocation permits contribute funds which are absolutely necessary if this management program is to continue.

**Economic Impact**

The fees imposed by these proposed amendments are expected to cost the regulated community approximately \$2,400,000 annually. The fees assessed to administer the Water Supply Allocation Permit program will provide the estimated \$2,419,820 required to fund 30 positions within the Department and cover associated program costs. In the past, the program was subsidized with funds provided by State appropriations. The costs are as follows:

**Water Allocation Program Costs**

- Bureau Chief
- Section Chief
- Master Well Driller
- Supervisor Environmental Engineer (3)
- Supervisor Environmental Specialist
- Supervisor Geologist
- Administrative Analyst II
- Principal Environmental Engineer (3)

**ENVIRONMENTAL PROTECTION**

**PROPOSALS**

Principal Environmental Specialist (3)	
Principal Geologist	
Senior Environmental Engineer (2)	
Senior Environmental Specialist (3)	
Senior Geologist	
Environmental Engineer Trainee	
Environmental Specialist Trainee	
Tech MIS	
Secretarial Assistant III	
Senior Clerk Typist (4)	
Estimated Salaries	\$1,257,576
Employer Benefits	\$ 304,459
Indirect Costs	\$ 510,785
	<u>\$2,072,820</u>

Program Costs	
Printing and Office	\$ 50,000
Vehicular (gas, oil)	\$ 12,000
Protection clothing and Related Items	\$ 3,000
Scientific/Engineering Supplies	\$ 7,000
Travel	\$ 5,000
Telephone	\$ 10,000
Postage	\$ 10,000
Data Processing	\$ 15,000
Professional Services	\$ 20,000
Training, Advertising, Memberships, Other Services	\$ 40,000
Maintenance of Equipment	\$ 5,000
Maintenance of Vehicles	\$ 12,000
Building Rent/CMP Rent	\$ 8,000
Vehicular Equipment	\$ 50,000
Other Equipment	\$ 50,000
Data Processing Equipment	\$ 50,000
	<u>\$ 347,000</u>
Total	\$2,419,820

All water allocation permit holders will be impacted by these fees. Two new classes of water users have been proposed to allow for better management of our water resources, and to more accurately reflect the actual time required for technical analysis. Previously there were four water use classes. It is now proposed to divide the largest water use class, formerly Class 4 water users (allocations of two million gallons per day or more) into three separate classes: Class 4 (two million gallons per day to less than five million gallons per day); Class 5 (five million gallons per day to less than 10 million gallons per day); and Class 6 (10 million gallons per day or more). The Department has determined that by adding the two additional water use classes, the fees associated with the various classes will be more equitable for all water users, and are a more accurate representation of the costs incurred in administering the program.

The Department has determined that user fees should reflect the actual cost of regulatory programs. By and large, the percent increase in fees reflects the reduction of state appropriations for this program. The increase ranges from \$40.00 to \$5,350, with the largest increase for Class 6 water users.

The proposed amendments encompass a 134 percent increase in initial fees and a 224 percent increase for modification and annual fees for the largest categories that do not require a public hearing. There will no longer be any difference between annual fees for those permit holders that require a hearing and those that do not. This represents a small reduction in annual fees to water supply allocation permit holders that require a public hearing to obtain their permit.

The proposed amendments will provide a positive economic benefit to the general public. New Jersey's economic growth and welfare depend upon an adequate water supply for potable, industrial and agricultural users. Through a strong water allocation management program, the maintenance of a reliable water supply can be achieved.

**Environmental Impact**

Clean and reliable water supplies are essential to the welfare of New Jersey's citizens and businesses. Allowing uncontrolled use of water supplies, without regard to long term needs, would result in ultimate insufficiency of water, as demand grows. By planning and properly managing available water resources, future generations can rely upon having plentiful and clean water to serve their needs. The Department's experience reveals that water pollution threatens significant amounts of the water supplies upon which we now rely. Further, during times of drought, the

necessity of proper planning and management becomes evident. It is clear that if the purity and adequacy of water supplies are to be assured in the future, farsighted management is required today. The proposed re-adoption contributes to the Department's efforts to provide the necessary management strategies and regulatory controls.

**Regulatory Flexibility Statement**

This chapter applies to the obtaining of water supply allocation permits. The proposed revisions will not change the total number of water users impacted by these rules. The number of "small businesses" as defined in the Regulatory Flexibility Act N.J.S.A. 52:14B-16 et seq. that will be impacted by this rule also will not change.

In order to comply with these rules the small businesses will need the service of a well driller, pump installer or similar professionals. Applications for larger water withdrawals will require the services of an engineering or environmental consultant.

The initial capital costs, attributable to these rules, for each small business will be for a water meter and water level indicator. Meters range in cost from a few hundred to a few thousand dollars depending on the size and type of meter. The installation of an air gauge or other means of measuring water levels in wells will add approximately one hundred dollars to the cost of a well.

In developing the revisions to this chapter the Department has balanced the need to protect and manage the water resources of the State against the economic impact of the revisions. The Department has determined that to minimize the impact of the rule would endanger the environment, public health and public safety and therefore no exemption from coverage is provided.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:19.

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

7:19-1.1 Scope and authority

(a) This chapter shall constitute the Department's rules governing the establishment of privileges to divert water, **the management of water quantity and quality**, and issuance of permits pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. [P.L. 1981 c. 262.] **the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the Subsurface and Percolating Waters Act, N.J.S.A. 58:4A-4.1 et seq.** This chapter establishes the schedule persons diverting more than 100,000 gallons of water per day shall follow in order to establish their privilege to divert water and [to] obtain a Water Supply Allocation Permit, and **in addition**, prescribes the application, review, notification and hearing procedures for establishing those privileges [to divert water and to obtain Water Supply Allocation Permits].

(b) **This chapter also establishes the reporting procedures for persons who have the ability to divert 100,000 gallons of water per day or more from wells but who do not presently do so.**

7:19-1.2 Construction

(a) This chapter shall be liberally construed to permit the [department] **Department** to discharge its statutory functions under the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. [ P.L. 1981, c.262]

(b) (No change.)

7:19-1.3 Definitions

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

"Act" means the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. [ , P.L. 1981, c. 262.]

"Applicant" means any person filing or required to file an application to establish a privilege to divert water or for a Water Supply Allocation Permit pursuant to [these rules] **this chapter** or the [act] Act.

...  
**"Contract" means the document setting out the entire agreement between a Water Supply Allocation Permittee and a purchaser for the bulk sale or purchase of water.**

...  
 "Decision maker" means the person designated by the [Division] Department to make decisions on applications for permits and claims of privileges to divert water.  
 ...

["Division" means the Division of Water Resources in the Department of Environmental Protection which constitutes the agency delegated the responsibility to administer this Act for and on behalf of the Department and the State.]

"Inactive well" means a well which is not presently being used and is being held in abeyance for future use.

"Modification" means a change to an existing permit including but not limited to, an increase in allocation, the addition of a new source, an increase in pump capacity of an existing source, the change of use of water or other changes deemed necessary by the Department.

...  
 "Recall" is the process by which the Department reexamines an existing water supply allocation permit to determine the need for modification or revocation.

"Replacement well" means a new well that is to replace an existing well which will be sealed in accordance with N.J.A.C. 7:9-9 and where the proposed well will be approximately the same depth as the existing well and diverting from the same aquifer; have the same or lesser pump capacity; and be within 100 feet of the existing well.  
 ...

["Water Policy and Supply Council" means the former Water Policy and Supply Council in the Department of Environmental Protection.]

"Water Supply Allocation Permit" means the document issued by the Department to a person granting that person the privilege[s], so long as the person complies with the conditions of the document, to divert 100,000 or more gallons of water per day for any purpose other than agricultural or horticultural purposes.

"Water Supply Critical Aquifer" means an aquifer within a water supply critical area where there may be either insufficient water supply, shortage of ground water by overdraft, threat of salt water intrusion or contamination, or where other circumstances exist requiring the Department to impose special water supply management provisions by rule under N.J.A.C. 7:19-6.10.

"Water Supply Critical Area" or "critical area" means a water supply area in which it is determined by the Department pursuant to N.J.A.C. 7:19-6, after public notice and a public hearing, that adverse conditions exist, related to ground or surface water, which require special measures in order to achieve the objectives of the Act.

"Well sealing" means the permanent closure of a well in accordance with the procedures set forth in N.J.A.C. 7:9-9.

#### 7:19-1.4 Applicability

(a) This chapter applies to all persons [presently] holding [a Water Policy and Supply Council permit] existing permits, or diverting, having the ability to divert, or claiming the right to divert more than 100,000 gallons of water per day and to all persons who in the future wish to divert more than 100,000 gallons of water per day except as specified below:

1. This chapter does not apply to diversions for agricultural or horticultural purposes [except as provided for in N.J.A.C. 7:19-1.5(c) and 7:19-2.2(f)].

2. This chapter does not apply to diversion of salt water [as determined by the Division] except [in situations such that] where salt water diversion and usage may affect utilization of fresh water as determined by the Department.

3. (No change.)

4. This chapter [shall] does not apply [in cases of] to emergency [as defined in State contingency plans:] diversion of water extending for periods of less than 31 days. An emergency diversion includes the taking of water for the purpose of fire fighting[;], flood prevention[;], hazardous substance and/or waste spill response, or [any] other emergency diversion of water[.] as determined by the Department. In all cases of emergency diversion, the party responsible for the diversion shall contact the Department within 48 hours of initiation of the emergency diversion. If [such an] it is determined that the emergency diversion [is contemplated to] is expected to continue for [a period

of more than three months] 31 days or more, then a permit shall be applied for within 30 days [of] after the beginning of [the emergency or of the determination that the emergency will last for more than three months, whichever is less] such diversion, in accordance with this chapter.

5. A plant site or group of contiguous properties under common ownership which have a total demand of over 100,000 gallons of water per day may be [given] provided with a water diversion by a [single] permit.

6. An application for a water supply allocation permit is not required for a replacement well included in an existing water allocation permit. However, prior to the installation of the well, a permittee shall provide the following information to the Department for the new well and the existing well that is to be replaced:

i. The location;

ii. Pump capacity and depth;

iii. Well permit number and local name or number; and

iv. A copy of the well abandonment report for the existing well.

7. This chapter does not apply to a diversion of 100,000 gallons of water per day or more for periods of less than 31 days annually. However, the person diverting water shall contact the Department 15 days prior to the initiation of the short term diversion; submit a short term water use report on the forms provided; and repair or replace any well or surface water supply system which becomes damaged, dry, has reduced capacity, reduced water quality, or is otherwise rendered unusable as a result of the diversion.

#### 7:19-1.5 Schedule for applying for Water Supply Allocation Permits [and establishing privileges to divert water]

[(a) Any person holding a valid Water Policy and Supply Council permit which will terminate within five years after the effective date of these rules may apply for a new permit 90 days prior to the termination date of the person's present Water Policy and Supply Council permit by following the procedures set forth in N.J.A.C. 7:19-2.

(b) Any person holding a valid Water Policy and Supply Council permit with no termination date or a termination date five or more years after the effective date of this chapter may apply for a permit within 180 days after the effective date of this chapter by following the procedures set forth in N.J.A.C. 7:19-2.]

[(c)](a) Any person presently diverting or claiming the right to divert more than 100,000 gallons of water per day and who does not hold a valid [Water Policy and Supply Council] permit is subject to penalties provided for under N.J.A.C. 7:19-1.6 and shall apply for a permit immediately. [Agricultural or horticultural users shall apply to establish the privilege to divert water prior to February 10, 1982 by following the application procedures set forth in N.J.A.C. 7:19.2.]

[(d)](b) Any person [other than those referred to in (a), (b) and (c) above] who intends to divert more than 100,000 gallons of water per day shall apply for a permit by following the application procedures set forth in N.J.A.C. 7:19-2.

#### 7:19-1.6 [Consequences of failure to apply for a Water Supply Allocation Permit or apply to establish its privilege to divert water] Penalties

(a) (No change.)

[(b) Any person who fails to comply with this chapter or the Act shall be subject to the penalty provisions set forth in section 16 of the Act.]

(b) Failure by any person to comply with any requirement of the Act including, but not limited to, a violation of any rule, license, permit, administrative order or this chapter may result in a penalty in accordance with N.J.A.C. 7:14-8.

#### 7:19-1.7 Program information

Unless otherwise specified, any questions concerning the requirements of this chapter shall be directed to the [Office] Bureau of Water Allocation, Water Supply [and Watershed Management Administration] Element, Division of Water Resources, New Jersey Department of Environmental Protection, CN 029, Trenton, New Jersey 08625.

**7:19-1.8 General prohibition**

No person shall divert water without obtaining a Water Supply Allocation Permit or filing a water use report in accordance with this chapter.

7:19-[1.8]1.9 (No change in text.)

**7:19-2.1 Scope**

This subchapter prescribes the procedures which shall be followed by applicants and the Department when applying for and processing applications for Water Supply Allocation Permits and [applications to establish a privilege to divert water] **water use reports**.

**7:19-2.2 General Water Supply Allocation Permit application procedures**

(a) An applicant for a permit [or to establish a privilege to divert water] shall contact the [Division] **Department** in accordance with N.J.A.C. 7:19-1.7 to obtain application forms and other instructions [needed] **necessary** to file a complete application.

(b) The applicant shall follow all the [instrucitons] **instructions**, [to] complete the application forms, [and] obtain and prepare all other documents required by the [instrucitons] **instructions**, and submit the completed application and other documents to the [Division] **Department**.

(c) The applicant for the division of [groundwater] **ground water** shall show the classification of land use for all land within half a mile of the proposed diversion point and provide a discussion of the **geology**.

(d) The applicant for the diversion of surface water shall provide information on the watershed, including:

1. Land use;
2. Size of drainage area to the diversion point;
3. Stream water quality classification;
4. Stream flow record;
5. Upstream and downstream diversions;
6. Upstream and downstream wastewater dischargers; and
7. A comprehensive hydrological evaluation of the proposed diversion.

(e) The applicant shall provide a United States Geological Survey map with the following items shown:

1. All diversions of greater than 100,000 gallons of water per day within a one mile radius;
2. All public water supply sources within a five mile radius;
3. The proposed withdrawal site;
4. All domestic wells in the same or interconnected aquifer within a one mile radius;
5. Landfills and ground water contamination sites within a five mile radius; and
6. Delineated freshwater wetlands within the zone of influence.

[(d)](f) In general, an applicant for a permit shall [have to] provide all information [available] which may establish:

- 1.-3. (No change.)
4. That the plans for the proposed diversion are just and equitable to the other water users affected thereby, **and that the withdrawal from the aquifer does not adversely affect other permitted withdrawals, either ground or surface;**

5. [In the case of surface water only, whether the reduction of] **That the proposed diversion will not reduce** the dry season flow of any stream [will be caused to an amount likely to produce unsanitary conditions] so as to adversely affect sanitary conditions, or otherwise unduly injure public or private interests;

6. [In] **That, in** the case of ground water only, [that] the proposed diversion does not lie within a cone of depression where the aquifer to be utilized is overstressed or threatened by saline intrusion[, and] ; that the location relative to hazardous waste disposal sites or other major sources of pollution is not [such as to be] likely to [result in groundwater] **cause or spread ground water contamination and that the diversion will not interfere with any ground water contamination clean-up plans or activity;**

7. That there are adequate [sewerage] **sewage** facilities for disposal [of sewage] from the areas to be served; [and]

8. If permit application is made for a period of more than five years, reasons why a permit of such duration is required by economic

considerations, including for example necessity of amortizing a new investment over an extended period of time, and the public interest[.]; **and**

**9. That the zone of influence of any proposed well does not contain a delineated freshwater wetland. If this is not shown, the applicant will comply with N.J.S.A. 13:9B-1 et seq. and N.J.A.C. 7:7A.**

[(e) If any of the conditions in (d) above are not met, a showing shall be required as to why some more suitable alternative source of water should not be used, in the public interest.]

[(f) Applicants applying for the privilege to divert more than 100,000 gallons of water per day for agricultural or horticultural use pursuant to prior legislative or administrative action and not holding a valid permit issued by the Water Policy and Supply Council, need only prove (f)1, 2, and 3 below. All other applicants establishing the privilege to divert more than 100,000 gallons of water per day pursuant to prior legislative or administrative action and not holding a valid permit issued by the Water Policy and Supply Council shall, in addition to (d) above, prove (f) 1, 2, and 3 below;

1. The source and basis of the claim and how the applicant came to possess the claim;

2. The amount of water presently being diverted and subject to contract; and

3. The amount reasonably required for a demonstrated future need.]

**(g) If any of the items in (f) above are not established or there is a more viable alternative source of water available, the application may be denied.**

[(g)](h) [Additionally the] The applicant [should] shall submit any other information which [would substantiate] **substantiates** the need for the proposed allocation and [the appropriateness of] **supports** the designated choice of water for the allocation. **The applicant shall analyze the availability and utilization of lower quality water and provide documentation that the diversion is of the lowest acceptable quality considering the intended use. If it is determined that the applicant can use lower quality water, the permit will be issued only for the use of the lower quality water.**

[(h)](i) (No change in text.)

(j) **The applicant shall submit information for all contracts which have been entered into for the bulk sale or purchase of water. Details shall include the effective and expiration dates of the contract and the quantity of water contracted for.**

[(i)](k) All applications shall be signed [by the applicant if an individual, or a duly authorized representative of the applicant if the applicant is an entity other than an individual. If the applicant is not an individual a certified copy of the document authorizing the representative to sign for the applicant shall be attached to the application] in accordance with the requirements of N.J.A.C. 7:19-2.24.

**7:19-2.4 Additional Water Supply Allocation Permit application requirements for privately owned public water supplies**

(a) (No change in text.)

**7:19-2.5 Applications for renewal of existing permits**

[(a) Persons requiring renewal of existing Water Policy and Supply Council permits of any duration may abstain from making an application, and in that case, shall be deemed to have applied for a minimum five year to a maximum 10 year extension of the permit under the same conditions as the existing permit. The Department may grant the extension with the same or different conditions as the existing Water Policy and Supply Council permit or deny the request for an extension of the existing permit. If the extension is granted to a Water Policy and Supply Council permit which will terminate within five years after the effective date of this chapter, then the schedule termination date of the existing Water Policy and Supply Council permit shall be the starting date of the extension of the permit pursuant to this section. If the extension is granted to a Water Policy and Supply Council permit which has no termination date or a termination date five or more years after the effective date of this chapter, then the starting date of the extension of the permit pursuant to this section shall be the effective date of this chapter. Any change in existing permit conditions shall require compliance with the procedures set forth in N.J.A.C. 7:19-2.]

(a) Applications for renewal of existing permits shall be submitted three months prior to expiration of the current permit.

(b) [Applications] Applicants for renewal of existing permits shall supply to the Division information not previously established in the existing permit; any information relevant to proposed changes in permit conditions; submit appropriate application forms and other information as requested by the [Division] Department for the proper implementation of the Act and this chapter.

(c) In a case where the permittee does not comply with (a) and (b) above, the Department may take the following action:

1. Notify the permittee by certified mail that the permit has expired;
2. Take appropriate enforcement action including the assessment of penalties under N.J.A.C. 7:19-1.6; and
3. Require the permittee to file an application as a new permittee in accordance with N.J.A.C. 7:19-2.2, 2.3 and 2.4 and pay the initial permit fee and annual permit fee as defined in N.J.A.C. 7:19-3.

(d) The Department, following receipt of an application for renewal of an existing permit, may, in its discretion, grant an extension of the permit for a period not to exceed one year.

#### 7:19-2.6 Preliminary application review

[(a) The Division shall make a preliminary review of the material to determine if:

1. The applicant has submitted with the application, documents addressing all the requirements of N.J.A.C. 7:19-2.2, and if they have been completely and properly prepared.

2. All plans and specifications have been prepared according to acceptable engineering practice.]

(a) The Department shall make a preliminary review of the material to determine that the applicant has submitted with its application all documents needed to meet the requirements of N.J.A.C. 7:19-2.2 through 2.5.

(b) [If] Upon a determination by the Department that the application is insufficient, incomplete or improperly prepared [improperly], the applicant shall be so advised and instructed [within 20 working days] as to [what steps must be taken] those steps it is required to take to make the application [acceptable] complete.

#### 7:19-2.7 Opportunity to review application by interested parties

Once the [Division] Department determines that an application is [acceptable] complete in accordance with N.J.A.C. 7:19-2.6, the application may be reviewed in person at the Department by any interested parties [at the Division] and copies may be obtained from the [Division] Department upon payment of the fee for duplication prescribed by law.

#### 7:19-2.8 Review and notice of hearing requirements

(a) [As soon as the Division determines] The Department, following a determination that the application is complete, [it] shall:

1. In the case of renewal applications not involving [either] an increase or decrease in the amount of water diverted, [the Division shall] review the material submitted and either issue a new permit containing appropriate conditions, or follow the procedures described in (a)2 below.

2. In all other cases [the Division shall]:

- i. (No change.)
- ii. Have a notice of the hearing published in a newspaper circulating in the territory affected by the application at least [30] 45 days prior to the scheduled hearing. If the [Division] Department determines that an emergency or other similar circumstances require an expedited hearing, the notice of the hearing [need only] shall be published in a local newspaper at least 14 days prior to the scheduled hearing; and

[iii. In the event of circumstances requiring emergency authority to divert water otherwise than by a properly processed permit or in the event that a person shall have acted without such authority, the person making such a diversion shall contact the Division within two days of the emergency and shall make an application for a permit under this chapter within 30 days after the emergency arises or the action is taken, whichever is less; and]

[iv.]iii. Notify in writing the applicant, the governing bodies of municipalities and counties [in the territory affected by the application] and water allocation permit holders within a one mile radius

of the diversion and officials of existing public water systems within a five mile radius of the proposed diversion.

3. The notice shall contain:

i. A description of the application;

[ii. A date for the public hearing;]

ii. A date for the end of the public comment period, which shall be at least 30 days in duration;

iii. A statement that written comments, arguments or objections to the application may be submitted until the end of the [scheduled hearing date] public comment period;

iv. A statement that [the] a hearing [shall be cancelled] shall be scheduled if [no] any interested parties, including the applicant and the Department, request [at least 10 days prior to the hearing date,] that [the] a hearing be held before the end of the comment period. Notice of the hearing date provided in accordance with (a)2 above;

v. If the Department schedules a public hearing, the comment period will be reopened for a period of 30 days during which time the public hearing will be held.

4. If a hearing is held, it shall be before a hearing officer specified by the [Division] Department.

(b) Between the time the notice is published and the scheduled date for the hearing, the [Division] Department shall review the application and develop staff recommendations concerning the disposition of the application and any conditions that should be included in the permit if issued. These recommendations shall be:

1. Presented at the hearing to be commented upon or objected to; or

2. If there is no hearing, the recommendations shall be submitted to the decision maker for his or her review along with other information prior to [his] making a final determination whether [to issue] or not to issue the permit and the conditions to be contained therein. Upon [timely] written request [by the applicant] to the [Division] Department, the staff recommendations [as to conditions] shall be made available to the applicant or any interested person [within seven days of the rendering of a decision].

#### 7:19-2.9 Expenses of hearing

The cost of advertisement and [other expenses of the hearing, including] stenographic record[, will] shall be certified to the applicant who shall pay the bill [within thirty days thereafter] by the specified due date. Payment in full of the bill shall be a condition of the final permit approval.

#### 7:19-2.10 The public hearing

[(a) If a timely request for the hearing to be held is filed, giving reasons for the request, or if reason to deny the permit appear or the Department determines a hearing should be held in the public interest, a public hearing shall be held on the date specified in the notice or on the subsequent day or days to which it has been adjourned.

(b) The hearing officer shall have reasonable discretion in the conduct of the hearing and shall give:

1. The applicant opportunity to submit his information meeting the requirements of this chapter.

2. Other persons opportunity to comment in favor of or in opposition to the application.

3. The applicant opportunity to respond to the commentors including written comments received by the Division.

(c) The hearing officer may give the applicant reasonable time after the hearing to correct deficiencies in its application and respond to comments received at the hearing.]

(a) The Department shall hold a public hearing on the date specified in the notice or on the day or days to which it has been adjourned when:

1. A timely request has been filed; or

2. It has been determined that a hearing would be in the public interest.

(b) At the public hearing, the applicant shall make an oral presentation justifying the application. Any other written or oral comments from interested parties relevant to the application may be presented at this time.

(c) The hearing officer shall provide the applicant with reasonable time following the hearing to correct deficiencies in its application and/

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or respond to comments received at the public hearing and to allow any other interested party time for additional comments relevant to the application.

7:19-2.11 The public hearing report

The hearing officer shall review the application, comments received, and the transcript and shall prepare and submit written findings and recommendations to the decision maker for a final decision on the application for a permit. [These findings and recommendations shall be made available and an opportunity for comment offered to the applicant and other principal interested parties.]

7:19-2.12 Decision making

(a) Where no hearing has been held the decision maker shall review the recommendations of the [Division's] Department's staff and the comments received during the public comment period before deciding whether to issue the permit and the accompanying conditions [to be attached to it].

(b) Where a hearing has been held the decision maker shall review the hearing report [before deciding] and decide whether to issue the permit and the accompanying conditions [to be attached to it].

(c) (No change.)

(d) Permits will be issued after the applicable fees have been paid.

7:19-2.13 Notification of decision

The applicant shall be notified in writing of the Department's decision [by either the issuance of a permit, or by a letter of denial of the application from the decision maker]. In addition, all persons [testifying] who testified at the public hearing or who provided written comments shall be notified by letter of the decision.

7:19-2.14 Record of decision

(a) [There shall be maintained by the Division for each application reviewed a record consisting of copies of] The Department shall maintain for each application a record that consists of the following:

1.-5. (No change.)

(b) This record may be reviewed by interested parties at the [Division] Department and copies of it may be obtained from the [Division] Department upon payment of the fee for duplication prescribed by law.

7:19-2.15 Appeal procedure

(a) The applicant or any person alleging to be adversely affected by the Division's decision shall have a right to a hearing thereon, if requested in writing within 20 days of receipt of a copy of the decision.

(b) For 30 days following receipt of the request for a hearing the Division shall attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(c) If such efforts at settlement fail the Department shall file the request for a hearing with the Office of Administrative Law.

(d) The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(e) The decision by the Commissioner, based on the hearing record and the recommendations of the administrative law judge shall be the final administrative decision on the approval/or denial of the application.]

(a) An applicant or any person who believes himself or herself to be aggrieved, with respect to decisions made by the Department regarding any permit may contest the decision and request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules N.J.A.C. 1:1, if the Department:

1. Denies an application for a water supply allocation permit, or any part thereof;

2. Revokes, withdraws or modifies a previously issued approval; or

3. Denies a contract for the sale of water under N.J.A.C. 7:19-7.

(b) Requests for a contested case hearing shall be submitted to:

Assistant Director  
Water Supply Element  
Department of Environmental Protection  
CN 029  
Trenton, New Jersey 08625

(c) All requests for a contested case hearing must be received by the Department within 20 calendar days after the date upon which the notice of decision was received.

(d) All requests for a contested case hearing shall be submitted by the applicant in writing to the Department and shall contain:

1. The name, address and telephone number of the person making such request;

2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;

3. A brief and clear statement of specific facts describing the Department decision being appealed, as well as the nature and scope of the interest of the requester in such decision; and

4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue must also be included.

(e) A hearing request not received within 20 days after receipt of the notification by the applicant or interested party shall be denied by the Department.

(f) If the applicant or interested party fails to include all the information required by (d) above, the Department may deny the hearing request.

(g) The Department shall determine whether any request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

(h) The hearing if granted shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the rules and regulations promulgated thereto.

7:19-2.16 Permit conditions

(a) Each permit shall contain specific and general conditions including, but not limited to, the following:

1. The term of the permit. The maximum term of a permit shall be based on the size of the diversion as specified under N.J.A.C. 7:19-3.8(d)

Class	Permit Duration (years)
1	7
2	6
3	5
4	4
5	4
6	4

2. The maximum allowable diversion, expressed in terms of a daily, monthly and/or annual allocation;

3. That the monthly diversion amount be reported on a quarterly basis. The quarters shall end on March 31, June 30, September 30 and December 31. The reports shall be submitted within 30 days after the close of the quarter;

4. That the diversion be metered and evidence of meter calibration shall be provided as required;

5. Allow the Department, and its representatives to:

i. Enter and inspect any site, building or equipment, or any portion thereof, owned or operated by the permittee, at any time, in order to ascertain compliance or non-compliance with N.J.S.A. 58:1A-1 et seq., 58:4A-4.1 et seq., 58:12A-1 et seq., this subchapter, or any other agreement or order issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test any equipment at the facility, to sketch or photograph any portion of the site, building

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or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or applicant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

ii. Permittees and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. This assistance includes allowing the Department and its representatives to accompany the person while performing any regulated activity, at a particular building or property for the purpose of inspection of those activities. During such inspection by the Department, the person shall operate equipment under normal routine operating conditions or under such other conditions as may be requested by the Department. The person, shall, upon request, make available such sampling and measurement equipment to the Department for the purpose of making comparative measurements.

6. Allow the transfer of a permit, with the consent of the Department, but only for the identical use of the waters by the transferee; and

7. That the Department may modify or revoke the permit, after notice and hearing for violations of permit conditions, rules adopted or orders issued by the Department, and when deemed necessary for the public interest.

(b) All permittees shall be required to file a water conservation plan and an annual status report on all conservation measures that have been implemented.

#### 7:19-2.17 Procedures for the recalling of a permit

(a) Upon a determination that the permittee has failed to comply with N.J.S.A. 58:1A-1 et seq., 58:4A-4.1 et seq., 58:12A-1 et seq., rules promulgated pursuant to those acts or its permit conditions and/or if there is substantiated evidence that the permittee is adversely affecting others, the Department may recall the permit to determine if revocation or modification is necessary.

(b) Prior to revoking or modifying the permit, the Department shall provide the permittee with notice and a public hearing in accordance with N.J.A.C. 7:19-2.10.

(c) Between the time the notice of the hearing is published and the hearing is held, the Department shall prepare a fact finding report which details all permit deficiencies and provides recommended solutions. This report shall be presented for comment at the public hearing.

(d) The expenses of the hearing shall be paid in accordance with N.J.A.C. 7:19-2.9.

(e) The hearing officer shall issue a public hearing report in accordance with N.J.A.C. 7:19-2.11.

(f) The permittee shall be notified of the Department's decision in accordance with N.J.A.C. 7:19-2.13.

(g) The permittee or any interested party who would be adversely affected by the Department's decision may request a hearing in accordance with N.J.A.C. 7:19-2.15.

#### 7:19-2.18 Water use reporting requirements

(a) Any person having the ability to divert more than 100,000 gallons of water per day but not presently doing so shall report their diversion by June 30, 1990 with the Department, on appropriate forms. Within 30 days following receipt of the report forms by the Department, the applicant shall receive a water use report number.

(b) All persons with a water use report number shall submit an annual report detailing monthly water usage for the previous year on forms provided by the Department by January 31 of the following year.

(c) All sources of water shall be metered within 60 days of assignment of a water use report number by the Department or within 60 days of completion of a well, whichever occurs last.

(d) All existing wells described in (a) above shall have all sources metered within 120 days of the effective date of this section.

#### 7:19-2.19 Inactive wells

(a) Any person with an inactive well having the capacity to pump more than 100,000 gallons per day who intends to use the well in the future shall inform the Department that the well is to be placed on the Department's inactive well list.

(b) The Department shall maintain a record of these inactive wells.

(c) Each person described in (a) above shall submit an inactive well status report form, provided by the Department, by December 31 of each year. This report shall certify that the well is in operating order and is protected from vandalism and contamination. If the well has pumped during the year, the report shall include the total number of hours and gallons pumped.

(d) If it is determined by the Department that the inactive well will not be used in the future or poses a threat to public health, the well shall be sealed in accordance with N.J.S.A. 58:4A-4.1 et seq. and N.J.A.C. 7:9-9 by a New Jersey licensed well driller who is certified to seal wells.

(e) If the conditions of the inactive well status report form are not met, the Department, in its discretion, may order that the well be sealed.

#### 7:19-2.20 Signatories

(a) All applicants for a water supply allocation permit shall, upon submission of initial or renewal applications, sign the following certification on the application 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 and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification set forth in (a) above shall be signed by the individual seeking certification and the highest ranking individual at the facility with overall responsibility for that facility.

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

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

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either the principal executive officer or ranking elected official.

(b) In cases where the highest ranking corporate, partnership, or governmental officer or official at the facility as required in (a)1i above is the same person as the official required to certify in (a)2i, only the certification in (a)1 need be made. In all other cases, the certifications of (a)1 and 2 shall be completed.

(c) All signatures required by this section shall be notarized.

#### 7:19-3.2 Purpose

The purpose of this subchapter is to establish fees for the water allocation [permit] program set forth in N.J.A.C. 7:19-1 and 2 based upon and not to exceed the estimated cost of processing, monitoring, administering and enforcing water supply allocation permits. The fee schedule shall be annually reviewed with respect to any changes in the costs of processing, monitoring, administering and enforcing water supply allocation permits. [Please note that the] The expenses of public hearings to be charged to applicants by the Department pursuant to N.J.A.C. 7:19-2.9 shall not be included in the calculations of the fee schedule set forth in this subchapter.

#### 7:19-3.3 Definitions

For the purpose of this subchapter, the following definitions in addition to those found in N.J.A.C. 7:19-1.3 are applicable:

"Annual fee" means a fee charged annually during the period of validity of every permit.

"Dewatering" means the diversion of ground water on a temporary basis from wells or excavations in order to facilitate construction.

"Initial fee" means the fee charged [upon issuance] for the review of all applications for new permits [except for renewal of privileges previously allowed pursuant to lawful legislative or administrative actions not previously charged fees].

"Modification fee" means the fee charged for the review of applications for proposed permit modifications.

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["Renewal fees" means the fee charged upon issuance of all renewals of existing permits or the renewal of privileges previously allowed pursuant to lawful legislative or administrative actions not previously charged fees.]

7:19-3.5 Establishment of fee schedule

The Department shall review the fee schedules set forth in this subchapter prior to [March] **September 1** of each year. **The figures will be adjusted up or down annually by the previous 12 month inflation factor. The inflation factor is based upon the United States Department of Labor, Bureau of Labor Statistics data published in the monthly CPI Detailed Report. The data will be taken from the most recent report available on July 1 of each year and the actual percentage used will be the past year percent change for the U.S. city average, all items, all urban consumers.** [If the Department determines that the existing fee schedule exceeds the cost of the water supply management activities funded thereunder, the fees will be reduced accordingly and a notice to that effect shall be published in the New Jersey Register.]

7:19-3.6 Payment of annual permit fee

- (a) The Department shall submit a bill for next year's annual permit fee to each permittee prior to [July] **January 1** of each year.
- (b) (No change.)

7:19-3.7 Failure to submit the annual permit fee payment in a timely manner

- (a) Failure to pay the annual permit fee by [September] **March 1** of each year [or 30 days after the fee payment became due] shall be considered a **violation of the act and subject to the penalty provisions of N.J.A.C. 7:14-8.13 and a voluntary termination and surrender of the permit by the permittee, unless the Department has granted the permittee a written extension of the time to pay the fee.**
- (b) Any permittee who has surrendered his permit in accordance with (a) above and continues to divert water shall be subject to the penalty provisions set forth in N.J.S.A. 58:1A-16 and N.J.A.C. 7:14-8 and shall apply for a new permit in accordance with 7:19-2.2.

7:19-3.8 Fees for Water Allocation Permits

- (a) All applicable fees shall be paid in accordance with the fee schedule established [pursuant to] in N.J.A.C. 7:19-3.9. **Any person who applies for a new permit or to modify an existing permit shall submit along with the application, the applicable initial or modification fee set forth in N.J.A.C. 7:19-3.9, based on the size of the allocation, listed in (d) below. If the permit is approved for a smaller class allocation the difference in the initial or modification fee will be refunded.**
- (b) Each applicant for a permit[, including those not previously subject to fees pursuant to this subchapter and those with privileges previously allowed pursuant to lawful legislative or administrative action,] shall pay the appropriate **annual** fee prior to issuance of the permit [plus] **as follows:**

1. The total annual fee, if the [permit is issued] **application is approved** during the first quarter of the [fiscal] **calendar year; [or]**

2. **Three-quarters of the annual fee, if the [permit is issued] application is approved** during the second quarter of the [fiscal] **calendar year; [or]**

3. **One-half of the annual fee, if the [permit is issued] application is approved** during the third quarter of the [fiscal] **calendar year; [or]**

4. **One-quarter of the annual fee, if the [permit is issued] application is approved** during the fourth quarter of the [fiscal] **calendar year.**

[(c) In addition to the annual fee, which shall be paid prior to August 1 of each year, a permittee renewing his or her permit shall pay the appropriate renewal fee at the time of renewal.]

[(d)](c) (No change.)

[(e) Each permittee shall pay the annual fee each year during the term of its permit, based upon the classification for that permittee, as set forth in (f) below. Permits for which the hearing process is required may be reclassified as not requiring the hearing process, after five years have elapsed from the date of the initial hearing. If at any time, the Department determines that additional hearings should be held, such reclassification is automatically withdrawn for another five year period.]

[(f)](d) An applicant for a permit shall be placed in the appropriate class below based on the size of the allocations approved **in terms of a monthly average:**

- 1. Class 1: 0.1 mgd to less than 0.5 mgd;
- 2. Class 2: 0.5 mgd to less than 1.0 mgd;
- 3. Class 3: 1.0 mgd to less than 2.0 mgd;
- 4. Class 4: 2.0 mgd [and above] **to less than 5.0 mgd; [and]**
- 5. Class 5: 0.01 to less than 0.1 mgd for groundwater in critical areas, see N.J.A.C. 7:19-6.]
- 5. **Class 5: 5.0 mgd to less than 10.0 mgd; and**
- 6. **Class 6: 10.0 mgd and above.**

[(g)](e) For the purpose of assessing fees under this subchapter the following shall apply:

- 1. (No change.)
- 2. For a water system supplying or servicing a single municipality only, all surface and ground water diversions may be treated as a single permit. [Each dewatering contract or project shall require a separate permit.]
- 3.-5. (No change.)

(f) Any hearing expenses shall be paid in full prior to issuance of the permit. If the application has been withdrawn after the public hearing or if the application is denied, the hearing expenses shall be paid by the specified due date of the bill.

(g) If a water supply allocation permit application is withdrawn after the public notice has been given to schedule a public hearing, the applicant shall be responsible for payment of the cost of the legal advertisement. The applicant shall be refunded 50 percent of the initial or modification fee that was paid when the application was filed.

(h) If the water supply allocation permit application is withdrawn prior to the public notice being given to schedule the public hearing, the applicant will be refunded 75 percent of the initial or modification fee that was paid when the application was filed.

7:19-3.9 Fee schedule

(a) Fees shall be charged for permits, as applicable, pursuant to the following schedules:

[1. Initial fees for new applications:

	Class 1	Class 2	Class 3	Class 4	Class 5
i. Surface water diversions not requiring hearing process	\$800.	\$900.	\$1160.	\$2000.	—
ii. Surface water diversions requiring hearing process	\$1200.	\$1350.	\$1730.	\$3000.	—
iii. Groundwater diversions not requiring hearing process	\$1000.	\$1120.	\$1450.	\$2500.	\$480.

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iv. Groundwater diversions requiring hearing process	\$2000.	\$2250.	\$2900.	\$5000.	\$960.
v. Dewatering: groundwater diversions not requiring hearing process	\$625.	\$700.	\$905.	\$1560.	—
vi. Dewatering: groundwater diversions requiring hearing process	\$1245.	\$1405.	\$1810.	\$3120.	—
vii. Ground and surface water diversions in which waters are returned undiminished to the source	\$480.	\$640.	\$800.	\$960.	\$240.
<b>2. Renewal fees without modification:</b>					
i. Surface water diversions not requiring hearing process	\$400.	\$450.	\$580.	\$1000.	—
ii. Surface water diversions requiring hearing process	\$600.	\$670.	\$870.	\$1500.	—
iii. Groundwater diversions not requiring hearing process	\$500.	\$560.	\$730.	\$1250.	\$240.
iv. Groundwater diversions requiring hearing process	\$1000.	\$1120.	\$1450.	\$2500.	\$480.
v. Ground and surface water diversions in which waters are returned undiminished to the source	\$240.	\$320.	\$400.	\$480.	\$120.
<b>3. Renewal fees with modifications:</b>					
i. Surface water diversions not requiring hearing process	\$560.	\$630.	\$810.	\$1400.	—
ii. Surface water diversions not requiring hearing process	\$840.	\$940.	\$1220.	\$2100.	—
iii. Groundwater diversions not requiring hearing process	\$700.	\$780.	\$1020.	\$1740.	\$360.
iv. Groundwater diversions requiring hearing process	\$1400.	\$1580.	\$2020.	\$3500.	\$720.

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v. Ground and surface water diversions in which waters are returned undiminished to the source	\$240.	\$320.	\$400.	\$480.	\$120.	
<b>4. Annual fees for permits:</b>						
i. Surface water diversions not requiring hearing process	\$800.	\$900.	\$1160.	\$2000.	—	
ii. Surface water diversions requiring hearing process	\$1200.	\$1350.	\$1730.	\$3000.	—	
iii. Groundwater diversions not requiring hearing process	\$1000.	\$1120.	\$1450.	\$2500.	\$480.	
iv. Groundwater diversions requiring hearing process	\$2000.	\$2250.	\$2900.	\$5000.	\$960.	
v. Dewatering: groundwater diversions not requiring hearing process	\$625.	\$700.	\$950.	\$1560.	—	
vi. Dewatering: groundwater diversions not requiring hearing process	\$1245.	\$1405.	\$1810.	\$1320.	—	
vii. Ground and surface water diversions in which waters are returned undiminished to the source	\$480.	\$640.	\$800.	\$960.	\$240.]	
<b>1. Initial fees for new applications:</b>						
	<b>Class 1</b>	<b>Class 2</b>	<b>Class 3</b>	<b>Class 4</b>	<b>Class 5</b>	<b>Class 6</b>
i. Surface water diversions	\$2160	\$2430	\$3135	\$5400	\$5900	\$6400
ii. Ground water diversions	\$2700	\$3030	\$3915	\$6750	\$7350	\$7850
iii. Ground and surface water diversions in which waters are returned undiminished to the source	\$1290	\$1725	\$2160	\$2595	\$2995	\$3395
<b>2. Modification fees:</b>						
i. Surface water diversions	\$1000	\$1135	\$1465	\$2520	\$3020	\$3520
ii. Ground water diversions	\$1260	\$1415	\$1825	\$3150	\$3650	\$4150
iii. Ground and surface water diversions in which waters are returned undiminished to the source	\$600	\$805	\$1110	\$1210	\$1310	\$1410
<b>3. Annual fees for permits:</b>						
i. Surface water diversions	\$1040	\$1220	\$2090	\$3600	\$4600	\$5600
ii. Ground water diversions	\$1400	\$1620	\$2610	\$4500	\$5500	\$6500

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**iii. Ground and surface water diversions in which waters are returned undiminished to the source**

**\$460                      \$750                      \$1440                      \$1730                      \$2020                      \$2310**

7:19-6.10 Water supply critical areas; general

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

(c) Within water supply critical areas of the type described in (a)1 and 2 above, where it is necessary to balance competing needs, the Department may [reduce the privilege given to users to withdraw water, as previously allocated or authorized, and] require those users to substitute water from a reasonably available alternative source. To the extent practicable, all users shall equitably share the burden of [reductions and/or] costs of replacement supplies. Procedures set forth in N.J.A.C. 7:19-2 are applicable to reallocations.

(d) Within critical water supply areas of the type described in (a)2 and 3 above, the Department may require the following:

1. (No change.)

[2. Reduction in the amounts of water withdrawn by users;]

[3]2.-[5]4. (No change in text.)

(e)-(l) (No change.)

**SUBCHAPTER 7. PROCEDURES FOR CONTRACT REVIEW AND APPROVAL**

**7:19-7.1 Scope**

This subchapter prescribes the procedures which shall be followed by applicants applying for approval of contracts for the sale of water.

**7:19-7.2 Applicability**

This subchapter applies to contract arrangements between purveyors for the routine sale and purchase of water. Contract arrangements for emergency purposes are excluded.

**7:19-7.3 Procedures for contract approval**

(a) The applicant for approval of a contract shall be the party which is selling water.

(b) The applicant shall contact the Department in accordance with N.J.A.C. 7:19-1.7 to obtain application forms and other instructions necessary to file a complete application.

(c) The applicant shall follow the instructions to complete the application forms and shall submit the completed application with a copy of the contract to the Department.

(d) For new contracts, the contract and application forms shall be filed at least two months prior to the effective date of the contract.

(e) For all contracts which are in force as of the effective date of this subchapter, the applicant shall file an application and copy of the contract with the Department within six months after the effective date of this subchapter.

(f) The Department, upon receipt of the contract and application forms, shall review the material and determine whether the applicant has sufficient allocation to supply the buyer.

**7:19-7.4 Appeal procedure**

The applicant or any interested party who would be adversely affected by the Department's decision may request a hearing in accordance with N.J.A.C. 7:19-2.15.

Submit comments by December 20, 1989 to:

Grey J. Dimenna, Esq.  
Director of Governmental Affairs  
Department of Higher Education  
CN 542  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

These proposed new rules will implement the legislative mandate of N.J.S.A. 18A:61D-1 (P.L. 1988, c.158) requiring all undergraduate and graduate students under the age of 30 (as of 1987) and enrolled in a program leading to an academic degree to submit to their institution of higher education a valid immunization record as a condition of admission or continued enrollment. Institutions of higher education may exempt from this requirement any students who attended an elementary or secondary school located in New Jersey (students attending these schools had to comply with identical immunization requirements), any student whose religious beliefs do not permit immunizations and students for whom an immunization is medically contraindicated.

The Department of Health's Section on Communicable Disease and Epidemiology recommended the inclusion of specific technical immunization requirements in these rules. These call for proper immunization against three vaccine-preventable communicable diseases—measles, mumps and rubella—representing the most likely cases of epidemic on a college campus.

Institutions of higher education will be required to document proper immunization or exemption for all new or continuing students enrolled in programs leading to an academic degree as a condition of enrollment. The statute requires implementation effective September 1, 1989. Institutions are required to maintain a record of student immunization in hard copy format and keep it separately from other medical and academic records so they are accessible for use by public health personnel in the event of an outbreak of disease.

Annually, institutions will report summary numbers to the State Department of Health regarding the total enrollment, the number of exempted students and the number for whom required immunizations have been verified.

**Social Impact**

The proposed new rules will have a beneficial social impact by increasing the level of immunity to contagious disease and by facilitating efforts to reduce the likelihood of epidemics on New Jersey's college and university campuses. Recent experience in New Jersey high schools and colleges show that current students are not necessarily immune to either mumps or measles. As rubella epidemics have been documented on college campuses in New York, California, Washington and Massachusetts, it is important that New Jersey institutions be prepared in the event of an outbreak and New Jersey students be immunized for these contagious diseases.

**Economic Impact**

There is minimal economic impact to the students and a small impact to the institutions. The economic impact to the institutions will be the administrative costs of implementing this requirement. Many of New Jersey's institutions already require some immunizations and, as a result of a survey of these institutions, the Department found that most four-year and graduate institutions already have health facilities and personnel to monitor student immunization requirements. The administrative tasks required by the rules can be managed by a trained clerical worker. The Department of Health will assist the institutions initially by providing some training for staff to identify and maintain proper records.

Students who wish to attend a New Jersey institution of higher education and who have not been immunized for these contagious diseases will have to obtain the immunizations. Over 90 percent of New Jersey college students are State residents, who probably attended a New Jersey high school. Therefore, the majority of the students will be either exempt from or already in compliance with the requirements of these rules. The students most likely to be impacted are those from out-of-State or country. The current single dose cost for the combined MMR vaccine (measles-mumps-rubella) is \$27.23, plus any additional service charge from a health

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**BOARD OF HIGHER EDUCATION**

**Immunization Requirements**

**Proposed New Rules: N.J.A.C. 9:2-14**

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

Authority: N.J.S.A. 18A:61D-1.

Proposal Number: PRN 1989-617.

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care provider. A vaccination against one of the three diseases given singly costs about \$15.00. This expense is reasonable when balanced against the health risks associated with these contagious diseases.

**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. The rules set forth immunization requirements for students attending institutions of higher education in New Jersey.

Full text of the proposed new rules follows:

## SUBCHAPTER 14. IMMUNIZATION REQUIREMENTS

## 9:2-14.1 Applicability

This subchapter applies to every new or continuing full-time and part-time undergraduate or graduate student enrolled in a program leading to an academic degree at any public or independent institution of higher education licensed by the New Jersey Board of Higher Education.

## 9:2-14.2 Exemptions

(a) Students shall be exempt from immunization requirements for medical or religious grounds under conditions set forth in N.J.A.C. 9:2-14.7 and 14.8.

(b) An exemption may be made, in the discretion of an institution, for the following categories of students:

1. Each student born before 1957;
2. Each student who presents proof of having attended an elementary or secondary school located in New Jersey (such as the school record of immunization, transcript, or diploma). An institution which grants an exemption on this basis should still request that the student furnish a record of immunization in accordance with N.J.A.C. 9:2-14.6;
3. A student enrolled in a program for which students do not congregate, whether for classes or to participate in institution sponsored events, such as those in programs for individualized home study or conducted solely via electronic media.

(c) Nothing in these rules should be construed as limiting the authority of a New Jersey institution of higher education to establish additional requirements for student immunizations and documentation that it determines appropriate.

(c) Nothing in these rules should be construed as limiting the authority of a New Jersey institution of higher education to establish additional requirements for student immunizations and documentation that it determines appropriate.

## 9:2-14.3 Required immunizations

(a) The following immunizations or proof of thereof shall be required pursuant to this subchapter:

1. Measles virus vaccine:
  - i. Each student shall document immunization of one dose of measles virus vaccine, live attenuated, or any vaccine combination containing measles antigen, that was administered after 1968 and on or after the student's first birthday.
  - ii. A student vaccinated with killed or an unknown vaccine prior to 1968 shall be revaccinated or produce laboratory proof of measles immunity.
  - iii. A student who presents serologic laboratory evidence of measles immunity shall not be required to receive measles vaccine.
2. Mumps virus vaccine:
  - i. Each student shall document immunization of one dose of mumps virus vaccine, live attenuated, or any vaccine combination containing mumps antigen that was administered on or after the student's first birthday.
  - ii. A student with a history of physician diagnosed mumps disease substantiated by a physician's statement shall not be required to receive a mumps vaccine.
  - iii. A student who presents serologic laboratory evidence of mumps immunity shall not be required to receive a mumps vaccine.
3. Rubella vaccine:
  - i. Each student shall document immunization of one dose of rubella virus vaccine, live attenuated, or any vaccine combination containing rubella antigen, that was administered on or after the student's first birthday.
  - ii. A student who presents serologic laboratory evidence of rubella immunity shall not be required to receive rubella vaccine.

## 9:2-14.4 Institutional responsibility for enforcement

(a) Each institution shall require acceptable evidence of immunization as a prerequisite to enrollment of each student who is not exempt from the requirements set forth in N.J.A.C. 9:2-14.2 in accordance with this subchapter.

(b) Each institution shall identify to the New Jersey State Department of Health an institutional official responsible for the administration and enforcement of this subchapter and for the maintenance of immunization records.

(c) Each institution shall establish policies and procedures to enforce student compliance with this subchapter within 60 days of enrollment.

## 9:2-14.5 Provisional admission

(a) A student may be admitted and enrolled into the institution on a provisional basis for his or her first term if required immunization documentation is not available at the time of registration.

(b) Prior to the second term, a student must present documentation or acceptable proof of immunity in accordance with the requirements of this subchapter or be reimmunized.

(c) In the event of a vaccine preventable disease outbreak, the institution may, in consultation with the State Department of Health, exclude each student with provisional status from attending classes and participating in institution sponsored activities until proof of adequate immunization is furnished (N.J.A.C. 8:57-1.7 and 1.8).

## 9:2-14.6 Documents accepted as evidence of immunization

(a) An institution shall accept the following documents as evidence of a student's immunization history provided the specific immunization and the exact date of each immunization administered is listed:

1. An official school immunization record or copy thereof from any primary or secondary school indicating compliance with the immunization requirements of N.J.A.C. 9:2-14.3;
2. A record from any public health department indicating compliance with the immunization requirements of N.J.A.C. 9:2-14.3; or
3. A record signed by a physician licensed to practice medicine or osteopathy in any jurisdiction of the United States or foreign country or other licensed health professional approved by the New Jersey State Department of Health indicating compliance with the immunization requirements of N.J.A.C. 9:2-14.3.

## 9:2-14.7 Medical exemption to immunization

(a) A student shall be exempt from receiving or documenting receipt of any required immunizations which are medically contraindicated in accordance with N.J.A.C. 9:2-14.2(a). The conditions which comprise valid contraindication to vaccine administration shall be those set forth within the most recent Recommendations of the Immunization Practices Advisory Committee published periodically by the Centers for Disease Control, Atlanta, Georgia 30333. Such students shall present a written statement from a physician licensed to practice medicine or osteopathy within the United States or another foreign country stating that a specific immunization is medically contraindicated for a specific period and the reasons for the medical contraindication which exempt a student from the specific immunization requirements of N.J.A.C. 9:2-14.3.

(b) Each institution shall maintain the written physician's statement as part of the immunization record and shall review it annually to determine whether the exemption shall remain in effect for the next year. When a student's condition for the medical contraindication no longer exists, the student must be immunized.

(c) In the event of a vaccine-preventable disease outbreak, the institution may, in consultation with the State Department of Health, exclude each student with a medical exemption to the specific relevant vaccine from attending class and other institution sponsored activities.

## 9:2-14.8 Religious exemption from immunization

(a) A student is exempt from documenting the required immunizations set forth in N.J.A.C. 9:2-14.3 if the student submits a written statement to the institution signed by the student and an official representative of the student's religious institution explaining how immunization conflicts with his or her religious beliefs and such statement is made a part of the student's immunization record.

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(b) In the event of a vaccine preventable disease outbreak, the institution may, in consultation with the State Department of Health, exclude each student with a religious exemption from attending class and other institution sponsored activities.

**9:2-14.9 Institutional records required**

(a) Each institution shall maintain a record of immunizations on each non-exempted student including those in provisional status, in accord with N.J.A.C. 9:2-14.6, and on each student described in N.J.A.C. 9:2-14.2(b)2 in a format specified by the New Jersey Department of Health Education, in consultation with the Department of Higher Education, which shall include the date of each required immunization.

(b) Each institution shall attach or reference statements pertaining to physician written medical exemptions, religious exemptions, laboratory evidence of immunity or a physician's diagnosis of mumps to this record.

(c) An institution shall maintain a complete hard copy set of immunization record forms separate from each student's academic, medical or personal records in a manner accessible to health officials to ensure the confidentiality of each student's other records.

(d) An institution shall, upon request of a student who is transferring to another institution, send the student's record of immunization with any attached statements or a copy thereof to the other institution.

(e) An institution shall, upon request, release to a student his or her immunization record or a copy thereof if the student graduates or leaves the institution for any reason.

(f) The institution shall maintain each student's immunization record for three years following a student's graduation, termination, transfer or departure from the institution.

**9:2-14.10 Reports to be provided to the State of New Jersey**

(a) Each institution shall send an annual report of the immunization status of their students to the State Department of Health in a form provided by the State Department of Health.

(b) Each institution shall include in this report all students who are covered by these rules and shall submit this report by December 1 of each respective academic year. The report shall document the total number of students attending the institution, the number and groups of students specifically covered by these rules, the number of students with medical exemptions, the number of students with religious exemptions and the number of students not receiving required immunizations.

**9:2-14.11 Records available for inspection**

(a) Each institution shall maintain centralized records of student immunization status available for inspection by authorized representatives of the State Department of Health, the local board of health in whose jurisdiction the institution is located, or representatives of the Department of Higher Education within 24 hours of notification.

(b) Authorized representatives will only review records to monitor compliance with these rules or in the event a vaccine preventable disease outbreak is threatening.

**9:2-14.12 Providing immunization**

(a) Each institution may administer the vaccines required by this subchapter to those students unable to obtain either acceptable vaccine documentation or the measles, mumps, or rubella vaccines from their own health care provider.

(b) In the event of an outbreak or a threat of an outbreak, each institution may administer the measles, mumps, and rubella vaccine or other immunizing agents to each student, other than a student exempt in accordance with N.J.A.C. 9:2-14.2, who are not covered by these rules when specifically authorized to do so by the State Department of Health.

**9:2-14.13 Existing responsibilities of institutions and of the State in controlling communicable disease**

(a) Each institution shall report the suspected presence of any reportable communicable disease to the local health officer in conformance with N.J.A.C. 8:57-1.2 and 1.5.

(b) In the event that an outbreak or threatened outbreak exists, the State Commissioner of Health, designated officers, or local health

officers may issue either additional immunization requirements or modify these immunization requirements to meet the emergency. These additional requirements may include obtaining immunization documentation or requiring specific immunizations for each student not covered by these rules. Each student failing to meet these additional requirements may be excluded from attending classes and participating in institution sponsored activities until proof of adequate immunization is furnished (N.J.A.C. 8:57-1.7 and 1.8).

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**DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS**

**Formation of a Domestic Property and Casualty Insurance Corporation (Stock or Mutual) or Reciprocal Insurance Exchange**

**Proposed New Rules: N.J.A.C. 11:1-28**

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

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e), 17:17-1 et seq., 17:46A-1 et seq., 17:46B-1 et seq. and 17:50-1 et seq.

Proposal Number: PRN 1989-613.

Submit comments by December 20, 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**

N.J.S.A. 17:17-1 et seq. sets forth the requirements for the formation of a domestic property and casualty insurance company in the State of New Jersey. N.J.S.A. 17:46A-1 et seq., 17:46B-1 et seq. and 17:50-1 et seq. provide additional requirements for the formation of mortgage guarantee insurance companies, title insurance companies and reciprocal insurance exchanges, respectively.

Pursuant to these statutes, the Department developed informal filing requirements providing for the submission of specified information by a proposed domestic property and casualty insurance corporation or attorney in fact representing a proposed reciprocal insurance exchange relating to its organization and proposed method of operation. This information must be received and approved before the Department will issue to an applicant a certificate of authority to transact property and casualty insurance. The Department has now determined to codify and clarify these requirements by proposing these new rules. This will ensure that the filing requirements for the formation of a domestic property and casualty insurer or reciprocal insurance exchange will be clearly and consistently set forth, thus streamlining the application process by ensuring that all applicants will be fully apprised of these requirements.

The proposed rules differ from the existing guidelines by requiring that more detailed information be filed and by providing a "four-tiered" application process rather than the "two-tiered" process currently utilized. Under the proposed rules, an applicant first submits a "feasibility study" containing specified information relating to the applicant's method of operation. A \$1,000 filing fee must be included with the feasibility study to cover the costs of Department review of the documents submitted. Secondly, if the Commissioner determines that the operation of the applicant is feasible, pursuant to the feasibility study, the applicant must submit its by-laws, biographical information on its incorporators, directors and officers and its certificate of incorporation for review. The officers, directors and incorporators of the applicant are then subject to and must pay the costs of a criminal history records check pursuant to proposed N.J.A.C. 11:1-28.7. Finally, the applicant is subject to an organization exam conducted on the site of its place of business. The Commissioner may then issue a certificate of authority to the applicant as provided in proposed N.J.A.C. 11:1-28.9.

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Proposed N.J.A.C. 11:1-28.1 and 28.2 set forth the purpose and the scope of the proposed new rules. Proposed N.J.A.C. 11:1-28.3 sets forth the definition of terms used in the subchapter. Proposed N.J.A.C. 11:1-28.4 describes the types of insurance for which an insurance corporation or reciprocal insurance exchange may be formed to transact pursuant to this subchapter. Proposed N.J.A.C. 11:1-28.5 requires and describes the filing requirements for the feasibility study. Proposed N.J.A.C. 11:1-28.6 describes additional general information requirements to be filed after acceptance of the feasibility study. Proposed N.J.A.C. 11:1-28.7 requires and describes the criminal history records check. Proposed N.J.A.C. 11:1-28.8 sets forth the requirements for the organization exam. Proposed N.J.A.C. 11:1-28.9 describes the issuance of the certificate of authority. Proposed N.J.A.C. 11:1-28.10 provides that failure to submit any information required by this subchapter may result in the denial of a certificate of authority to transact property and casualty insurance in this State. Proposed N.J.A.C. 11:1-28.11 provides that if any provision of this subchapter or the application thereof is held invalid, the remainder of the subchapter and its application to other persons or circumstances shall not be affected.

#### Social Impact

The major impact of the proposed new rules is that proposed domestic property and casualty insurers and attorneys in fact representing reciprocal insurance exchanges will be required to submit more detailed information than was previously required under the informal guidelines. The proposed new rules will benefit these applicants, however, in that they will be fully apprised of the Department's filing requirements in its review of an application for a certificate of authority, thus streamlining the application process.

The codified and more thorough review procedures established by the proposed new rules will facilitate Department review of a proposed insurer or reciprocal exchange which will reduce the likelihood of such an insurer or exchange becoming insolvent, thereby protecting the public and reducing the financial burden on the New Jersey Property-Liability Insurance Guaranty Association.

#### Economic Impact

The primary impact on proposed domestic property and casualty insurers and attorneys in fact representing reciprocal insurance exchanges is that they will be required to bear the costs of compiling and filing the information required by this subchapter, to the extent that this data was not required under the previous Department guidelines. In addition, these applicants will be required to pay a \$1,000 filing fee included with the submission of the feasibility study to cover the costs of the Department's review of such study and they will be required to pay the fee for a New Jersey State Police criminal history check on the applicant's directors, officers, incorporators and stockholders with controlling interest.

The proposed rules will benefit applicants, however, in that the publication of these rules clarifies application procedures, thus reducing the time and effort previously expended by an applicant in securing and following application guidelines. The positive economic impact to the public is as set forth in the Social Impact statement.

The Department may experience extra cost in reviewing the additional data required and due to the increase in applications likely to result due to increased availability of the application procedures.

#### Regulatory Flexibility Analysis

The proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

To the extent the new rules apply to "small businesses," they will apply to businesses seeking to form a domestic property and casualty insurance corporation or reciprocal insurance exchange. The reporting, recordkeeping or other compliance requirements are clearly and fully set forth in the proposed new rules. The initial compliance costs would be those associated with obtaining and filing the data required, the submission of the \$1,000 filing fee and the submission of the fee to cover the costs of the criminal history check. As under the current guidelines, the services of both financial and legal professionals will likely be required for all applicants. To the extent that the new rules apply to "small businesses," they will impose a greater economic burden on "small businesses" in that they may have to devote proportionately more financial resources and staff to the obtaining and filing the information required. Similarly, the \$1,000 filing fee and criminal history check fee may impose an additional burden on a small business. The Department believes that any such impact is reduced since much of this data is currently required by the Department. Furthermore, any business that can meet the statutory

prescribed minimum capital and surplus requirements should not be unduly burdened by these filing requirements and additional fees.

The proposed new rules provide no different compliance requirements based on business size. The proposed new rules codify, clarify and enlarge existing Department requirements for the examination of proposed domestic property and casualty insurers and reciprocal insurance exchanges. In the interests of consistency and uniformity and since these rules primarily protect the interests of the public by reducing the likelihood that a proposed insurer or exchange will become insolvent, no differentiation in compliance requirements is proposed based on business size.

Full text of the proposal follows:

### SUBCHAPTER 28. Formation of a Domestic Property and Casualty Insurance Corporation (Stock or Mutual) or Reciprocal Insurance Exchange

#### 11:1-28.1 Purpose

This subchapter sets forth the filing requirements for the granting of a certificate of authority to transact property and casualty insurance in this State, pursuant to N.J.S.A. 17:17-1 et seq., 17:46A-1 et seq., and 17:46B-1 et seq., and to transact business as a reciprocal insurance exchange, pursuant to N.J.S.A. 17:50-1 et seq.

#### 11:1-28.2 Scope

This subchapter applies to all persons seeking to form a property and casualty insurance corporation or reciprocal insurance exchange in this State.

#### 11:1-28.3 Definitions

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

"Actuary" means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

"Annual statement" means the form of statement that is described in N.J.S.A. 17:23-1.

"Applicant" means a domestic corporation seeking to obtain a certificate of authority to transact property and casualty insurance in this State or the attorney in fact representing a proposed reciprocal insurance exchange seeking to obtain a certificate of authority to transact business pursuant to N.J.S.A. 17:50-1 et seq.

"Attorney in fact" or "attorney" means a person or corporation possessing the power of attorney to act on behalf of a reciprocal insurance exchange.

"Certificate of authority" means a certificate issued by the Commissioner evidencing the authority of a corporation to transact insurance in this State.

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

"Department" means the New Jersey Department of Insurance.

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

"Property casualty insurance" means all lines of business for which an insurance company may be formed to transact, pursuant to N.J.S.A. 17:17-1, and includes mortgage guarantee insurance and title insurance pursuant to N.J.S.A. 17:46A-1 et seq. and 17:46B-1 et seq., respectively.

#### 11:1-28.4 Types of insurance

(a) The following are the types of insurance which a company may be formed to transact under the stated paragraphs of N.J.S.A. 17:17-1:

1. Paragraph "a" means fire and allied lines, earthquakes and growing crops;
2. Paragraph "b" means ocean marine, inland marine, automobile physical damage and aircraft physical damage;
3. Paragraph "e" means worker's compensation and employer's liability, automobile liability (bodily injury), automobile liability (property damage) and other liability;
4. Paragraph "f" means boiler and machinery;
5. Paragraph "g" means fidelity and surety;

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6. Paragraph "i" means credit;
7. Paragraph "j" means burglary and theft;
8. Paragraph "k" means glass;
9. Paragraph "l" means sprinkler leakage and water damage;
10. Paragraph "m" means livestock;
11. Paragraph "n" means smoke and smudge; and
12. Paragraph "d" means accident and health insurance as defined in N.J.S.A. 17B:17-4.

(b) The following are the miscellaneous coverages allowed under N.J.S.A. 17:17-1, paragraph "o":

1. All loss to buildings and structures, including consequential loss, and against loss or damage to property of others, caused by an insured;

2. The perils of radioactive contamination and all other perils causing physical loss to nuclear energy installations and facilities including consequential loss; and

3. All other miscellaneous coverage, including, but not limited to, the following:

i. Loss or damage to property by epidemic;

ii. Loss or damage to property by power failure or mechanical breakdown;

iii. Loss or damage to property or any insurable interest therein caused by insects or by radiation resulting from atomic fission;

iv. Engine breakdown;

v. Loss or damage to property of the assured caused by falling of tanks or equipment for protecting property against fire, by explosion other than steam boilers, pipes, engines, motor, and machinery connected therewith (except fire);

vi. Loss resulting from the right to participate in associations or pools, such as NEPIA and NELIA, which associations or pools are authorized to write "All Risks" insurance involving nuclear fuel exposure;

vii. Economic security; and

viii. All other liability not covered under N.J.S.A. 17:17-1(e), including voluntarily assumed liability.

(c) A stock insurance company may be formed to transact solely the following lines of business:

1. Mortgage guarantee insurance, pursuant to N.J.S.A. 17:46A-1 et seq.; and

2. Title insurance, pursuant to N.J.S.A. 17:46B-1 et seq.

**11:1-28.5 Feasibility study**

(a) In order for an applicant to be granted a certificate of authority to transact property and casualty insurance in this State, the requirements of this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

(b) Any applicant seeking to obtain a certificate of authority to transact property and casualty insurance in this State shall first submit a feasibility study to the Commissioner which shall include, but not be limited to, the following:

1. A detailed plan of operation of the applicant which shall:

i. Include and explain its plans of operation;

ii. Explain its source of funding;

iii. Describe its marketing strategy;

iv. Describe its underwriting procedures and guidelines;

v. Explain the administrative and legal arrangements to be made for the adjustment of claims and the recovery of salvage and subrogation;

vi. Describe its territory of operation;

vii. Describe the qualifications of the individuals to be responsible for carrying out the policies of the applicant;

viii. Describe the proposed maximum amount of coverage by line of business;

ix. Describe the proposed retention by line of business;

x. Describe the proposed reinsurance arrangements;

xi. Describe the proposed methods for the handling of consumer complaints;

xii. Include the applicant's proposed organization chart; and

xiii. Describe the proposed dividend policy;

2. A summary of the applicant's initial rating system to the extent its proposed operations are regulated which shall include:

i. Rates by lines of business;

- ii. Policy forms;
- iii. Proposed statistical agents (if any);
- iv. Independent filings; and
- v. The rating bureau (if any);

3. A five year projection of the following certified by a qualified actuary and accompanied by a narrative explaining the sources of anticipated premium and all assumptions made in developing the entire projection:

i. Assets, liabilities and surplus and other funds in the format of the Assets page and the Liabilities and Surplus and Other Funds page in the Annual Statement representing the start-up year of the applicant and the five successive year-ends;

ii. Underwriting and investment income in the format of the Underwriting and Investment Exhibit, Statement of Income in the Annual Statement for each of the five years;

iii. The following information by line of business for each of the five years (the line of business classifications shall be those set forth in the Underwriting and Investment Exhibit, Part Two in the Annual Statement):

(1) Premiums earned;

(2) Losses incurred;

(3) Loss expenses incurred; and

(4) Ratios of the sum of the losses and loss expenses to premium earned; and

iv. The projected values required in the Underwriting and Investment Exhibit, Part Four—Expenses in the Annual Statement; and

4. The name of the proposed insurer or reciprocal insurance exchange which shall be reviewed for acceptability by the Commissioner, and if acceptable, shall be reserved for the time that such proposed insurer's or reciprocal insurance exchange's application is pending.

(c) In addition to the requirements in (b) above, the Commissioner may require any additional information he or she deems necessary in order to make an adequate evaluation of the applicant.

(d) Each applicant shall submit a \$1,000 filing fee with the filing of the information required by (b) above to cover the costs of Department review of such information.

(e) After 60 days from the receipt of a complete feasibility study and filing fee required by (b), (c) and (d) above, the Commissioner shall notify the applicant in writing that he or she either accepts or rejects the applicant's feasibility study. If the Commissioner notifies the applicant that the feasibility study is accepted, the applicant shall comply with the additional information requirements set forth in N.J.A.C. 11:1-28.6.

**11:1-28.6 Additional information requirements**

(a) After review and acceptance of the feasibility study pursuant to N.J.A.C. 11:1-28.5, an applicant seeking to obtain a certificate of authority shall submit the following to the Commissioner:

1. The corporation's original certificate of incorporation, which the Department will submit for review and certification by the State Attorney General of New Jersey.

i. A suggested form for the preparation of a certificate of incorporation is appended to this subchapter as Appendix A, which is hereby incorporated by reference as part of these rules.

ii. After approval and certification by the State Attorney General of New Jersey, the corporation shall submit the certificate of incorporation to the county clerk of the county of the corporation's domicile for recording. The corporation shall then file the original recorded certificate of incorporation with the Commissioner.

iii. In the case of proposed reciprocal insurance exchanges, in lieu of the requirements in (a) i and ii above, the attorney in fact, if a corporation, shall file with the Commissioner a copy of its certificate of incorporation. The attorney in fact shall also file a declaration containing the information required in N.J.S.A. 17:50-3 and an instrument authorizing service of process on the Commissioner, pursuant to N.J.S.A. 17:50-4;

2. Biographical affidavits for each incorporator, officer and director of the proposed insurance corporation or attorney in fact, as applicable, in the format of Appendix B appended to this subchapter, which is hereby incorporated by reference as part of these rules;

**INSURANCE**

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3. The by-laws of the proposed insurer or reciprocal insurance exchange, as applicable; and

4. A security deposit pursuant to N.J.S.A. 17:20-1, 17:46B-7 and 17:50-6, as applicable, registered in the following format:

“Commissioner of Insurance of the State of New Jersey, as trustee, in trust for the benefit and security of the policyholders of (Name of company F.I.D. No.)”

(b) In addition to the requirements in (a) above, a stock company shall deposit the whole amount of capital stock set forth in the certificate of incorporation and the required minimum surplus in cash, and a mutual company shall deposit the amount of cash equal to the required minimum net assets, for all lines of insurance such stock or mutual company is authorized to write pursuant to its certificate of incorporation. A reciprocal insurance exchange shall deposit the required minimum capital and surplus requirements pursuant to N.J.S.A. 17:50-5.

(c) All filings required by this subchapter or other information reasonably deemed necessary by the Commissioner or otherwise required by law shall be sent to:

New Jersey Department of Insurance  
 Financial Exams Division  
 20 West State Street  
 CN 325  
 Trenton, New Jersey 08625  
 Attention: Formation of domestic companies

**11:1-28.7 Criminal history record check**

(a) The applicant shall submit New Jersey State Police Requests for Criminal History Record Information and the fee required to pay for their processing, for each officer, director, incorporator or stockholder with controlling interest of the proposed insurer or attorney in fact and for each member of the board of trustees, as applicable.

(b) Upon request by the Commissioner, each officer, director, incorporator or stockholder with controlling interest of the proposed insurer or attorney in fact and each member of the board of trustees, as applicable, shall have impressions taken and submit them to the Commissioner on a New Jersey State Police fingerprint card with the fee required to pay for their processing.

(c) Upon request by the Commissioner, an applicant shall submit copies of any complaint, indictment, judgment of conviction or other related documents.

**11:1-28.8 Organization examination**

(a) After the required capital and surplus amounts have been deposited and credited in cash to the applicant pursuant to N.J.A.C. 11:1-28.6(b), the applicant shall notify the Commissioner in writing that such deposit has taken place. Within 30 days after such notification the Department will contact the applicant and arrange for an organization examination to be conducted on the site of the applicant's home office.

(b) The applicant shall make available to the Department for review and copy as necessary to conduct an organization exam the following, without limitation:

1. The Certificate of Incorporation;
2. Certified copies of the incorporators', stockholders', company's and attorney in fact's organization resolutions, as applicable;
3. The names, home addresses (including zip codes) and occupations of directors elected;
4. The names and titles of the applicant's officers;
5. The name and address of the bank in which the securities are deposited and the person to contact to verify securities owned;
6. The name of the applicant's registered agent and the resolution authorizing him to accept service of process;
7. A complete ownership chart depicting a diagram of ultimate control;

i. For the purposes of the ownership chart, control exists if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing five percent or more of the voting securities of any other person;

8. An audited financial statement of the intermediate and ultimate parent(s) prepared by a certified public accountant.

i. For the purposes of the audited financial statement, intermediate and ultimate parent means any person, directly or indirectly, who owns, controls, holds with power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person;

9. A pro forma balance sheet of the company certified by an officer of the applicant;

10. A certified copy of the by-laws of the proposed insurer or reciprocal insurance exchange, as applicable;

11. A copy of the applicant's stock certificate;

12. Complete copies of the biographical sketches of the applicant's incorporators, directors and officers;

13. Any financing agreements with a bank or other financial institution;

14. Management, operating or expense sharing agreements;

15. An original affidavit of the officers and directors completed and signed in the format of Appendix C appended to this subchapter, which is hereby incorporated by reference as part of these rules;

16. Reinsurance agreements or proposed reinsurance programs;

17. A detailed written outline from the applicant explaining its plan of operations containing the information specified in N.J.A.C. 11:1-28.5(b)1, and a summary of the applicant's initial rating system which shall include:

- i. Rates by lines of business;
- ii. Policy forms;
- iii. Statistical agent;
- iv. Independent filings; and
- v. The rating bureau (if any);

18. A five year projection certified by a qualified actuary containing the information required by N.J.A.C. 11:1-28.5(b)3; and

19. Documents pertaining to authority to write workers' compensation insurance (if applicable).

**11:1-28.9 Certificate of authority**

(a) When satisfied that an applicant has complied with all of the requirements of this subchapter and all of the requirements of N.J.S.A. 17:17-1 et seq., 17:46A-1 et seq., 17:46B-1 et seq. and 17:50-1 et seq., as applicable, to entitle it to engage in business and that the proposed methods of operation of the applicant and the background of the officers and directors are not such as would render its operation hazardous to the public or its policyholders, the Commissioner shall issue a certificate to the applicant authorizing it to commence business. The Commissioner shall specify in the certificate the particular kind or kinds of insurance the applicant is authorized to transact.

(b) The Commissioner may refuse to issue a certificate of authority if he or she finds that any of the applicant's directors or officers has been convicted of a crime involving fraud, dishonesty or like moral turpitude or that said persons are not persons of good character and integrity.

(c) No corporation shall transact the business for which it is incorporated until it has received a certificate of authority from the Commissioner. Except for reciprocal insurance exchanges, if any corporation fails to obtain such certificate within one year from the date of certification of its certificate of incorporation by the Attorney General pursuant to N.J.S.A. 17:17-5, the corporation shall be dissolved and its certificate of incorporation shall be null and void.

**11:1-28.10 Failure to comply with subchapter; denial of certificate of authority**

Failure to submit the information required by this subchapter completely and accurately may result in the denial of a certificate of authority to transact property and casualty insurance in this State.

**11:1-28.11 Severability**

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

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APPENDIX A

Format for the Preparation of a Domestic Property/Liability Insurance Company's Certificate of Incorporation

Insurance as may be determined by the Board of Directors, subject to statutory requirements. The Board of Directors shall have the power to adopt by-laws pertaining to such declaration and payment which, in their judgment, seems necessary or desirable.

- 1. On the face of the certificate, the title should be called the following: "CERTIFICATE OF INCORPORATION OF \_\_\_\_\_"
2. The introductory paragraph upon the face of said certificate should open as follows: "We, the undersigned, intending to form a corporation under Chapters 17 to 33 of Title 17 of the Revised Statutes of New Jersey as amended and supplemented, do hereby certify and state:"

- 10. EIGHTH: The principal officers of this corporation shall be a Chairman of the Board of Directors, one or more Vice Chairmen of the Board of Directors, a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may determine to elect in accordance with the provisions of the by-laws of this corporation by resolution adopted by a majority of the entire Board. All officers shall hold office for a term of one year unless sooner removed by the entire Board of Directors.

OR

"This is to certify that we, the undersigned, intending to form a corporation under Title 17, Chapters 17 to 33 of the Revised Statutes of New Jersey as amended and supplemented, do hereby certify and state:"

- 11. NINTH: The Board of Directors, in addition to all other rights and powers bestowed upon it by law, shall have the power, without the assent or vote of the shareholders, to make, alter, and repeal by-laws as set forth in the by-laws. (By-laws made by the Board may be altered, repealed, and new by-laws made by the shareholders.)

\*\*\*\*\*

NOTE: If the proposed company intends to write "health insurance" as defined in N.J.S.A. 17B:17-4 of the life and health insurance code, as part of paragraph "d" of N.J.S.A. 17:17-1, the introductory paragraph upon the face of said certificate should open as follows:

"This is to certify that we, the undersigned, intending to form a corporation under Title 17, Chapters 17 to 33 and Title 17B, Chapter 17-4 of the Revised Statutes of New Jersey as amended and supplemented, do hereby certify and state:

- 3. FIRST: The name of the corporation shall be: (Name of the Proposed Corporation)
4. SECOND: The principal office of the corporation in the State of New Jersey, which shall also be its registered office, is to be located at (name and number of the street, road, etc.), (City or Township of \_\_\_\_\_, or Borough of \_\_\_\_\_), County of \_\_\_\_\_, State of New Jersey, and the registered agent upon whom process may be served shall be (the corporation and/or a name of an individual).
5. THIRD: The kinds of insurance to be transacted by the corporation shall be the kinds of insurance specified by the following paragraphs under N.J.S.A. 17:17-1 and 17B:17-4:

- 12. TENTH: The company reserves the right to amend, alter, change, or repeal any provision contained in this certificate, in the manner now or hereafter prescribed by law. All rights and powers conferred herein on shareholders, directors, and officers are subject to this reserved power.

- (a) Against direct or indirect, loss or damage to property, including loss of use or occupancy by fire, etc.

- 13. ELEVENTH: The names and addresses of the incorporators are as follows: (ten or more) Name Typed, Home Address

ALL PARAGRAPHS DESIRED MUST BE SPELLED OUT IN FULL. Paragraphs "c" and "h" may not be included. Coverages available under paragraph "o" are on an attached list. If the corporation desires to write any coverages under paragraph "o", these must also be spelled out in full. If health insurance is desired, 17B:17-4 must be quoted.

- 14. TWELFTH: The names and addresses of the first Board of Directors and Officers of the corporation and their term of office are as follows: Name Typed, Home Address, Term of Office

- 6. FOURTH: The corporation is to be a stock company.
7. FIFTH: The amount of capital stock of the corporation shall be \$\_\_\_\_\_ divided into \_\_\_\_\_ shares of common stock having a par value of \$\_\_\_\_\_ per share. See 17:17-8. The whole amount of the capital stock set forth in the certificate of incorporation must be actually paid in.
8. SIXTH: The duration of the corporation shall be perpetual.

IN WITNESS WHEREOF, we the undersigned have hereunto set our hands effective this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. (Ten or more names typed and official signatures)

(Names) (L.S.)

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me a Notary Public within and for said County, personally appeared (ten or more names), \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, known to be persons named as incorporators and who executed this Certificate of Incorporation and, who being duly sworn, depose and say that they executed the same as their free act and deed and for the uses and purposes therein expressed.

(Notary Seal)

Notary Public

At Option of the Company:

- 9. SEVENTH: The corporation may issue both participating and non-participating policies with respect to any kind of insurance which the corporation is authorized to transact. Dividends shall be in accordance with rates and rules applicable to such kind or kinds of in-

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APPENDIX B
BIOGRAPHICAL AFFIDAVIT

(Print or Type)

Name and Address of Company:

Blank lines for company name and address.

In connection with the above named company, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully.) IF ANSWER IS "NONE" OR "NO EXCEPTIONS", SO STATE.

- 1. Affiant's Full Name:
Marital Status:
2. Other Names Used at any Time:
3. Date of Birth: Place of Birth:
Color of Hair: Eyes:
Height: Weight:
4. Social Security No.:
5. Schooling: High School
College
Graduate
or Professional
Degree (List)

(ATTACH LIST OF ALL EDUCATIONAL INSTITUTIONS AND LOCATION—CITY AND STATE)

- 6. Member of Professional Societies or Associations List:
7. I control directly or indirectly, or own legally or beneficially 10% or more of the outstanding capital stock (in voting power) of, the following insurers:
7a. If any of the above stock is pledged or hypothecated in any way, please detail fully:
8. Present Chief Occupation:
Position or Title
Employer's Name
Address
How long in this Position?
How long with this employer? Where?
9. Other jobs, positions, directorates, or officerships concurrently held at present:

10. Complete Employment Record for Past 20 Years:

Table with columns: Dates, Employer and Address, Title. Includes blank lines for data entry.

(Use Reverse Side If Necessary)

11. For the last 10 years, I have lived at the following address or addresses:

Table with columns: Address, City, Dates. Includes blank lines for data entry.

12. I have never been adjudicated as bankrupt, except as follows:

13. I have never been convicted or had a sentence imposed, suspended or had pronouncement of a sentence suspended or been pardoned for conviction of, or pleaded guilty of or nolo contendere to an information or an indictment charging a felony for embezzlement, theft or larceny, mail fraud, or violating any corporate securities statute or any insurance law, nor have I been the subject of a cease and desist order of any federal or state securities regulatory agency, except as follows:

14. During the last 10 years, I have neither been refused a professional, occupational, or vocational license by any public or governmental licensing agency or regulatory authority, nor has such a license held by me ever been suspended or revoked, except as follows:

14a. I presently hold or have held in the past the following professional, occupational, and vocational licenses issued by public or governmental licensing agencies or authorities (state date license issued, issuer of license, date terminated, reason for termination):

15. I have never been an officer, director, trustee, investment committee member, key employee, or controlling stockholder of an insurer which, while I occupied any such position or capacity with respect to it, became insolvent or was placed in conservatorship or was enjoined from or ordered to cease and desist from violating any securities or insurance law, except as follows:

16. The certificate of authority or license to do business of any insurance company of which I was an officer, director or key management person has never been suspended or revoked while I occupied such position, except as follows:

17. No insurer of which I was an officer, director or key management person at the time has ever been denied or refused or voluntarily withdrawn its application for a license or certificate of authority, except as follows:

18. Neither I nor any company of which I was an officer, director or key management person at the time has ever been subject to any civil action alleging fraud, negligence or violation of any applicable racketeering statutes (state or federal), except as follows:

Dated and signed this \_\_\_ day of \_\_\_\_\_

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at \_\_\_\_\_  
I hereby certify under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief and further, by the affixation of my signature hereon, I hereby give my certified consent to the New Jersey Department of Insurance to verify the representations and information supplied in response to all questions on the biographical data form, with any Federal, State, municipal or other agency which may have knowledge and/or information thereof.

\_\_\_\_\_  
(Signature of Affiant)

STATE OF \_\_\_\_\_ )

ss

COUNTY OF \_\_\_\_\_ )

Personally appeared before me the above named \_\_\_\_\_, personally known to me, who, being duly sworn, deposes and says that affiant executed the above instrument and that the statements and answers contained therein are true and correct to the best of affiant's knowledge and belief.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

APPENDIX C

AFFIDAVIT OF OFFICERS AND DIRECTORS OF

STATE OF NEW JERSEY)

ss

COUNTY OF \_\_\_\_\_ )

The undersigned \_\_\_\_\_ President,

\_\_\_\_\_ Secretary, and \_\_\_\_\_

\_\_\_\_\_ a majority of the directors of \_\_\_\_\_ Insurance Company, a corporation formed under Title 17, Chapter 17, of the "Revised Statutes", and having its principal office at No. \_\_\_\_\_ Street, in the \_\_\_\_\_ of \_\_\_\_\_ in said State, being duly sworn, on their respective oaths do depose and say that they are the officers and directors of the said corporation as above mentioned; that the amount of the capital stock of the said company set forth in its certificate of incorporation is \$ \_\_\_\_\_ consisting of \_\_\_\_\_ shares of a par value of \$ \_\_\_\_\_; that the whole amount of such capital has been subscribed for and taken in good faith by diverse individuals, firms and/or corporations and has been paid in cash as follows:

- \_\_\_\_ Shares @ \_\_\_\_\_% of par value or \$ \_\_\_\_\_ per share amounting to \$ \_\_\_\_\_
  - \_\_\_\_ Shares @ \_\_\_\_\_% of par value or \$ \_\_\_\_\_ per share amounting to \_\_\_\_\_
  - \_\_\_\_ Shares @ \_\_\_\_\_% of par value or \$ \_\_\_\_\_ per share amounting to \_\_\_\_\_
  - \_\_\_\_ Shares @ \_\_\_\_\_% of par value or \$ \_\_\_\_\_ per share amounting to \_\_\_\_\_
- Total Paid In ..... \$ \_\_\_\_\_  
 being applicable to Capital ..... \$ \_\_\_\_\_  
 Surplus ..... \_\_\_\_\_  
 Other Funds (to be specified) ..... \_\_\_\_\_  
 ..... \$ \_\_\_\_\_

Said deponents further severally depose and say that the assets arising from the sale of said capital stock was and is bona fide the property of said company, and is now possessed by it, in its corporate name and capacity, either in money or in such stocks, bonds, bonds and mortgages, and other investments required and allowed by law, and that no part of the said capital has been withdrawn, pledged or in any manner impaired, and that no part or portion thereof has been loaned or advanced to said company by any persons, partnership or corporation, for the purpose of being used as such capital on the organization of said company.

And the deponents further severally depose and say that all the books, accounts and records containing the transactions with the subscribers to capital and in the acquisition of assets have been submitted to \_\_\_\_\_ the person appointed by the Commissioner of Banking and Insurance of the State of New Jersey to examine the capital, securities and affairs of said company on its organization and that to such person there were exhibited the assets composing the original capital and surplus of said company paid in by the stockholders on its organization.

And the said deponents further severally say, according to the best of their respective knowledge, information and belief, that there is no intention or design existing on the part of any person or persons whomsoever, to withdraw any part or portion of the said moneys and capital, until the same is wanted for investment or to be otherwise legitimately used or appropriated to and for the sole and exclusive use and benefit of the said company in its corporate capacity, in strict conformity with the statute in such case made and provided; and that there is not any agreement, arrangement or understanding, either expressed or implied, made or existing between the said company or its officers or directors, or any or either of them, or any other person or persons, to the effect or import that the money advanced or paid in by any stockholder shall be loaned or returned to him, or to any stockholder, or any other person or persons, for his or their use or accommodation, upon the hypothecation of stock of said company as security therefor, or upon any other securities, terms or conditions whatsoever; and further, that the said company is not, nor are any of its officers or directors, in any way, manner or form, pledged or committed to make any investment, loan or disposition of the said capital, or any part or portion thereof, which is not in strict conformity, in all respects, with the statute of the State of New Jersey hereinbefore recited.

And the deponents further severally depose and say, that they do not know and are not informed of any matter, cause or thing whatsoever, which in their judgment or belief, can or will, in any manner or form, impair, lessen or jeopardize the said capital or any part thereof.

\_\_\_\_\_  
Subscribed and sworn to before me at \_\_\_\_\_ N.J., this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_\_

\_\_\_\_\_  
(Official Title)

(a)

**DIVISION OF ADMINISTRATION  
Commercial Automobile Insurance Plan  
Proposed Repeal and New Rules: N.J.A.C. 11:3-1**

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

Authority: N.J.S.A. 17:29D-1.

Proposal Number: PRN 1989-620.

Submit comments by December 20, 1989 to:

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

**INSURANCE**

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The agency proposal follows:

**Summary**

The Department of Insurance (hereinafter "the Department") proposes new rules that establish a regulatory framework for the New Jersey Automobile Insurance Plan (NJAIP), Commercial Automobile Insurance Procedure ("CAIP") in accordance with N.J.S.A. 17:29D-1. The purpose of the CAIP is to provide insurance coverage through a residual market mechanism for commercial vehicles and private passenger automobiles that are ineligible for coverage through the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA).

There currently exists a Plan of Operation for CAIP but these procedures have not been established by rule as contemplated by N.J.S.A. 17:29D-1, and the current plan of operation provides little opportunity for public comment. The significant features of the CAIP plan, such as the governing and administration of CAIP, participation, extent of coverage, eligibility, rates and appeal procedures should be proposed as administrative rules in accordance with N.J.S.A. 17:29D-1.

The proposed new rules establish a plan that provides for the apportionment of insurance coverage for eligible applicants who are in good faith entitled to, but are unable to procure, motor vehicle insurance through the voluntary market. The proposed new rules establish a procedure for the sharing of premiums, losses and expenses among all insurers who are participants in New Jersey for all risks eligible for coverage. Every participant in the State of New Jersey shall participate in and provide insurance coverage to the extent required by the proposed new rules.

The proposed new rules have retained most of the significant features of the current existing plan of operation for the CAIP in addition to adding or changing the current provisions.

1. Under the proposed new rules, members of the Governing Committee are to be nominated by the insurance industry and appointed by the Commissioner. The current CAIP plan of operation provides that these members are appointed by industry trade associations and only allows the Commissioner to appoint or nominate an alternative producer representative. The proposed new rules also provide for the addition of two public members to the Governing Committee. The current CAIP plan of operation has no provision for public members.

2. The proposed new rules include a depopulation credit plan. Under the depopulation credit program, an insurer can relieve itself of participating in CAIP by voluntarily writing its share of the residual market. Nonservice companies will not receive credit for voluntarily writing business they currently service for CAIP.

3. The proposed new rules require separate rates for fleet risks of 10 or more vehicles. The proposed new rules also subject fleet risk to experience rating or a merit rating plan established in the plan of operation. Under the proposed new rules, risks with basic limits premiums of 100,000 or more shall be subject to retrospective rating established in the plan of operation.

4. The proposed new rules authorize the governing committee to arrange for an independent audit of CAIP each year, which shall include servicing carriers.

5. The proposed new rules change the current CAIP plan of operation's procedures governing appeals to the Commissioner. Under the new rules an applicant, insured, producer, servicing carrier or participant may petition for appeal to the Commissioner. The current CAIP plan of operation made the appeal procedures a matter of right.

6. The proposed new rules provide procedures for the approval and amendment of the plan of operation.

A summary of the various provisions of the proposed new rules follows:  
N.J.A.C. 11:3-1.1 states the purpose and scope of the proposed new rules.

N.J.A.C. 11:3-1.2 provides the definitions for the terms that are used in the proposed new rules.

N.J.A.C. 11:3-1.3 provides for the creation of the plan and the governing committee.

N.J.A.C. 11:3-1.4 provides for the appointment of members to the governing committee as well as the duties and responsibilities of the Committee.

N.J.A.C. 11:3-1.5 provides the criteria for determining a participant's participation in the plan.

N.J.A.C. 11:3-1.6 provides for the plan of operation which shall include performance standards, extent of coverage, a risk management plan, a statistical plan and manual, and the procedure for the timely and proper submission of the plan of operation to the Commissioner for his or her approval.

N.J.A.C. 11:3-1.7 states that CAIP shall provide coverage for bodily injury liability and property damage liability in addition to uninsured and underinsured motorist coverages, personal injury protection coverage, and physical damage coverage. This provision also limits the types of vehicles that are eligible for physical damage coverage under CAIP.

N.J.A.C. 11:3-1.8 provides the requirements that a prospective insured must adhere to in order to be eligible for coverage.

N.J.A.C. 11:3-1.9 provides for the filing of all rates, rules, a merit rating plan and minimum premiums used by CAIP, all of which are required to be approved by the Commissioner. This provision also provides for separate rates for fleets and retrospective rating for large risks.

N.J.A.C. 11:3-1.10 provides the procedure for the right to petition for appeal to the Commissioner.

**Social Impact**

The proposed new rules will require all insurers admitted to transact motor vehicle insurance in the State to participate in CAIP as provided in this subchapter and the plan of operation. The proposed new rules are designed to assist in the depopulation of CAIP by giving carriers incentives to write business in the voluntary market. Affected as insureds by the proposed new rules are owners of commercial automobiles not insurable under NJAFIUA. These rules seek to promote placement of such insureds in the voluntary market.

**Economic Impact**

The Department does not anticipate any adverse economic impact on insurers as a result of the implementation of these rules. The proposed new rules are designed to help stabilize the financial operation of CAIP which currently has substantial operating losses. The Department also anticipates an increase in rates charged fleet risks (that is, 10 or more vehicles) for CAIP coverage. As a result, these rules will result in lower premiums paid by many risks currently in the voluntary market.

**Regulatory Flexibility Statement**

The proposed new rules do not require a small business regulatory flexibility analysis since the rules do not specifically apply or impact on small business as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Department is aware of no affected insurer employing less than 100 people.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-1.

Full text of the proposed new rules follows:

**SUBCHAPTER 1. COMMERCIAL AUTOMOBILE INSURANCE PLAN**

**11:3-1.1 Purpose and scope**

(a) The purpose of this subchapter is to establish a plan pursuant to N.J.S.A. 17:29D-1:

1. To provide the coverages described herein, subject to the conditions stated, for motor vehicles other than those vehicles subject to the New Jersey Automobile Full Insurance Underwriting Association;
2. To provide for the apportionment of insurance coverage for eligible applicants who are in good faith entitled to but are unable to procure the same, through the voluntary market;
3. To establish a procedure for the sharing of premiums, losses, and expenses among all insurers who are participants in New Jersey as defined within this subchapter for all risks eligible for coverage under the provisions of this subchapter; and
4. To encourage risk management to prevent accidents and losses.

**11:3-1.2 Definitions**

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

"CAIP" means the Commercial Automobile Insurance Procedure.

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

"Eligible applicant" means the owner or registrant of a motor vehicle registered in New Jersey or to be registered within 60 days who is not qualified for automobile insurance coverage in the New Jersey Automobile Full Insurance Underwriting Association as defined in N.J.S.A. 17:30E-3m. For multi-state operations, the applicant must have its operating headquarters in New Jersey but vehicles

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may be registered in other states. Members of the United States military forces with vehicles registered in other states shall be deemed eligible applicants if they are otherwise eligible; are stationed in New Jersey; and the vehicle is garaged in New Jersey at the time application is made. No applicant shall be deemed eligible if the principal operator of the vehicle to be insured does not hold a driver's license which is valid in New Jersey, or if a regular operator of the vehicle other than the principal operator does not hold such a license.

"Eligible for depopulation credit" means business which meets all of the following criteria:

1. Business first written voluntarily by the participant after the effective date of this subchapter;

2. Business that was insured by CAIP or the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure immediately prior to being written voluntarily by the participant;

3. Business first written voluntarily by the participant no more than five years before the end of the policy year for which the credit is being claimed; and

4. Business which was not written by the participant as a servicing carrier for CAIP or the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure for one year before being written voluntarily by the participant.

"Emergency type vehicle" means any land vehicle, used to respond to distress calls, fires, or rescue, propelled by other than muscular power and not run upon rails or tracks. This term includes, but is not limited to, fire trucks, rescue trucks, police cars and ambulances.

"Gross participation" means a participant's Voluntary All Other Automobile Direct Written Premiums derived from information contained in the annual statement times a fraction, the numerator of which is the sum of the plan's total written premiums for that year and the Statewide total Voluntary All Other Automobile Direct Written Premiums which are eligible for depopulation credit for that policy year, and the denominator of which is the Statewide total Voluntary All Other Automobile Net Direct Written Premiums of all participants for that policy year.

"Light truck" means a vehicle with a gross vehicle weight (G.V.W.) of 10,000 pounds or less.

"Motor vehicle" means any land vehicle propelled otherwise than by muscular power including trailers and semi-trailers, except such vehicles that run only upon rails or tracks.

"Net participation" means a participant's gross participation for that policy year less its business eligible for depopulation credit for that policy year.

"Net participation percentage" means a participant's net participation for that policy year in proportion to the comparable Statewide total net participation for all participants.

"New Jersey Automobile Full Insurance Underwriting Association" (NJAFIUA) means the private passenger automobile insurance residual market established pursuant to N.J.S.A. 17:30E-1 et seq.

"Operating headquarters" means the chief place of business where the principal officers generally transact business, and the place to which reports are made and from which orders emanate. It is the location where the executive offices are, corporate decisions are made and corporate functions are performed.

"Participant" means an insurer licensed and authorized to write motor vehicle liability and physical damage insurance and specifically includes any insurer who writes all other automobile liability and all other automobile physical damage insurance.

"Policy year" means the exposure and premiums for all policies written during a calendar year and all losses attributable to policies written during the same calendar year.

"Private passenger automobile" means a vehicle that meets the definition in N.J.S.A. 39:6A-2a, that is not eligible for coverage through the New Jersey Automobile Full Insurance Underwriting Association, and is owned by an individual or husband and wife.

"Private passenger type automobile" means a vehicle that meets the definition in N.J.S.A. 39:6A-2a and is owned by a corporation, partnership or any other entity except an individual or husband and wife.

"Voluntary All Other Automobile Direct Written Premiums" means automobile liability, personal injury protection, and physical

damage premiums written by a participant on New Jersey risks, minus:

1. CAIP direct written premiums included in the figures which the participant wrote as a service carrier for CAIP;

2. Any direct written premiums included in the figures from insureds who are eligible applicants for the New Jersey Full Insurance Underwriting Association as defined in N.J.S.A. 17:30E-3m;

3. Any reinsurance premiums assumed from other insurers included in the figures; and

4. Any premiums for Death and Disability coverage included in the figures.

"Voluntary Direct Written Premium" means the gross direct premiums without deduction for reinsurance ceded and shall include policy membership fees less return premium and premiums on policies not taken. Voluntary Direct Written Premiums shall also include excess of loss policies except where a participant writes no basic limits automobile insurance. In the event that a risk which was written voluntarily by a participant is insured upon expiration by a surplus lines company which is under the same ownership or management as the participant, the surplus lines premium for that risk shall be included in the participant's Voluntary Direct Written Premium.

**11:3-1.3 Creation of the plan**

(a) There is created in the State of New Jersey a plan for the administration and apportionment of automobile insurance for qualified applicants to be known as the New Jersey Commercial Automobile Insurance Procedure, hereafter referred to as "CAIP."

(b) CAIP shall be administered by the governing committee pursuant to this subchapter and a plan of operation approved by the Commissioner.

(c) Every insurer admitted to transact and transacting motor vehicle insurance in the State of New Jersey shall participate in CAIP and provide insurance coverage to the extent required by this subchapter and the plan of operation.

**11:3-1.4 Governing committee**

(a) CAIP shall be administered by a governing committee of 13 members.

1. Eight members shall be salaried employees of an insurer which is a participant of CAIP.

2. Three members shall be licensed producers.

3. Two members shall be public representatives who are knowledgeable about automobile insurance matters but who are not employed by, or otherwise affiliated with, insurers, insurance producers, or other entities of the insurance industry.

4. The Commissioner or his designee shall be an ex-officio member of the committee.

(b) The following organizations shall each nominate two members to represent participants of CAIP:

1. The Alliance of American Insurers;

2. The American Insurance Association; and

3. The National Association of Independent Insurers.

(c) Participants which are not members of the organizations in (b) above shall nominate two members to represent participants in accordance with a fair method set forth in the plan of operation.

(d) The following organizations shall each nominate one member to represent producers:

1. Independent Insurance Agents of New Jersey;

2. Insurance Brokers Association of New Jersey; and

3. Professional Insurance Agents of New Jersey.

(e) All members shall be appointed by the Commissioner and shall serve for one year or until a successor is appointed. Each member may designate an alternate. In the event the Commissioner fails to appoint a nominee, the organization shall nominate another representative.

(f) The governing committee of the existing New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure shall act as the governing committee for CAIP until the CAIP governing committee is appointed pursuant to this section.

(g) All meetings of the governing committee shall be conducted in accordance with this subchapter and the plan of operation.

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(h) Pursuant to this subchapter and the plan of operation, the governing committee shall have the following duties:

1. To assume the assets and liabilities of the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure;
2. To assume the rights and obligations of the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure;
3. To develop and submit for approval by the Commissioner:
  - i. A plan of operation; and
  - ii. Premium rules, rates, surcharges, pursuant to N.J.S.A. 17:29A-1 et seq.;
4. To appoint, conditionally appoint or terminate:
  - i. A CAIP manager;
  - ii. At least two servicing carriers;
  - iii. Producers to act as agents; and
  - iv. Other employees, professionals, and contractors required to administer CAIP.
5. To budget expenses, levy assessments, and disburse funds;
6. To investigate complaints and hear appeals from applicants, insureds, producers, servicing carriers or participants about any matter pertaining to the proper administration of the CAIP;
7. To arrange for an independent audit of CAIP each year which shall include all servicing carriers;
8. To furnish all participants with:
  - i. An annual written operations report;
  - ii. The approved annual budget;
  - iii. A copy of the annual audit upon request;
  - iv. A copy of the plan of operation, and all amendments;
  - v. A copy of all rates, rules and manuals upon request; and
  - vi. A copy of the minutes from all meetings;
9. To audit the records of any participant relating to the subject matter of CAIP and establish such policies, records, books of account, documents and related material which shall be maintained for the proper administration of CAIP;
10. To perform such other functions as may be necessary and proper to administer CAIP in accordance with this subchapter and the approved plan of operation; and
11. To indemnify each member of the governing committee, and employees for any and all claims, suits, costs of investigations, costs of defense, settlements or judgments against them on account of an act or omission in the scope of the member's duties or employee's employment. CAIP shall refuse to indemnify if it determines that the act or failure to act was due to actual fraud, willful misconduct or actual malice.

**11:3-1.5 Participation**

(a) At the end of each fiscal period, CAIP's profit or loss shall be determined separately for each policy year. Profit shall be credited or distributed to each participant and loss shall be charged against each participant in proportion to each participant's "net participation percentage" for the policy year which resulted in the profit or loss.

(b) If the Commissioner finds that the continuation of the depopulation credit program is no longer in the best interests of the public, he or she may order that business first written voluntarily after that date may no longer be eligible for depopulation credit.

1. The Commissioner may also order that specific lines or sublines are no longer eligible for depopulation credit.

2. The Commissioner may also reinstate the depopulation credit program for specific lines or sublines.

(c) All data necessary to comply with the foregoing participation procedures shall be reported to the CAIP's central statistical agent in the manner described in the approved statistical plan.

(d) Groups of participants under the same ownership and management shall be treated as a single participant. Groups of participants under either the same ownership or management, but not both, may elect to be treated either separately or as a single company.

(e) In the event a participant discontinues writing motor vehicle liability or physical damage insurance in this State, it shall continue to pay assessments, provided, however, that if the automobile liability or physical damage business of a participant discontinuing the writ-

ing of automobile liability or physical damage insurance in this State has been purchased by, transferred to, or reinsured by another company, the latter shall receive the assessments of the former.

(f) In the event a participant is merged with another company or there is a consolidation of companies, the continuing company shall receive the assessments of the company merged or consolidated, provided, however, the continuing company may be relieved from such obligations if another company has agreed, in a manner satisfactory to the governing committee, to assume such obligations.

(g) Participation shall be suspended upon order of the Commissioner of Insurance if he or she finds that such action is required by the financial condition of that participant.

(h) All participants in CAIP shall participate in the business written by the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure pursuant to an approved plan of operation.

**11:3-1.6 Plan of operation**

(a) The plan of operation shall provide for the prompt and efficient provision of automobile insurance to eligible applicants. The plan of operation shall provide for, among any other matters:

1. The internal organization and proceedings of the governing committee;
2. Standards and procedures for the appointment, compensation, and termination of and performance standards for servicing carriers, the CAIP manager, producers, other employees, professionals and contractors required to administer CAIP;
3. The extent of coverage to be offered by CAIP to eligible applicants;
4. Procedures to apply for coverage;
5. Premium rules, surcharges and minimum premiums;
6. Provisions for the cancellation or the nonrenewal of policies;
7. Methods and means for the collection, investment and disbursement of funds;
8. Development and maintenance of a statistical plan, and manuals incorporating that plan, which shall be subject to the prior approval by the Commissioner in the same manner as the plan of operation; and
9. Development and maintenance of a risk management plan which shall provide for safety inspections, safety education, follow-up on hazardous conditions and operations and procedures for the cancellation of insurers who fail to comply with the procedures of the plan. The risk management plan shall be subject to the prior approval by the Commissioner in the same manner as the plan of operation.

(b) The governing committee shall, within 90 days of the effective date of this subchapter, submit to the Commissioner, for his or her review and approval, a proposed plan of operation. The governing committee may propose an amendment to the plan of operation at any time.

(c) The proposed plan and any amendments shall be reviewed by the Commissioner and approved by him or her if he or she finds it fulfills the purposes provided by this subchapter. If approved, the Commissioner shall certify approval to the governing committee and the plan of operation or amendments shall take effect 10 days after such certification.

1. If the Commissioner disapproves all or any part of the plan of operation or any amendment he or she shall return same to the governing committee with a statement, that sets forth the reasons for his or her disapproval and may include other recommendations he or she may wish to make.

2. If the governing committee does not submit a plan of operation within 90 days after the effective date of this subchapter, or a new plan which is acceptable to the Commissioner within 90 days after the disapproval of a proposed plan, the Commissioner may promulgate a plan of operation and certify same to the governing committee.

3. Any such plan approved by the Commissioner shall take effect 10 days after the certification to the governing committee; provided, however, that until a plan of operation is in effect pursuant to the provisions of this subchapter, the existing New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure tem-

porary placement facility shall be continued in effect. Each participant shall continue to comply with the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure with respect to all business written under that procedure prior to the effective date of the CAIP plan of operation.

(d) The Commissioner may propose an amendment to the plan of operation by communicating the proposed amendment to the governing committee.

#### 11:3-1.7 Coverage

(a) CAIP shall provide to eligible applicants, bodily injury liability and property damage liability coverages as follows:

1. CAIP shall offer basic limits of \$35,000 combined single limit and statutory uninsured motorist coverage except:

i. When limits in excess of the basic combined single limit of \$35,000 are required by law, the plan shall offer limits adequate to comply with the minimum requirements of that law, except with respect to limits over \$5 million in which case excess coverage is conditioned upon the plan being able to secure facultative reinsurance. CAIP shall provide a policy for limits less than the minimum requirements of the law when evidence of adequate excess insurance is provided by the producer or the insured.

ii. CAIP shall provide limits adequate to comply with the provisions of the financial responsibility law of any state in which the motor vehicle will be operated, but only while the vehicle is being operated in that state.

iii. CAIP shall also offer the optional limits of liability as specified in the plan of operation.

(b) CAIP shall provide to eligible applicants, uninsured or underinsured motorist coverage as follows:

1. Uninsured and underinsured motorist coverage shall be provided as an option to the named insured up to the maximum and subject to the deductibles specified in the plan of operation. The limits for uninsured and underinsured motorist coverage shall not exceed the insured's motor vehicle liability policy limits for bodily injury and property damage respectively.

2. Uninsured and underinsured motorist coverage shall not be increased by stacking the limits of coverage of multiple motor vehicles covered under the same policy of insurance nor shall these coverages be increased by stacking the limits of coverage of multiple policies available to the insured. If the insured had uninsured motorist coverage available under more than one policy, any recovery shall not exceed the higher of the applicable limits of the respective coverages and the recovery shall be prorated between the applicable coverages as the limits of each coverage bear to the total of the limits.

3. Uninsured motorist coverage shall be subject to the policy terms, conditions and exclusions approved by the Commissioner, including, but not limited to, unauthorized settlements, nonduplication of coverage, subrogation and arbitration.

(c) CAIP shall provide to eligible applicants, basic and additional personal injury protection coverage as follows:

1. With respect to those automobiles subject to the New Jersey Automobile Reparation Reform Act, CAIP shall provide basic personal injury protection coverage under every automobile liability policy as required by the Act and shall also offer to the named insured Additional Personal Injury Protection as required by the Act and by regulations promulgated by the Commissioner thereunder.

(d) CAIP shall provide to eligible applicants, physical damage coverage as follows:

1. CAIP shall only offer physical damage coverage to:

- i. Private passenger vehicles;
- ii. Private passenger type vehicles;
- iii. Light trucks;
- iv. Motorcycles;
- v. Recreational trailers (excluding trailers used as residences); and
- vi. Social services vehicles of the private passenger, station wagon, van or mini-bus type owned by or operated on behalf of a non-profit entity used to transport, without charge, the elderly or handicapped.

2. Notwithstanding (d)1 above, CAIP shall not offer physical damage coverage to:

- i. Risks consisting of fleets of 10 or more vehicles;
- ii. Vehicles more than 25 or more years old;
- iii. Vehicles with an original cost new of \$40,000 or more;
- iv. Vehicles with a seating capacity in excess of 20;
- v. Any emergency type vehicle; and
- vi. Any vehicle which is operated under a registration plate not issued for a specific vehicle.

3. Comprehensive and collision coverage shall be provided on an actual cash value basis subject to a minimum deductible specified in the plan of operation applicable to each loss to each vehicle. CAIP shall also offer optional higher deductibles as specified in the plan of operation.

4. Physical damage coverage shall be offered only in connection with a policy written by the plan affording bodily injury and property damage coverage.

5. Upon request, CAIP shall issue a loss payable clause for the benefit of a lienholder.

#### 11:3-1.8 Eligibility

(a) As a prerequisite for insurance from CAIP, a prospective insured must attempt, within 60 days prior to the date of the application, to obtain automobile insurance in New Jersey, and be unable to obtain such insurance. The prospective insured must certify, in the application form prescribed by CAIP, that the applicant has attempted, but has been unable, to obtain automobile insurance in New Jersey through ordinary methods.

(b) For any fleet risk of 10 or more vehicles, the applicant must also provide:

1. A copy of the notice of cancellation or nonrenewal from the applicant's previous insurer, or an explanation concerning why the applicant was not insured; and

2. A certification that the applicant has been refused insurance within 60 days of the date of application from at least three named insurers licensed to transact automobile business in New Jersey. Such certification shall list the three insurers.

(c) No producer shall bind a risk for CAIP or submit an application for insurance to CAIP if such producer knows that the risk has coverage available from the voluntary market.

(d) An eligible applicant shall not be afforded coverage until it:

1. Submits an application as prescribed in the plan of operation;
2. Pays the premium, or portion thereof, required in the plan of operation;
3. Is accepted for coverage by CAIP or its authorized agent as provided for in the plan of operation; and
4. Completes such other requirements as set forth in the plan of operation.

#### 11:3-1.9 Rates and policy forms

(a) CAIP shall continue to use the rates, rules, surcharges, minimum premiums, classifications and policy forms approved for the New Jersey Automobile Insurance Plan Commercial Automobile Insurance Procedure until modified or changed pursuant to this subchapter.

(b) The governing committee shall file all rates, rules, surcharges, minimum premiums, classifications and policy forms to be used by CAIP for the prior approval of the Commissioner. Proceedings to review these filings shall be conducted pursuant to N.J.S.A. 17:29A-1 et seq. All rates shall consider the experience of risks insured by the plan and shall not be excessive, inadequate or unfairly discriminatory.

(c) For any risk with less than 10 vehicles, the premium shall be subject to a merit rating plan established in the plan of operation. Every rate filing shall include an analysis of the adequacy of the merit rating plan.

(d) Any risk with 10 or more vehicles shall be considered as a fleet. CAIP shall file base rates for fleets with the Commissioner for his or her prior approval which are different than the rates for non-fleet risks if CAIP determines that the loss expectancy of fleet risks insured by CAIP is different than the loss expectancy of non-fleet risks insured by CAIP.

(e) Fleet risks shall be subject to an experience rating plan established in the plan of operation, which shall set forth the criteria for

eligibility of the experience rating plan. If any fleet risk is determined to be ineligible for the experience rating plan, the risk shall be subject to a merit rating plan established in the plan of operation.

(f) Any risk with basic limits premium of \$100,000 or greater shall also be subject to a retrospective rating plan established in the plan of operation. In the event CAIP finds that the premium from all retrospectively rated risks combined is inadequate, or excessive, CAIP shall file with the Commissioner for his or her prior approval a change in the retrospective rating formulas, including a percentage surcharge on all retrospectively rated risks if necessary, so that the total premium from retrospectively rated risks is adequate based on the combined experience of retrospectively rated risks insured by the plan.

#### 11:3-1.10 Right to petition for appeal to the Commissioner

(a) An applicant, insured, producer, servicing carrier or participant may petition for appeal to the Commissioner from an adverse decision of the governing committee by filing a request in writing within 20 days of the date of receipt of the written decision of the governing committee.

1. The written request to appeal shall set forth the facts upon which it is based and include a copy of the written decision of the governing committee.

2. The Commissioner shall notify the petitioner and the governing committee within 30 days whether the request to appeal shall be granted.

3. Notice from the Commissioner that an appeal has been granted shall also provide a statement about whether the action of the governing committee has been stayed pending the disposition of the appeal.

(b) An appeal to the Commissioner granted pursuant to this rule shall be conducted in accordance with applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

## (a)

### DIVISION OF FINANCIAL EXAMINATIONS

#### Risk Retention Groups and Purchasing Groups

#### Proposed New Rules: N.J.A.C. 11:2-30

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6, 17:1C-17 and 52:14B-1 et seq.

Proposal Number: PRN 1989-622.

Submit comments by December 20, 1989 to:

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

The agency proposal follows:

#### Summary

The Product Liability Risk Retention Act of 1981 (Act), 15 U.S.C. 3901 et seq., was enacted in response to severe, national market dislocations in obtaining product liability insurance for product manufacturers, distributors and retailers. The rationale underlying this statute was that it would provide an alternative to the traditional insurance market.

The 1981 Act permits insurance buyers to form their own insurance companies which would adhere closely to their own experience in setting rates. Termed "risk retention groups," it was believed that the new groups would create new capacity in the market, reduce costs for participants, and would also promote greater competition among insurers thereby encouraging private insurers to set rates to reflect experience as accurately as possible.

It was further believed that through the group purchase of insurance, members of "purchasing groups" could realize advantages in rates and terms from the economic efficiency of collective purchasing.

After one amendment to the 1981 Act in 1983, the Act was further amended in 1986. The amendments expanded the coverage of the 1981 Act to purchasers of general liability insurance. The amendments retain

the basic regulatory and preemptory structure of the 1981 Act but new provisions were included to augment regulatory authority. Known as the Liability Risk Retention Act of 1986, the 1986 Act preempted certain state laws that would have the effect of frustrating the Act's purpose.

The purpose of these proposed new rules is to regulate the formation and operation of risk retention groups and purchasing groups in this State formed pursuant to the provisions of the Liability Risk Retention Act of 1986, to the extent permitted by such law.

The proposed new rules set forth requirements which must be met before a risk retention group may do business in this State, and such requirements differ according to whether the group is chartered in another state and wishes to do business in this State or whether the group wishes to be chartered in this State before doing business.

The proposed new rules also set forth requirements which must be met before a purchasing group may do business in this State.

In addition, the proposed new rules require agents and brokers of risk retention groups and purchasing groups to comply with the New Jersey producer licensing laws.

N.J.A.C. 11:2-30.1 sets forth the purpose and scope of these proposed new rules.

N.J.A.C. 11:2-30.2 sets forth the definitions of terms used throughout the proposed new rules.

N.J.A.C. 11:2-30.3 sets forth the qualifications for a risk retention group chartered in this State.

N.J.A.C. 11:2-30.4 sets forth the qualifications for a risk retention group not chartered in this State.

N.J.A.C. 11:2-30.5 sets forth provisions applicable to risk retention groups in general.

N.J.A.C. 11:2-30.6 sets forth notice and registration requirements for purchasing groups.

N.J.A.C. 11:2-30.7 sets forth restrictions relating to insurance purchased by purchasing groups.

N.J.A.C. 11:2-30.8 prohibits the association of risk retention groups with State sponsored guaranty associations.

N.J.A.C. 11:2-30.9 sets forth licensing requirements for agents and brokers of risk retention groups and purchasing groups.

N.J.A.C. 11:2-30.10 provides for fines and penalties applicable to risk retention and purchasing groups for failure to comply with this subchapter.

N.J.A.C. 11:2-30.11 provides for the severability from this subchapter of provisions or applications later determined to be invalid.

#### Social Impact

The proposed new rules will clarify the State of New Jersey's requirements for risk retention groups and purchasing groups which are doing or intend to do business in this State not inconsistent with the Risk Retention Act of 1986. The proposed new rules will also protect consumers and policyholders in this State through the proper regulation of this alternative market mechanism.

#### Economic Impact

The proposed new rules will require risk retention groups and purchasing groups to qualify to do business in this State and subject them to applicable New Jersey premium tax laws.

The proposed new rules require compliance with certain other State laws; however, the cost of such compliance will vary depending on the particular risk retention or purchasing group.

As these rules, in conjunction with the Federal legislation, promote sound commercial liability insurance, the economic interests of consumers is protected.

The Department does expect to incur additional expense as a result of the proposed new rules due to the increased time, effort and expense in monitoring the operation of, and reviewing documents filed by risk retention groups and purchasing groups.

#### Regulatory Flexibility Analysis

The proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" are risk retention and purchasing groups qualified to do business in this State.

The reporting and compliance requirements imposed upon risk retention groups and purchasing groups, including small businesses, are that they file with the Department certain documents in order to qualify to do business in this State and that risk retention groups pay applicable State premium taxes.

The proposed new rules should not require additional capital expenditures by way of personnel and equipment, nor should subject groups

be required to engage professional services for compliance. Therefore, no business size related differentiation in requirements is provided.

Full text of the proposal follows:

### SUBCHAPTER 30. RISK RETENTION GROUPS AND PURCHASING GROUPS

#### 11:2-30.1 Purpose; scope

(a) The purpose of this subchapter is to regulate in this State the formation and operation of risk retention groups and purchasing groups formed pursuant to the provisions of the Federal Liability Risk Retention Act of 1986, 15 U.S.C. 3901 et seq., to the extent permitted by such law.

(b) This subchapter applies to all risk retention groups and purchasing groups, their agents and representatives, who are doing or intend to do business in this State.

#### 11:2-30.2 Definitions

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

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

"Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:

1. Any person who performs that work; or
2. Any person who hires an independent contractor to perform that work.

Completed operations liability shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

"Deductible" means any arrangement under which an insurer pays claims and then seeks reimbursement from the insured, except that the insurer's obligation to pay claims is not contingent upon reimbursement from the insured.

"Doing business" in this State means solicitation in this State, having group members in this State, or having an office in this State.

"Domicile" means, with respect to a purchasing group:

1. For a corporation, the state in which the purchasing group is incorporated; and
2. For an unincorporated entity, the state of its principal place of business.

"Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

"Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance and any other arrangement for shifting and distributing risks which is determined to be insurance pursuant to the laws of this State.

"Liability" means legal liability for damages, including the cost for defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of:

1. Any business, trade, product, services, including professional services or operations; or
2. Any activity of any state or local government, or any agency or instrumentality thereof.

Liability does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the Federal Employer's Liability Act, 45 U.S.C. 51 et seq.

"Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in the definition of "liability."

"Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of the risk retention group, including at a minimum:

1. Information sufficient to verify that its members are engaged in business or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;

2. For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

3. Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

4. Pro forma financial statements and projections;

5. Appropriate opinions by a qualified, independent casualty actuary, including the determination of minimum premium or participation levels and capitalization required to commence operations and to prevent a hazardous financial condition;

6. Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements;

7. Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and

8. Such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state.

"Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of that person when the incident giving rise to the claim occurred.

"Purchasing group" means any group which:

1. Has as one of its purposes the purchase of liability insurance on a group basis;

2. Purchases this insurance only for its group members and only to cover their similar or related liability exposure;

3. Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and

4. Is domiciled in this or any other state.

"Retrospectively rated" means a rating plan or system, whereby the premium payable by an insured is subject to a contractual adjustment after the policy expiration based upon actual and incurred experience.

"Risk retention group" means any corporation or other limited liability association:

1. Whose primary purpose and activity consists of assuming and spreading all, or any portion of the liability exposure of its group members;

2. Which:

i. Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

ii. Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in the business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability;

3. Which does not exclude any person from membership in the group solely to provide for members of that group a competitive advantage over that person;

## INSURANCE

## 4. Which:

i. Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

ii. Has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

5. Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises or operations;

6. Whose activities do not include the provision of insurance other than:

i. Liability insurance for assuming and spreading all or any portion of the liability of its group members; and

ii. Reinsurance with respect to the similar or related liability exposure of any other risk retention group, or of any member of the group, which is engaged in businesses or activities so that such group or member meets the requirement described in paragraph 5 above for membership in the group which provides the reinsurance; and

7. The name of which includes the phrase "Risk Retention Group."

"Self-insured retention" means:

1. Any fund or other arrangement to pay claims other than by an insurance company; and

2. Any arrangement under which an insurance company has no obligation to pay claims on behalf of an insured if it is not reimbursed by the insured.

"Similar insurance source" means an insurer authorized to do business in this State or a non-authorized surplus lines insurer eligible to do business in this State.

"Special risk" means:

1. A commercial lines insurance risk as specified on a list promulgated by the Commissioner, which is of an unusual nature or high loss hazard or is difficult to place or rate or which is excess or umbrella or which is eligible for export; or

2. A commercial lines insurance risk which produces minimum annual premium in excess of \$10,000. Additions or deletions to the list promulgated may be made by the Commissioner without a hearing upon notice to all licensed insurers.

"State" means this State, any other state of the United States or the District of Columbia.

## 11:2-30.3 Risk retention groups chartered in this State

(a) Any person wishing to establish a risk retention group chartered and licensed in this State shall, in addition to meeting the requirements established by Chapter 17 of Title 17 of the Revised Statutes (N.J.S.A. 17:17), submit to the Commissioner on a form or forms prescribed by the Commissioner, a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within 10 days of any such change. The group shall not offer any additional kinds of liability insurance in this State or in any other state, until a revision of such plan or study is approved by the Commissioner.

(b) At the time of filing its application for charter, the risk retention group shall provide to the Commissioner in summary form the following information, upon receipt of which the Commissioner shall forward such information to the National Association of Insurance Commissioners (NAIC):

1. The identity of the initial members of the group;

2. The identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group;

3. The amount and nature of initial capitalization;

4. The coverages to be afforded; and

5. The states in which the group intends to operate.

(c) Each risk retention group chartered in this State must be chartered to do business in this State as provided for in Title 17 of the Revised Statutes and is subject to Title 17 of the Revised Statutes

with respect to its operations, unless waived by any of the provisions of this subchapter.

(d) Each risk retention group chartered in this State shall provide the following notice in 10-point, boldface type, in every policy of insurance issued by the group:

## "NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insolvency guarantee funds are not available for your risk retention group."

## 11:2-30.4 Risk retention groups not chartered in this State

(a) Each risk retention group which is chartered and licensed under the laws of any other state and which wishes to do business in this State shall, before doing business as a risk retention group, submit to the Commissioner, on a form or forms prescribed by the Commissioner:

1. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, the charter date, its principal place of business, and any other information, including information on its membership, which may be required by the Commissioner to verify that the risk retention group is qualified under the definition contained in N.J.A.C. 11:2-30.2;

2. A copy of its plan of operation or feasibility study and revisions of such plan or study submitted to the state or states in which the risk retention group is chartered and licensed; provided, however, that the provision relating to a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered before such date by any risk retention group which had been chartered and operating for not less than three years before such date. The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by this subsection at the same time such revision is submitted to the commissioner of its chartering state;

3. A statement of registration, for which a filing fee shall be determined by the Commissioner, which designates the Commissioner as its agent for the purpose of receiving service of legal documents or process; and

4. Any other information as may be required by the Commissioner to verify that the risk retention group is qualified under the definition contained in N.J.A.C. 11:2-30.2. No risk retention group may offer any kind of liability insurance in this State until it is notified by the Commissioner that the risk retention group is qualified under the definition contained in N.J.A.C. 11:2-30.2.

(b) Each risk retention group which has received notice of qualification from the Commissioner to do business in this State shall submit to the Commissioner on a reasonable and timely basis:

1. A copy of the group's annual financial statement submitted to the state in which the risk retention group is chartered and licensed as an insurance company which shall be certified by an independent public accountant or a certified public accountant, and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist;

2. A copy of each examination of the risk retention group as certified by the chartering state's commissioner or public official conducting the examination;

3. Upon request of the Commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group; and

4. Such information as may be required to verify its continuing qualification as a risk retention group under N.J.A.C. 11:2-30.2.

(c) To the extent that insurance agents or brokers are utilized by a risk retention group pursuant to this subchapter, such agent or broker shall keep a complete and separate record of all policies procured from each such risk retention group, which records shall be open to examination by the Commissioner, as provided in Title

17 of the Revised Statutes. These records shall, for each policy and for each kind of insurance provided thereunder, include the following:

1. The limit of liability;
2. The time period covered;
3. The effective date;
4. The name of the risk retention group which issued the policy;
5. The gross premium charged; and
6. The amount of return premiums, if any.

(d) Each risk retention group, its agents and representatives shall comply with the Unfair Claims Settlement Practices Act of this State, N.J.S.A. 17:29B-1 et seq., and any other State law regarding deceptive, false or fraudulent acts or practices.

(e) Each risk retention group must submit to an examination by the Commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the Commissioner of this State. The risk retention group shall pay the reasonable expenses of such an examination upon presentation by the Commissioner of a detailed account of the expenses.

(f) Every application form for insurance from a risk retention group, and every policy, on its front and declaration pages, issued by a risk retention group, shall contain in 10-point, boldface type the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guarantee funds are not available for your risk retention group."

(g) Each risk retention group shall comply with any lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the Commissioner if there has been a finding of financial impairment after an examination pursuant to this section.

(h) Each risk retention group shall comply with any injunction issued by a court of competent jurisdiction upon a petition by the Commissioner alleging that the group is in a hazardous financial condition or is financially impaired.

11:2-30.5 Provisions applicable to risk retention groups in general

(a) No risk retention group, whether chartered in this State or another state, shall:

1. Solicit the sale of or sell insurance to any person who is not eligible for membership in the group;
2. Solicit the sale of or sell insurance if it is deemed to be in a hazardous condition or financially impaired;
3. Sell or offer for sale any insurance coverage which is not permitted by the provisions of Title 17 of the Revised Statutes or which is declared unlawful by the highest court of this State whose law applies to such insurance coverage; or
4. Be owned by or controlled directly or indirectly by an insurer, or have an insurer as a member, except that this shall not apply in the case of a risk retention group in which all the members are insurers.

(b) Notwithstanding the provisions of any other law to the contrary, no policy of insurance issued by a risk retention group, whether chartered in this State or otherwise, shall be required to be countersigned by an insurance agent or broker residing in this State.

(c) All premiums paid to the risk retention groups not chartered in this State for coverage on risks within this State are subject to taxation at the same rate and are subject to the same interest, fines and penalties for nonpayment as that taxation which is applicable to surplus lines insurers. All premiums paid to risk retention groups chartered in this State pursuant to N.J.A.C. 11:2-30.3 are subject to taxation at the same rate and shall be subject to the same interest, fines, and penalties for nonpayment as that taxation which is applicable to authorized insurers.

(d) Each risk retention group, whether chartered in this State or otherwise, shall report all premiums paid to it which are attributable to risks insured within this State and remit the taxes owed on such

premiums to, and on a form and in a manner required by, the Director of the Division of Taxation, in consultation with the Commissioner.

11:2-30.6 Notice and registration requirements of purchasing groups

(a) Any group of persons with similar exposure to risk may form a purchasing group for the purpose of purchasing liability insurance. Each purchasing group with members located in this State shall, before doing business in this State, register with, on a form established by, the Commissioner.

1. The application for registration shall be accompanied by a registration fee of \$250.00 payable to: State of New Jersey, General Treasurer.

2. Each purchasing group registered pursuant to this section shall submit to the Commissioner from time to time, as he or she may require, reports relative to the group's operations.

3. Each purchasing group registered pursuant to this subsection is subject to audits or examination as the Commissioner may deem necessary.

(b) No purchasing group with members located in this State shall solicit business in this State, nor shall any person solicit, negotiate or effect a contract of insurance or accept any fee or commission on a risk located in this State which is to be effected through a purchasing group unless the purchasing group is notified by the Commissioner as registered pursuant to the provisions of this section.

(c) Each purchasing group with members located in this State shall file a statement with the Commissioner which designates the Commissioner as agent of the purchasing group for service of legal documents or service of process, except that this shall not apply in the case of any purchasing group which:

1. Was incorporated before April 1, 1986 and is domiciled on or after October 27, 1986 in any state of the United States;

2. Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state and since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state;

3. Was a purchasing group pursuant to the provisions of the "Product Liability Risk Retention Act of 1981," 95 Stat 949, P.L. 97-45 (15 U.S.C. 3901 et seq.) before October 27, 1986; and

4. Does not purchase insurance that was not authorized for the purposes of an exemption under the Product Liability Risk Retention Act of 1981, 15 U.S.C. 3901 et seq.

11:2-30.7 Restrictions on insurance purchased by purchasing groups

(a) No purchasing group doing business in this State shall purchase or maintain insurance covering its members located in this State from an insurer or risk retention group which is not authorized or admitted pursuant to Title 17 of the New Jersey Revised Statutes to write insurance in this State unless the purchase is from a risk retention group registered pursuant to N.J.A.C. 11:2-30.4 or a surplus lines insurer deemed eligible pursuant to "the surplus lines law," P.L. 1960, c.32 (N.J.S.A. 17:22-6.40 et seq.).

(b) No purchasing group doing business in this State shall purchase or maintain any insurance covering its members located in this State which provides for a deductible or a self-insured retention unless the deductible or self-insured retention is the sole responsibility of the individual members of the purchasing group.

(c) No purchasing group doing business in this State shall purchase or maintain a policy of insurance covering its members located in this State which is retrospectively rated unless either:

1. The retrospective premium is charged to each member based solely on that member's claims; or

2. The retrospective premium payable by the group is subject to a provision which provides for a maximum premium payable by the group. The maximum premium shall be established so that there is at least a 10 percent actuarial probability that the premium otherwise payable will exceed the maximum premium.

(d) No purchasing group doing business in this State may purchase or maintain a policy of insurance covering its members located in this State unless the policy form or contract complies with P.L. 1982,

c.144 (N.J.S.A. 17:29AA-1 et seq.) if the insurer is an authorized insurer, or section 9 of P.L. 1960, c.32 (N.J.S.A. 17:22-6.43) if the insurer is an eligible surplus lines insurer.

(e) No purchasing group doing business in this State shall purchase insurance coverage with rates in this State which are less than the lowest rate approved by the Commissioner for use by any authorized insurer for similar risks, except that this provision does not apply to special risks as defined in P.L. 1982, c.114 (N.J.S.A. 17:29AA-1 et seq.). The purchasing group may purchase insurance coverage with any premium modification plan on file and in actual use by an authorized insurer for similar risks. The Commissioner may authorize the purchasing group to purchase insurance coverage with a lower rate or different premium modification plan if the group demonstrates to the Commissioner's satisfaction that the exposure and experience of the group's members in this State justify a lower rate or different premium modification plan.

(f) Each purchasing group doing business in this State shall report all premiums paid to it which are attributable to risks within the State, on a form and in a manner provided by the Commissioner. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this State by a purchasing group or any members of the purchasing group are imposed upon the group's insurer at the same rate and subject to the same interest, fines and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds.

#### 11:2-30.8 Insolvency guaranty associations

No risk retention group, whether domiciled in this State or otherwise, shall be eligible to become a member of, contribute to, or derive any benefit from, the New Jersey Property-Liability Guaranty Association established pursuant to the provisions of P.L. 1987, c.17 (N.J.S.A. 17:30A-1 et seq.) or the New Jersey Surplus Lines Insurance Guaranty Fund established pursuant to the provisions of P.L. 1984, c.101 (N.J.S.A. 17:22-6.70 et seq.).

#### 11:2-30.9 Duty of insurance producers to obtain license

(a) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating, procuring or effecting liability insurance in this State from a risk retention group unless such person, firm, association or corporation is licensed as an insurance producer in accordance with N.J.S.A. 17:22A-1 et seq. and all rules and regulations promulgated thereunder.

(b) No person, association or corporation shall act or aid in any manner in soliciting, negotiating, procuring or effecting liability insurance in this State for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless such person, firm, association or corporation is licensed as an insurance producer in accordance with N.J.S.A. 17:22A-1 et seq. and all rules and regulations promulgated thereunder.

(c) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating, procuring or effecting liability insurance coverage in this State for any member of a purchasing group under a purchasing group's policy unless such person, firm, association or corporation is licensed as an insurance producer in accordance with N.J.S.A. 17:22A-1 et seq. and all rules and regulations promulgated thereunder.

(d) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating, procuring or effecting liability insurance from a risk retention group registered pursuant to N.J.A.C. 11:2-30.4 or an insurer not authorized to do business in this State on behalf of a purchasing group with members located in this State unless such person, firm, association or corporation is licensed as a surplus lines agent in accordance with N.J.S.A. 17:22A-1 et seq. and all rules and regulations promulgated thereunder.

(e) For purposes of acting as an agent or broker for a risk retention group or purchasing group pursuant to (a) through (d) above, the requirement of residence in this State shall not apply.

(f) Every person, firm, association or corporation licensed pursuant to the provisions of N.J.S.A. 17:22A-1 et seq., on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by N.J.A.C. 11:2-30.4(f) in the case of a risk retention group and N.J.A.C. 11:2-30.7(b) in the case of a purchasing group.

#### 11:2-30.10 Fines and penalties

(a) Each risk retention group, whether chartered in this State or otherwise, is subject to the same fines and penalties to which insurers licensed in this State are subject for any violation of this subchapter or any other applicable law.

(b) Failure of a purchasing group doing business in this State to comply with the provisions of this section may, after notice and a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, result in the revocation or suspension of its registration in this State.

#### 11:2-30.11 Severability

If any provision of this subchapter or its application to any person or circumstance is held invalid, such determination shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are separable.

## (a)

### DIVISION OF FINANCIAL EXAMINATIONS Orderly Withdrawal of Insurance Business Proposed New Rules: N.J.A.C. 11:2-29

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:17-1, 17:22-6.14(a), 17:22-6.40 et seq., 17:22A-1 et seq., 17:23-1 et seq., 17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-1 et seq., 17:29C-1 et seq., 17:32-1 et seq., 17:37B-1 et seq., and 39:6A-1 et seq.

Proposal Number: PRN 1989-619.

Submit comments by December 20, 1989 to:

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

The agency proposal follows:

#### Summary

When an insurer determines to discontinue one or more lines of business in the State of New Jersey, a process of orderly withdrawal from such business is necessary in order to prevent or minimize disruptions in the marketplace and harm to the interests of policyholders and the public in general. Such an orderly withdrawal requires that certain obligations be fulfilled and certain procedures followed.

These proposed new rules establish the requirements and procedures by which insurers may initiate and execute an orderly withdrawal from one or more lines of insurance business in this State.

N.J.A.C. 11:2-29.1 sets forth the purpose and scope of the proposed new rules.

N.J.A.C. 11:2-29.2 provides the definitions of words and terms used throughout this subchapter.

N.J.A.C. 11:2-29.3 sets forth the general provisions which must be met to satisfy an orderly withdrawal of business.

N.J.A.C. 11:2-29.4 contains the elements of a proposed plan of orderly withdrawal.

N.J.A.C. 11:2-29.5 contains additional requirements which must be satisfied by insurer's transacting the business of private passenger automobile insurance in this State.

N.J.A.C. 11:2-29.6 provides for fines and penalties for failure to comply with this subchapter.

N.J.A.C. 11:2-29.7 provides for the severability from this subchapter of provisions or applications later determined to be invalid.

#### Social Impact

The proposed new rules will establish formalized requirements for insurers to withdraw from this State in an orderly fashion. If the requirements contained in the proposed new rules are satisfied, insurers will be able to withdraw from this State without unnecessarily disrupting the marketplace or harming the insurance-buying public.

**Economic Impact**

The proposed new rules will not result in any adverse economic impact upon insurers. These new rules codify existing Department policy regarding an orderly withdrawal from this State. This codification of Department policy will aid insurers' administrative, financial and legal staff in initiating and executing an orderly plan of withdrawal.

Unless a waiver is granted, an insurer seeking to withdraw a single line of insurance is required to surrender its certificate of authority. In addition, the withdrawal applicant and its affiliates and subsidiaries shall be prohibited from acquiring, directly or indirectly, a controlling interest in any insurer that is doing business in this State for a period of five years after the effective date of nonrenewal, cancellation, termination or surrender of its certificate of authority to transact the business of insurance in this State.

**Regulatory Flexibility Analysis**

The proposed new rules are applicable to all insurers as herein defined. It is believed that some insurers to whom the proposed new rules apply are "small businesses" within the meaning found in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The Department does not anticipate that the notification and compliance requirements contained in the proposed new rules will necessarily require the addition of any new staff to insurer payrolls or any new capital requirements. The rules do not impose any procedural requirements that would impact, economically, any insurers contemplating withdrawal, let alone small businesses.

Therefore, to further uniformity and consistency in their application, the proposed new rules do not provide an exemption for "small businesses."

Full text of the proposal follows:

**SUBCHAPTER 29. ORDERLY WITHDRAWAL OF INSURANCE BUSINESS****11:2-29.1 Purpose and scope**

(a) The purpose of this subchapter is to establish the requirements and procedures by which insurers may undertake an orderly withdrawal from the business of insurance in this State, thereby preventing or minimizing the disruption in the marketplace and harm to the public that would otherwise occur in the absence of regulation and thereby permitting insurers to wind down their business in an orderly fashion consistent with their obligations under applicable New Jersey laws.

(b) This subchapter applies to all insurers that withdraw from the business of insurance as defined herein.

**11:2-29.2 Definitions**

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

"Affiliate" means an insurer that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common management or control with, the insurer that initiates a withdrawal.

"Annual statement" means the form of statement that is described in N.J.S.A. 17:23-1.

"Applicant" means the insurer seeking approval to withdraw from the business of insurance in this State.

"Automobile" and "automobile insurance" are defined in N.J.S.A. 17:30E-3.

"Certificate of authority" or "certificate" means the evidence of authority issued by the Commissioner that enables an insurer to transact the business of insurance in this State.

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

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the insurer as defined in N.J.S.A. 17:27A-1.

"Insurance" means any risk or coverage authorized pursuant to Titles 17 and 17B of the Revised Statutes.

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

"Insurer" means an authorized or admitted insurer, reinsurer, eligible surplus lines insurer or a chartered or qualified risk retention group, and any insurance affiliates or subsidiaries thereof, transacting the business of insurance in this State.

"New Jersey surplus" means that portion of the applicant's policyholder's surplus as reported in its statutory annual statement, which equals the ratio of the applicant's net direct premium written (less dividends) for the affected lines of New Jersey business during the immediately preceding three calendar years as reported on page 14 of the statutory annual statement to its net direct premium written for all lines during the same time period in all states as reported on Schedule T of the statutory annual statement.

"Servicing carrier" means an automobile insurer subject to the provisions of N.J.S.A. 17:30E-12.

"Subsidiary" means an affiliate controlled by an insurer that initiates a withdrawal directly, or indirectly through one or more intermediaries.

"Withdraw" or "withdrawal" means the nonrenewal, cancellation, or termination of policies or surrender of a certificate of authority for one or more lines of insurance or rating plans, or any similar insurer action that amounts to a withdrawal (including, but not limited to, the cessation of writing insurance coverage) from the business of insurance in this State.

**11:2-29.3 General provisions**

(a) Any insurer which wishes to withdraw from the business of insurance in New Jersey (by surrendering or nonrenewing its certificate of authority to operate in this State, or any specific line or lines of insurance which it is authorized to transact thereunder) shall submit an application to the Commissioner for prior approval of the withdrawal, accompanied by 10 copies of a proposed plan of orderly withdrawal (plan).

1. An application by an insurer to withdraw its authority from any line of insurance shall constitute a request to surrender its certificate of authority for all lines of insurance written by the insurer and by its insurance affiliates and subsidiaries.

2. The Commissioner shall not commence his or her review of the proposed plan until the applicant has complied with the requirements contained herein for the submission of a plan of orderly withdrawal.

3. An applicant cannot take any action to withdraw its business or any action in contemplation of withdrawal (such as termination of agents, etc.) prior to the Commissioner's approval of the plan.

4. The certificate of authority of an applicant, upon approval of the plan, shall be deemed to continue in effect, but only for the limited purposes of effectuating the approved plan of orderly withdrawal.

5. No withdrawal shall commence until the applicant has complied with any and all conditions contained in the approved plan of orderly withdrawal.

6. Unless the applicant specifically seeks and is granted a waiver, the applicant shall be required to make either or both of the following special deposits, or to provide the equivalent in performance bonds, until such time as the applicant's liabilities and potential liabilities no longer exist in this State:

i. A deposit established with and in the Commissioner's name for the benefit of all of the applicant's New Jersey policyholders, claimants and creditors which shall be equal to an amount equivalent to the applicant's liabilities and potential liabilities existing in this State;

ii. A deposit established with and in the Commissioner's name to ensure performance of the promises and averments contained in the orderly plan of withdrawal, a breach of which shall constitute an immediate forfeiture of the entire deposit. This deposit shall be in an amount established at the discretion of the Commissioner and may equal one million dollars or up to a maximum of 10 percent of the insurer's New Jersey surplus.

7. For good cause shown, the Commissioner may waive the special deposits required in (a)6 above, based upon a consideration of factors

including, but not limited to, the uniqueness of the applicant's circumstances, its size, and its volume of business.

(b) Upon specific request by the applicant for a waiver of any portion of the requirements of (a)1 above, the Commissioner may, in his or her discretion, grant the waiver if the Commissioner finds that, based upon proofs presented, one or more of the following mitigating circumstances exist:

1. The withdrawal would have no negative impact on the residual market;
2. The withdrawal would not cause a market availability problem or an undue disruption in the marketplace;
3. The withdrawal would not adversely affect competition;
4. The withdrawal is not rate-motivated;
5. The withdrawal is due to hazardous financial conditions or other specified problems affecting solvency;
6. The withdrawal is consistent with the insurer's overall plan of withdrawal in other jurisdictions as part of a corporate restructuring;
7. The withdrawal is due to one or more unprofitable lines of business and the insurer and its affiliates have no compensating profitability in other lines of insurance in this State; or
8. The public interest is best served by such a waiver.

(c) The applicant and its affiliates and subsidiaries shall be prohibited from acquiring, directly or indirectly, a controlling interest in any insurer that is doing business in this State for a period of five years after the effective date of nonrenewal, cancellation, termination or surrender of its certificate of authority to transact the business of insurance in this State.

#### 11:2-29.4 Elements of proposed plan of orderly withdrawal

(a) A proposed plan of orderly withdrawal shall contain the following information:

1. The reasons that the applicant wishes to withdraw, supported by a description and documentation of the applicant's financial condition for the last three years or other such period as the Commissioner deems appropriate, including the underlying accounting, actuarial and other relevant data or material relied upon in deciding to seek withdrawal;
2. The effective date of such withdrawal;
3. A description of all certificates currently and previously held in all jurisdictions (specifically listing states in which the applicant has withdrawn), including dates of issuance, surrender, suspension or revocation, and indication of which certificates are intended for surrender in the future;
4. An organizational chart and narrative description of the relationships among the applicant and its affiliates and subsidiaries, if any, indicating at a minimum:
  - i. The lines of insurance which each entity is licensed to write;
  - ii. The management relationships;
  - iii. The financial relationships (for example, reinsurance agreements, pooling arrangements, common investments, etc.);
  - iv. The marketing relationships;
  - v. The agency relationships; and
  - vi. The claims handling relationships;
5. A description, by line of insurance written in New Jersey, of the applicant's business during the last three years, including for each year the corresponding premium volume, number of current policyholders, approximate market share and the number of insurance producers and employees servicing the business. If employees will be terminated in this State, include a description of the applicant's plan with regard to the termination of its New Jersey employees, as well as a description of the termination benefits;
6. The address of each of the applicant's offices in this State;
7. Copies of the nonrenewal and termination notices the applicant intends to send to policyholders and insurance producers, as well as any other notices of nonrenewal or cancellation, and the proposed dates of the notices. Producer termination notices shall comply with the notice requirements contained in N.J.S.A. 17:22-6.14, as amended;
8. The name and address of each insurance producer, as well as the number of policies sold and premium volume produced by each producer, by line of insurance, for a 12 month period prior to filing a proposed plan of orderly withdrawal;

9. A specimen copy of each current producer contract;

10. Copies of all correspondence to be sent to the applicant's insurance producers and policyholders concerning the applicant's withdrawal, exclusive of (a)7 above;

11. Copies of all correspondence and notices to be sent to the following entities, as well as a description of all agreements (which need not be in final form) reached with such entities as to the applicant's financial obligations to such entities, as applicable. The following list is not intended to be exhaustive. It shall be the responsibility of the applicant to furnish the information required under this paragraph for any other entity to which it owes or may owe a financial obligation.

- i. Unsatisfied Claim and Judgment Fund established pursuant to N.J.S.A. 39:6-61 et seq.;
- ii. New Jersey Property/Liability Guaranty Association established pursuant to N.J.S.A. 17:30A-1 et seq.;
- iii. New Jersey Automobile Insurance Risk Exchange Board established pursuant to N.J.S.A. 39:6A-21 through 22.1;
- iv. Mutual Workers Compensation Security Fund established pursuant to N.J.S.A. 34:15-112;
- v. Stockworkers Compensation Security Fund established pursuant to N.J.S.A. 34:15-105;
- vi. New Jersey Insurance Division of Fraud Prevention established pursuant to N.J.S.A. 17:33A-1 et seq.;
- vii. Commercial Automobile Insurance Plan established pursuant to N.J.S.A. 17:29D-1;
- viii. New Jersey State Division of Taxation for premium taxes required by N.J.S.A. 54:18A-1 et seq.;
- ix. Surplus Lines Guaranty Association established pursuant to N.J.S.A. 17:22-6.70 et seq.;
- x. Medical Malpractice Reinsurance Association established pursuant to N.J.S.A. 17:30D-1 et seq.;
- xi. New Jersey Automobile Full Insurance Underwriting Association examination assessments provided by N.J.S.A. 17:30E-18.1;
- xii. Residual market equalization charges and policy constants established pursuant to N.J.S.A. 17:30E-8 and 17:29A-37.1, respectively; and
- xiii. Financial examinations provided by N.J.S.A. 17:23-1 et seq. and other statutory fees provided by N.J.S.A. 17:33-1;

12. A statement, by line of insurance written in this State, of all of the applicant's current incurred liabilities and reserves, including those incurred but not reported, as developed and certified by a "qualified actuary" as defined in N.J.A.C. 11:1-21.1 for property and casualty lines and a Fellow of the Society of Actuaries for life and health lines, all as of a date not earlier than 30 days prior to the submission of the plan;

13. A description of the manner in which the applicant intends to handle claims arising from policies held by New Jersey residents remaining in force after the plan has been approved. Provide a description of the applicant's staff and adjusters servicing these claims, including their location and the procedures for consumer contact;

14. A list of all the applicant's deposits currently held by the Treasurer of the State of New Jersey, if any;

15. A description of the kind and amount of all reinsurance assumed and ceded by the applicant, identifying the ceding and assuming insurers and describing the corresponding risks in each reinsurance treaty. Include an explanation of whether any assumed reinsurance will be rendered unauthorized based on the withdrawal, as well as a description of the procedures designed to minimize any marketplace disruption or hazardous financial condition that may occur as a result of the loss of authorization of in force reinsurance agreements;

16. A description of all national accounts under which insurance has been provided for risks located in New Jersey, as well as an explanation of the impact of withdrawal on New Jersey risks covered under national accounts;

17. Verification by the applicant of the establishment of the special deposits, or equivalent performance bonds (required under N.J.A.C. 11:2-29.3(a)6), which shall be maintained until such time as the applicant's liabilities and potential liabilities no longer exist in this State;

18. Written certification from a duly authorized officer of the applicant, signed under the pains and penalties of perjury, that the information submitted in the plan of orderly withdrawal is accurate and complete to the best of his or her belief and that for as long as insurance policies are in force or there are unpaid losses and/or expenses in this State:

i. The applicant shall fully honor all of its legal obligations in this State;

ii. The applicant shall continue to service, without discrimination, all outstanding policies, bonds and surety lines of credit, which includes processing all usual and customary endorsements requested by insureds during the term of such policies, subject to the applicant's normal underwriting standards;

iii. The applicant shall continue to submit annual statements and information required by the entities set forth in (a)11 above, upon request, for as long as the applicant has any unearned premium or any unpaid or incurred losses in this State;

iv. The applicant shall continue to operate in accordance with the laws and regulations of this State and remain subject to examination by the Department of Insurance as deemed necessary by the Commissioner;

v. The applicant shall not accept any new business whatsoever in this State, including authorized reinsurance and excess and surplus lines placements; and

vi. The applicant shall maintain its designation of the Commissioner as its agent for service of process; and

19. The plan shall include a method acceptable to the Commissioner by which the Commissioner can verify the applicant's compliance with its obligations under the plan.

#### 11:2-29.5 Additional elements: automobile insurance

(a) Notwithstanding the provisions of N.J.A.C. 11:3-8.2, if an applicant's request to withdraw involves private passenger automobile insurance, it shall be subject to the following additional conditions which must be addressed in the proposed plan of orderly withdrawal:

1. The applicant shall seek to place its business with a voluntary market replacement carrier for a specified period of years after the Commissioner's approval of the plan or until all automobile insurance is replaced, whichever is sooner. The period of time in which an applicant must seek to place its business with a replacement carrier will be determined by the Commissioner, but in no instance will be less than one year nor more than five years. If, at the end of the designated period, the applicant has not succeeded in placing all of the automobile insurance policies with a voluntary market carrier, the applicant shall provide two notices of nonrenewal to remaining policyholders. Unless the Commissioner finds that good cause exists for shortening the initial notice period, the first renewal notice shall be provided at least one year prior to the next policy expiration date and its contents shall comply with the provisions of N.J.A.C. 11:3-8.2. In addition to the initial notice, the insurer shall issue a second notice of nonrenewal in compliance with the time and content requirements of N.J.A.C. 11:3-8.2.

2. At the specific request of the applicant, and upon good cause shown, the Commissioner may exercise his or her discretion to permit the applicant to nonrenew two percent of the voluntary market policies that are in force in each territory at the end of a calendar year pursuant to N.J.S.A. 17:29C-7.1, in addition to the nonrenewals permitted by N.J.A.C. 11:3-8.3.

3. Notwithstanding the above provision, an applicant requesting to withdraw its automobile insurance from this State cannot nonrenew one policy for every two newly insured automobiles which are voluntarily written pursuant to N.J.S.A. 17:29C-7.1 because the applicant will not be voluntarily insuring new business.

4. An applicant shall be required to accept the quotas established by N.J.S.A. 17:30E-14, unless an applicant specifically requests and the Commissioner agrees to a waiver of this requirement pursuant to N.J.S.A. 17:30E-14(g) or for good cause shown.

5. Insurers that currently serve as New Jersey Automobile Full Insurance Underwriting Association servicing carriers shall be subject to the withdrawal provisions of N.J.S.A. 17:30E-12. The Com-

missioner may require such an insurer to deposit with the Association an amount sufficient to meet the insurer's obligations under N.J.S.A. 17:30E-4.

#### 11:2-29.6 Fines and penalties

Failure to comply with this subchapter may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33-2.

#### 11:2-29.7 Severability

If any provision of this subchapter or its application to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are separable.

### (a)

## DIVISION OF FINANCIAL EXAMINATIONS

### Credit for Reinsurance

#### Proposed New Rules: N.J.A.C. 11:2-28

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6, 17:17-1 et seq., 17:22-6.45 et seq., 17:23-1 et seq., 17:30C-1 et seq., 17:32-1 et seq. and 52:14B-1 et seq.

Proposal Number: PRN 1989-621.

Submit comments by December 20, 1989 to:

Verice M. Mason, Assistant Commissioner  
Legislative and Regulatory Affairs  
New Jersey Department of Insurance  
CN-325  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Currently, the New Jersey Department of Insurance ("Department") allows credit for property/casualty reinsurance ceded by authorized and eligible surplus lines insurers in this State.

Credit to the ceding company for reinsurance ceded to an assuming insurer may be allowed either as an asset or a deduction from liability in the ceding company's annual financial report. This accounting treatment allows a ceding insurer to present a more stable and reliable surplus picture in its financial statements submitted to the Department by acknowledging the true potential liabilities it has retained as a result of direct business written.

Authorized and eligible surplus lines companies are able to take credit for reinsurance ceded, and the credit is allowed only when the assuming insurer (reinsurer) is an authorized carrier in this State. The Department wishes to expand the type of assuming insurer which the ceding company may utilize in order to receive credit to non-authorized reinsurers meeting certain qualifications.

These proposed new rules set forth the requirements which must be fulfilled by an authorized or eligible surplus lines ceding insurer and an assuming insurer, whether authorized or unauthorized, in order for the ceding insurer to receive credit for reinsurance either as an asset or a deduction from liability on account of reinsurance ceded. The proposed new rules also list circumstances where credit will not be given if, by the terms of the reinsurance agreement, no risk was actually transferred from the ceding insurer to the assuming insurer. In addition, the proposed new rules provide guidelines on the treatment of credit for reinsurance in the case of cancellation of the reinsurance agreement and in the case of pooling arrangements entered into by the ceding insurer.

N.J.A.C. 11:2-28.1 sets forth the purpose and scope of these proposed new rules.

N.J.A.C. 11:2-28.2 defines the terms used throughout this subchapter.

N.J.A.C. 11:2-28.3 sets forth the general requirements which must be met before the Department will accept credit for reinsurance.

N.J.A.C. 11:2-28.4 provides for the types of security that may be accepted by the Commissioner from an unauthorized or unaccredited assuming insurer in reducing the ceding insurer's liability for reinsurance ceded.

N.J.A.C. 11:2-28.5 provides additional requirements concerning reinsurance under which credit will be given.

N.J.A.C. 11:2-28.6 disallows surplus relief to a ceding insurer under listed circumstances.

N.J.A.C. 11:2-28.7 sets forth guidelines for the allowance of credit in the case of cancellation of the reinsurance agreement between a ceding insurer and an assuming insurer.

N.J.A.C. 11:2-28.8 provides the conditions under which credit will be given with regard to reinsurance pooling arrangements.

N.J.A.C. 11:2-28.9 provides for various exclusions from the provisions of this subchapter.

N.J.A.C. 11:2-28.10 provides for the severability from this subchapter of provisions or applications later determined to be invalid.

#### Social Impact

The proposed new rules will establish formalized requirements for authorized and eligible surplus lines insurers in this State to take credit for reinsurance ceded to reinsurers, and such requirements vary depending on what degree of regulatory control the Department may have with regard to the reinsurer in question. If the requirements contained in the proposed new rules are satisfied, these ceding insurers will be able to increase their writings within this State and, in turn, maintain a stable and reliable surplus in relation to such writings. The ability to write more premium benefits the direct market for insurance, and the stability and reliability of surplus protects the interests of New Jersey policyholders.

#### Economic Impact

The proposed new rules will not result in any adverse economic impact upon insurers. These new rules codify and clarify what already is or will be the Department's policy regarding credit for reinsurance. For instance, unauthorized assuming insurers may take on accredited status thereby allowing the ceding insurer to receive credit for the reinsurance ceded to the accredited assuming insurer. The larger economic impact on insurers and policyholders is as set forth as part of the Social Impact. At the very least, this codification of Department policy will aid insurers' administrative, financial and legal staff in determining whether credit for reinsurance may be taken by reducing the amount of uncertainty and direct inquiries to the Department.

#### Regulatory Flexibility Analysis

The proposed new rules are applicable to all authorized and eligible insurers as herein defined. It is believed that some insurers to whom the proposed new rules apply are "small businesses" within the meaning found in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The notification and compliance requirements contained in the proposed new rules, upon adoption, will not necessarily require the addition of any new staff to insurer payrolls or any new capital requirements since the rules are simply a codification and clarification of existing and impending Department policy. The rules do not impose any procedural requirements (other than notification of reinsurance cancellations) that would impact, economically, any ceding insurers, let alone small businesses.

Therefore, to further uniformity and consistency in their application, the proposed new rules do not provide an exemption for "small businesses."

Full text of the proposal follows:

### SUBCHAPTER 28. CREDIT FOR REINSURANCE

#### 11:2-28.1 Purpose and scope

(a) The purpose of this subchapter is to establish requirements for acceptable reinsurance which may be credited towards an authorized or eligible surplus lines insurer's assets or deducted from its liabilities or reserve accounts.

(b) This subchapter applies to all authorized and eligible surplus lines insurers subject to Title 17 of the Revised Statutes who reinsure a portion or all of their risk with an assuming insurer, whether such assuming insurer is authorized or unauthorized to transact the business of insurance in this State.

#### 11:2-28.2 Definitions

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

"Accredited insurer" means an unauthorized insurer which qualifies as an assuming insurer for the purpose of allowing credit for

reinsurance ceded to the assuming insurer by meeting the requirements set forth in N.J.A.C. 11:2-28.3.

"Assuming insurer" means a reinsurer that accepts business from another insurer or reinsurer, or an underwriting syndicate, as the case may be.

"Authorized insurer" means a domestic or foreign insurer, duly authorized by a certificate of authority issued by the Commissioner to transact the business of insurance in this State.

"Beneficiary" means the ceding insurer in favor of which the letter of credit or its confirmation is established and shall include any successor by operation of law of any named beneficiary including, without limitation, any liquidator, rehabilitator, receiver or conservator.

"Ceding insurer" means an originating insurer which procures insurance for itself in another insurer, called the "assuming insurer," with respect to part of all or an insurance risk of the originating insurer.

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

"Certificate of eligibility" means a certificate issued by the Commissioner evidencing the authority of an unauthorized insurer to transact the business of surplus lines insurance in this State.

"Clean and unconditional letter of credit" or "clean and unconditional confirmation" means a letter of credit or confirmation which:

1. Makes no reference to any other agreement, document or entity;
2. Provides that a beneficiary need only draw a sight draft under the letter of credit or confirmation and present it to promptly obtain funds and that no other document need be presented; and
3. Indicates that it is not subject to any conditions or qualifications outside of the letter of credit.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance, or his or her designee as may be permitted by law.

"Department" means the New Jersey Department of Insurance.

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

"Eligible surplus lines insurer" means an unauthorized insurer which is issued a certificate of eligibility to transact the business of insurance in this State.

"Evergreen clause" means a provision in a letter of credit or its confirmation which prevents the expiration of the letter of credit or its confirmation without due written notice to the beneficiary from the issuing or confirming bank or trust company.

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

"Reinsurer" means an insurer which insures part or all of an insurance risk of an originating or "ceding" insurer.

"State" means the State of New Jersey.

"Substantially similar" standards regarding credit for reinsurance means those standards which the Commissioner determines as equal or exceeding the standards of this subchapter.

"Surplus" means, for the purposes of N.J.A.C. 11:2-28.4(a)3vii, in the case of a parent corporation, the surplus of the parent minus the surplus of its insurance company subsidiaries, and, in the case of an affiliate, the surplus of the affiliate minus the surplus of its insurance company subsidiaries.

"Surplus as regards policyholders" means the net assets of the insurer or assuming insurer.

#### 11:2-28.3 General requirements

(a) Credit for reinsurance is allowed an authorized or eligible surplus lines insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurance agreement meets the requirements set forth in N.J.A.C. 11:2-28.5 and only when:

1. The reinsurance is ceded to an assuming insurer which is authorized in this State to transact insurance or reinsurance; or
2. The reinsurance is ceded to an assuming insurer which is an accredited insurer in this State. No credit is allowed a ceding insurer if the assuming insurer's accreditation is revoked by the Com-

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missioner after notice and hearing. An accredited insurer is one which:

- i. Files with the Commissioner evidence of its submission to this State's jurisdiction;
- ii. Submits to this State's authority to examine its books and records;
- iii. Is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
- iv. Files annually with the Commissioner:

(1) A copy of its annual statement filed with the insurance department of its state of domicile (or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance);

(2) A certificate of compliance or good standing from the state of domicile (or, in the case of an alien assuming insurer, from the state through which it is entered and in which it is licensed to transact insurance or reinsurance);

(3) One copy each of its most recent audited financial statement and a statement of opinion on loss and loss adjustment expense reserve liabilities, provided that the loss reserve opinion must be submitted in accordance with the requirements contained in N.J.A.C. 11:1-21; and

(4) An annual filing and processing fee of \$500.00 to be paid on or before the first day of July;

v. Maintains a surplus as regards policyholders in an amount the greater of \$20,000,000 or 25 percent of loss and loss adjustment expense reserve liabilities; and

vi. Whose accreditation has not been denied by the Commissioner within 90 days of its submission; or

3. The reinsurance is ceded to an assuming insurer which maintains a trust fund in a bank duly authorized to do business in this State or a United States bank or trust company which is a member of the Federal Reserve System and has been granted authority to operate with fiduciary powers, exclusively for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by authorized insurers to enable the Commissioner to determine the sufficiency of the trust fund.

i. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of the greater of \$20,000,000 or 25 percent of loss and loss adjustment expense reserve liabilities as shown on its annual statement last preceding; and the assuming insurer shall make available to the Commissioner an annual certification by the assuming insurer's domiciliary regulator and its independent public accountants of the solvency of the assuming insurer and the accuracy of its United States liabilities.

ii. In the case of a group of individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which the greater of \$100,000,000 or 25 percent of loss and loss adjustment expense reserve liabilities as shown on its annual statement last preceding shall be held jointly for the benefit of United States ceding insurers of any member of the group; and the group shall make available to the Commissioner an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter and the accuracy of their United States liabilities.

iii. Any trust shall be established in a form approved by the Commissioner and as required by this paragraph. The trust instrument shall provide that contested claims shall be valid and enforceable out of the trust to the extent such claims remain unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers,

their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the Commissioner. The trust described herein must remain in effect for as long as the assuming insurer, or any current member or former member of a group of insurers, has outstanding obligations due under the reinsurance agreements subject to the trust. No amendment to the trust is effective unless reviewed and approved in advance by the Commissioner.

iv. No later than February 28 of each year the trustees of the trust shall report to the Commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year's end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31; or

4. The reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this subchapter and such assuming insurer or United States branch of an alien assuming insurer:

- i. Is in compliance with such standards;
- ii. Maintains a surplus as regards policyholders in an amount the greater of \$20,000,000 or 25 percent of loss and loss adjustment expense reserves; provided, however, that this requirement does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system; and
- iii. Submits to the authority of this State to examine its books and records; or

5. The reinsurance is ceded to an assuming insurer not meeting the requirements of (a)1, 2, 3, and 4 above, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction; or

6. If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this State, the credit permitted by (a)3 and 4 above shall not be allowed unless the assuming insurer complies with the requirements of N.J.A.C. 11:2-28.4 and the assuming insurer agrees in the reinsurance agreement:

- i. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States; will comply with all requirements necessary to give such court jurisdiction; and will abide by the final decision of such court or of any appellate court in the event of an appeal; and
- ii. To designate the Commissioner as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company.

7. Subparagraphs (a)6i and ii are not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

#### 11:2-28.4 Reduction from liability for reinsurance ceded to an assuming insurer; security

(a) A reduction from liability for the reinsurance ceded to an assuming insurer not licensed or accredited to transact insurance or reinsurance in this State is allowed pursuant to N.J.A.C. 11:2-28.3(a)6 in an amount not exceeding the liabilities carried by the ceding insurer and such reduction is in the amount of security held by or on behalf of the ceding insurer. This security must be in the form of:

1. Cash;
2. Assets held in a trust pursuant to a trust agreement made and entered into among the beneficiary, the grantor and the trustee which must be a bank duly authorized to do business in this State or United States bank or trust company which is a member of the Federal Reserve System and has been granted authority to operate with fiduciary powers, and such trust agreement must contain the following conditions:

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i. The trust agreement must create a trust account into which assets will be deposited. All assets in the trust account must be held by the trustee at the trustee's office in the United States;

ii. The trust agreement must be clean and unconditional, in that:

(1) The trust agreement must stipulate that the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(2) No other statement or document need be presented in order to withdraw assets, except the beneficiary may be required to acknowledge receipt of withdrawn assets;

(3) The trust agreement must indicate that it is not subject to any conditions or qualifications outside of the trust agreement;

(4) The trust agreement cannot contain references to any other agreements or documents other than the reinsurance agreement or a reference to specific claims by such an agreement; and

(5) No reference is made to the fact that these funds may represent reinsurance premiums.

iii. The trust agreement must be established for the sole use and benefit of the beneficiary.

iv. The trust agreement must provide for the trustee to:

(1) Receive assets and hold all assets in a safe place;

(2) Determine that all assets are in such form that the beneficiary or the trustee, upon direction by the beneficiary may, whenever necessary, negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(3) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(4) Notify the grantor and the beneficiary, within 10 days, of any deposits to or withdrawals from the trust account;

(5) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of such assets to such beneficiary; and

(6) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, or the trustee may without the consent but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the principal is paid into the trust account.

v. The trust agreement must provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination must be delivered by the trustee to the beneficiary.

vi. The trust agreement must be made subject to and governed by the laws of this State, except that, when the beneficiary is an authorized foreign insurer, an eligible surplus lines insurer or an accredited insurer, such insurer's state of domicile may be substituted for this State.

vii. The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

viii. The trust agreement must provide that the trustee is liable for its own negligence, willful misconduct or lack of good faith.

ix. Assets deposited in the trust account shall be valued according to their current fair market value, and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by the insurance laws of New Jersey, or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary.

x. When a trust agreement is established in conjunction with a reinsurance agreement covering specific risks, where it is customary practice to provide a trust agreement for a specific purpose, that trust agreement may, notwithstanding any other conditions in this subchapter, provide that the ceding company shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding company or the insurer, for the following purposes:

(1) To pay or reimburse such ceding company for the reinsurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding company, but not recovered from the reinsurer or for unearned premiums due to the ceding company, if not otherwise paid by the reinsurer;

(2) To make payment to the reinsurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the reinsurer's "obligations" under the specific reinsurance agreement; or

(3) Where the ceding company has received notification of termination of the trust account and where the reinsurer's entire "obligations" under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to such termination date, to withdraw amounts equal to such obligations and deposit such amounts in a separate account, in the name of the ceding company in a bank duly authorized to do business in this State or a United States bank or trust company which is a member of the Federal Reserve System, apart from its general assets, in trust for such uses and purposes specified in (a)2x(1) and (2) above as may remain executory after such withdrawal and for any period after such termination date.

xi. In addition, the reinsurance agreement entered into in conjunction with such a trust agreement must provide that assets deposited in the trust account shall be valued according to their current fair market value, and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by the insurance laws of New Jersey, or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited;

3. Irrevocable, clean and unconditional letters of credit, issued or confirmed by a bank duly authorized to do business in this State or a United States bank or trust company that is a member of the Federal Reserve System or a United States branch or agency of a foreign bank that has been determined by the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

i. The letter of credit must contain a statement to the effect that the obligation of the financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

ii. Such letters of credit must have a term of at least one year and contain an "evergreen clause" which provides at least 30 days written notice to the beneficiary prior to expiry date for nonrenewal.

iii. The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for such letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only and does not affect the terms of the letter of credit or the obligations of the financial institution thereunder.

iv. The letter of credit shall state whether it is subject to and governed by the laws of the State of New Jersey or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), and all drafts drawn thereunder shall be presentable at the financial institution's office in the United States.

v. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of the Publication 400 occur.

vi. The reinsurance agreement in conjunction with which the letter of credit is obtained must contain provisions which:

(1) Require the reinsurer to provide letters of credit to the insured and specify what they are to cover; and

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(2) Stipulate that the reinsurer and reinsured agree that the letters of credit provided by the reinsurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in such agreement, and shall be utilized by the reinsured or its successors in interest only for one or more of the following:

(A) To reimburse the reinsured for the reinsurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(B) To reimburse the reinsured for the reinsurer's share of surrenders and benefits or losses paid by the reinsured under the terms and provisions of the policies reinsured under the reinsurance agreement;

(C) To fund an account with the reinsured in an amount at least equal to the deduction, for reinsurance ceded, from the reinsured's liabilities for policies ceded under the agreement. Such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves; and/or

(D) To pay any other amount the reinsured claims are due under the reinsurance agreement.

(3) All of the foregoing provisions of this subparagraph should be applied without diminution because of insolvency on the part of the reinsured or reinsurer.

(4) A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized reinsurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of the filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but not greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

vii. Credit is allowed under this section for parental or affiliate letters of credit if the parent company or affiliate is a non-insurance entity and has surplus equal to twice the value of the letter of credit. In addition to the normal requirements of a letter of credit discussed in this paragraph, the parental or affiliate letter of credit must be non-cancellable or contain a provision whereby the ceding insurer has the right to draw down the letter of credit in the event the letter of credit will not be renewed; or except that the affiliate letter of credit must be held by the Commissioner; or

4. Any other form of security acceptable to the Commissioner.

**11:2-28.5 Additional requirements**

(a) Notwithstanding any other provision of this subchapter, no credit is allowed a ceding insurer unless the reinsurance agreement provides that, in the event of insolvency of the ceding insurer, reinsurance proceeds will be paid to the ceding insurer or its liquidator, receiver or other statutory successor on the basis of the amount of the claim allowed in the insolvency proceeding, without diminution by reason of the inability of the ceding insurer to pay all or any part of the claim, except that credit is allowed:

1. Where the contract specifically provides for another payee of such reinsurance, acceptable to the Commissioner, in the event of the insolvency of the ceding insurer; and

2. Where the assuming insurer, with the consent of the direct insured or insureds, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

(b) Notwithstanding any other provision of this subchapter, no credit is allowed a ceding insurer unless:

1. The ceding insurer retains a minimum amount of each individual risk of five percent of the gross premium written or the loss ceded by the ceding insurer on that risk, provided, however, that the Commissioner may waive or reduce such minimum retention requirement. This provision does not apply to risks ceded a reinsurer that is owned and controlled directly or indirectly by the insured, to pooling arrangements allowed by N.J.A.C. 11:2-28.8 where the ceding insurer assumes back its proportionate share, nor to contracts which provide that, for adequate consideration, another insurer will assume the future obligations on policies held by the ceding insurer; and

2. The reinsurance agreement is of a minimum duration of one calendar year and provides that in the event of cancellation the assuming insurer agrees to provide for a run-off of in force business or to allow the ceding insurer the option of repurchase of the run-off.

**11:2-28.6 No surplus relief allowed**

(a) No authorized or eligible insurer shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with this Department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

1. The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against prior years' losses nor payment by the ceding insurer of an amount equal to prior years' losses upon voluntary termination of in-force reinsurance by that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience;

2. The ceding insurer can be deprived of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for non-payment of reinsurance premiums shall not be considered to be such a deprivation of surplus;

3. The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded; or

4. No cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements prior to the termination date of the agreement made only in a "reinsurance account", and no funds in such account are available for the payment of claims.

**11:2-28.7 Cancellation**

(a) A domestic authorized ceding insurer shall promptly inform the Commissioner in writing of the cancellation of any one of its reinsurance treaties or arrangements which affects, directly or indirectly, at least 15 percent of its surplus or of any other material change in such reinsurance treaties or arrangements.

(b) Where, under the terms of a reinsurance contract, the reinsurer is entitled to cancel such contract without the consent of the ceding insurer on less than 90 days notice, credit for commission is allowed on the financial statement of the ceding insurer only as and to the extent that such commission is actually earned.

(c) In the case of a reinsurance contract requiring 90 or more days notice of cancellation and involving reinsurance of more than 20 percent of the ceding insurer's gross unearned premiums before any deduction for such reinsurance, the ceding insurer shall, within 30 days after receiving notice of cancellation, notify the Commissioner of the fact of cancellation and the estimated amount of gross unearned premiums and return commissions involved.

**11:2-28.8 Reinsurance pooling arrangements**

(a) No credit for reinsurance is allowed a domestic insurer as either an asset or a deduction from liability on account of reinsurance ceded pursuant to a pooling arrangement authorized by the laws of this State unless, in addition to the requirements contained in this subchapter:

1. The pooling arrangement provides that the pool is conducted on either a net of outside reinsurance basis or a gross, assumed, ceded and net basis, but not both; and

2. The pooling arrangement provides that any amendment thereto requires the Commissioner's approval prior to the effective date of such amendment.

**11:2-28.9 Exclusions**

This subchapter does not apply to wet marine and transportation insurance.

**11:2-28.10 Severability**

If any provision of this subchapter, or its application to any person or circumstance, is held invalid, such determination shall not affect

other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are separable.

## LABOR

### (a)

#### DIVISION OF EMPLOYMENT SERVICES

#### Worker Adjustment and Retraining Notification Procedures for Serving Notice to the State Dislocated Worker Unit

#### Proposed New Rules: N.J.A.C. 12:40

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

Authority: N.J.S.A. 34:1-20; 34:1A-3(e); P.L. 100-379; 20 C.F.R. §639.6(c).

Proposal Number: PRN 1989-618.

Submit comments by December 20, 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

The Worker Adjustment and Retraining Notification Act (WARN, the Act), P.L. 100-379, 29 U.S.C. §§2101 et seq., was enacted on August 4, 1988. WARN provides that, with certain exceptions, employers of 100 or more workers must give at least 60 days' advance notice of a plant closing or mass layoff to affected workers and their representatives, to the State Dislocated Worker Unit, and to the appropriate local government.

On April 20, 1989, the Employment and Training Administration of the United States Department of Labor published rules to implement the Act. 20 CFR §639.6(c) of the WARN rules requires the Governor (authority delegated to the Commissioner of Labor) to publish procedures for serving notice to the State Dislocated Worker Unit.

Pursuant to 20 CFR §639.6(c), the Department of Labor (Department) is proposing new rules that contain the procedures employers must follow when submitting a notice of a plant closing or mass layoff to the State Dislocated Worker Unit. The proposed new rules apply to all employers of 100 or more workers in the State of New Jersey.

N.J.A.C. 12:40-1.1 sets forth the purpose and scope of the rules.

N.J.A.C. 12:40-1.2 sets forth definitions.

N.J.A.C. 12:40-1.3 sets forth the notification requirement.

N.J.A.C. 12:40-1.4 sets forth the content of the notice.

N.J.A.C. 12:40-1.5 sets forth the procedures for notifying the State Dislocated Worker Unit.

N.J.A.C. 12:40-1.6 sets forth the procedures for acknowledging receipt of the notice.

#### Social Impact

The notification procedures in these proposed new rules provide clear and easy instructions to employers who must file a notice of plant closing or mass layoff. Employers will benefit from these procedures in that they will be able to comply with the Act by submitting timely and clear notifications.

The notification procedures in these rules benefit affected employees in that timely and clear notifications will enable the State Dislocated Worker Unit to quickly provide employment services, job training and other services necessary to ease the prospective loss of employment.

The Department will benefit from the notification procedures in that the rules enable the State Dislocated Worker Unit to implement the WARN Act and its rules. Also, the State Dislocated Worker Unit will be able to provide its services in a timely fashion.

#### Economic Impact

The notification procedures will benefit employees in that they will receive timely services from the State Dislocated Worker Unit. Services such as unemployment insurance will provide employees with direct mon-

etary relief. Other services such as job training and resume writing will help the affected employees find new jobs.

Employers will incur the cost of preparing and filing the notice. However, the notice may actually save the employer the time and expense of having to deal with handling employee questions concerning unemployment and other services.

#### Regulatory Flexibility Statement

The proposed new rules do not impose requirements of any kind on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules place requirements on employers of more than 100 people; therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows:

#### CHAPTER 40

#### WARN NOTIFICATION PROCEDURES

#### SUBCHAPTER 1. PROCEDURES FOR SERVING NOTICE TO THE STATE DISLOCATED WORKER UNIT

##### 12:40-1.1 Purpose and scope

(a) The purpose of this subchapter is to provide procedures for New Jersey employers to follow when submitting a notice of a plant closing or mass layoff to the State Dislocated Worker Unit.

(b) The requirements of this subchapter apply to all employers of 100 or more workers within the State of New Jersey.

##### 12:40-1.2 Definitions

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

"Employer" means any business enterprise that employs:

1. 100 or more employees, excluding part-time employees; or
2. 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of overtime.

"Employment loss" means:

1. An employment termination, other than a discharge for cause, voluntary departure, or retirement;
2. A layoff exceeding six months; or
3. A reduction in hours of work of more than 50 percent during each month of any six-month period.

"Mass layoff" means a reduction in force which is not the result of plant closing, and results in the employment loss at a single employment site of employment, during any 30-day period, for:

1. At least 33 percent of the active employees, excluding any part-time employees, and at least 50 employees; or
2. At least 500 employees, excluding part-time employees.

"Part-time employee" means an employee who is employed for an average of fewer than 20 hours per week, or who has been employed for fewer than six of the 12 months preceding the date on which the notice is required.

"Plant closing" means the permanent or temporary shutdown of a single site of employment, or one or more of the facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees, excluding any part-time employees.

"State Dislocated Worker Unit" means the unit or office created within the Department of Labor pursuant to 29 U.S.C.A. §1661(b).

##### 12:40-1.3 Notification requirements

In addition to providing at least 60 days notice of a plant closing or mass layoff to affected employees, their representatives, and to the appropriate local government officials as required by 20 C.F.R. Part 639, employers shall provide the same notice to the State Dislocated Worker Unit.

##### 12:40-1.4 Content of notice

(a) The notice to the State Dislocated Worker Unit shall be specific and shall contain the following:

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**Interested Persons see Inside Front Cover**

**PUBLIC UTILITIES**

**PUBLIC UTILITIES**

**(a)**

**BOARD OF PUBLIC UTILITIES**

**Regulation of Interlata Telecommunications Carriers**

**Proposed Amendments: N.J.A.C. 14:10-5**

Authorized By: Board of Public Utilities, Christine Todd Whitman, President.

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: TX89090796.

Proposal Number: PRN 1989-612.

A **public hearing** on the proposed amendments will be held on December 18, 1989 at 10:00 A.M. at the following location:

Board of Public Utilities  
Hearing Room, 10th Floor  
Two Gateway Center  
Newark, N.J. 07102

Submit written comments by December 20, 1989 to:

Robert G. Goode, Esq.  
Regulatory Officer  
Two Gateway Center  
Newark, N.J. 07102

The agency proposal follows:

**Summary**

The Board of Public Utilities (Board) is proposing to amend the rules governing the adjustment of rates by telecommunications interexchange carriers (IXC). Under the current regulatory scheme, an IXC may raise or lower any rate by up to 25 percent without prior Board approval provided the new rate structure does not result in the IXC realizing a return on equity 300 basis points or more above that authorized by the Board. Certain notice requirements must be met and the Board may suspend a proposed rate adjustment and institute a rate proceeding in accordance with N.J.S.A. 48:2-21.

After a review of the current rules and the changing nature of the telecommunications industry, it is reasonable to seek comment on adjustments to the rules as they exist. The services provided by IXCs are becoming more competitive and the Board requests input on the appropriate manner of regulation. Traditional forms of rate base/rate of return regulation may no longer be necessary or in the public interest in light of the current structure of the industry. The Board recognizes that traditional forms of utility regulations are a substitute for competitive markets and may be detrimental, burdensome and contrary to the public interest in markets where viable competition exists.

The proposed amendments would eliminate the 25 percent increase or decrease band and the 300 basis points analysis in determining when the Board would institute a rate proceeding. Instead, the Board proposes that rate adjustments would be permitted to go into effect unless the Board institutes a proceeding on its own motion or based on a properly filed petition. In making its determination, the Board would review the level and degree of competition for the carrier and services in question. Such a determination would use appropriate economic and other criteria to measure market share. The Board intends to use the information which would be contained in the reports to be filed by the IXCs in this analysis.

The proposed amendments would require IXCs to file quarterly reports including information on revenues, access, customers, intrastate minutes of use and number of calls by service category. Recognizing that much of this information is proprietary market data, the Board proposes that the reports be treated as confidential.

**Social Impact**

The proposed amendments affect the procedures IXCs follow in implementing rate adjustments. Certain restrictions on seeking prior Board approval are removed and additional reporting requirements are imposed. It is anticipated that IXCs will have greater flexibility in pricing their services under the proposed amendments.

**Economic Impact**

The proposed amendments will require IXCs to incur additional record keeping and administrative costs and the Board will be required to check and monitor the reports filed and the information contained in those reports. However, the Board anticipates these costs will be more

1. The name and address of the employment site where the plant closing or mass layoff will occur, and the name and telephone number of a company official to contact for further information;
  2. A statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect;
  3. The expected date of the first separation and the anticipated schedule for making separations;
  4. The job titles of positions to be affected, and the number of affected employees in each job classification;
  5. An indication as to whether or not bumping rights exist; and
  6. The name of each union representing the affected employees, and the name and address of the chief elected official of each union.
- (b) The notice may include additional information useful to the employees such as a statement of whether the planned action is expected to be temporary and, if so, its expected duration.

(c) As an alternative to the notice outline in (a) and (b) above, an employer may give notice to the State Dislocated Worker Unit by providing a written notice stating the name and address of the employment site where the plant closing or mass layoff will occur; the name and telephone number of a company official to contact for further information; the expected date of the first separation; and the number of affected employees. The employer is required to maintain the other information listed in (a) and (b) above on site and readily accessible to the State Dislocated Worker Unit and to the unit of general local government. Should this information not be available when requested, it will be deemed a failure to give required notice.

**12:40-1.5 Procedures for notifying State Dislocated Worker Unit**

(a) Every employer who is required to serve a notification of a plant closing or of a mass layoff pursuant to the requirements of P.L. 100-379 and 20 C.F.R. §639.6(c) shall serve notice by using any reasonable method designed to ensure receipt of the notice at least 60 days before the separation from employment of any affected employee (for example, first class mail, personal delivery, with optional signed receipt, or facsimile notices). All notices to the State Dislocated Worker Unit shall be addressed to:

Coordinator, Department of Labor Response Team  
State Dislocated Worker Unit  
Labor Building, Room 1013  
Trenton, New Jersey 08625  
Fax (609) 396-1685

(b) The State Dislocated Worker Unit shall maintain a file of all notices and copies of all related correspondence in the employer file and information of the notices shall be provided to the following:

1. Employment and Training;
2. Employment Security;
3. Unemployment Insurance; and
4. The representative of the local Job Training Partnership Act (JTPA) Service Delivery Area(s).

**12:40-1.6 Acknowledgment of notice**

The Coordinator of the State Dislocated Worker Unit shall send a letter to the employer within 10 working days to confirm the date of receipt of the notification. If the employer's notice is deficient, the Coordinator shall notify the employer in the letter acknowledging receipt of the notice and shall indicate the specific deficiencies. The employer shall respond to the notification of deficiencies within 10 days of receipt of the Coordinator's letter.

## PUBLIC UTILITIES

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than offset by corresponding reductions in costs from the relaxation of the necessity of filing full rate proceedings. The Board anticipates the amendments' impact on subscriber rates will be neutral.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since, based on the information available to the Board, none of the current IXC's to which the rulemaking would apply are small businesses as defined by N.J.A.C. 1:30-3.1(f)4ii, being too large and/or not based in New Jersey.

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

### SUBCHAPTER 5. REGULATION OF INTERLATA TELECOMMUNICATIONS CARRIERS

#### 14:10-5.1 Scope

The regulations in this subchapter govern the adjustment of rates by telecommunications interexchange carriers subject to the jurisdiction of the New Jersey Board of Public Utilities. The regulations will apply to the adjustment of rates for [only those services which are clearly competitive for] all intrastate interLATA carriers, after initial tariffs have been approved by the Board. Connection, service discontinuance, and other matters, unless expressly stated herein, will continue to be governed by existing sections of Title 14 of the New Jersey Administrative Code.

#### 14:10-5.2 Construction and amendment

(a) (No change.)

(b) These rules will be operative for a period of five years. Prior to the end of that period, the Board will evaluate and review their effectiveness to determine if they should be continued.]

(b) **Nothing herein shall preclude the Board from reinstating rate base/rate of return regulation in compliance with New Jersey Statutes Annotated Title 48, if deemed necessary.**

#### 14:10-5.3 Definitions

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

"Averaged rates" means rates that are based on distance without regard to specific geographic location.

"Board" means the New Jersey Board of Public Utilities.

"Deaveraged rates" means rates that are not averaged and are route specific or differ depending upon a specific geographic location.

"Herfindahl-Hirschman Index" or "HHI" means an analytical tool for measuring relative market power of a firm or service. It is determined by using the market share of a firm or service. The market share is the percentage of the total market and, for purposes of analysis, it is expressed as a whole number rather than as a decimal, that is, a fifty percent share is expressed as 50 rather than .50. Calculation of the HHI requires a three step process: determine the correct market share, square the market share of each participant and add these figures together. The HHI is the sum of the squares. Therefore, the HHI of a market with only one competitor (a monopoly) would be 10,000; this is the highest HHI possible [(100)<sup>2</sup> equals 10,000]. The HHI of a market with two equal size competitors would be 5,000 [(50)<sup>2</sup> plus (50)<sup>2</sup> equals 5,000]. The HHI of a market with 10 equal size competitors would be 1,000 [(10)<sup>2</sup> times 10 equals 1,000].

"Intrastate interLATA carriers" and "interexchange carriers" mean AT&T Communications of New Jersey, MCI, [GTE-] US Sprint, [USTS] ITTCSI, RCI, [Western Union] Teleconnect Long Distance Services and Systems Company and other common carriers (OCC's) authorized by the Board to provide intrastate interLATA telecommunications service in New Jersey.

["Return on equity" is the percentage return on equity set by the Board for each individual interexchange carrier or a general rate set by the Board for all interexchange carriers. The return on equity as set by the Board shall be the midpoint of a range of returns on equity approved by the Board. The range of returns on equity shall be plus or minus 300 basis points over or under the midpoint set by the Board.]

#### 14:10-5.4 Initial rates

Initial rates for interexchange carriers currently authorized to operate in New Jersey shall be the averaged rates [in effect upon Board

adoption of these regulations] (in effect upon the effective date of these amendments). For any additional carriers that may subsequently be authorized to provide intrastate interLATA service, initial rates shall be those averaged rates contained in the initial tariffs approved by the Board. Initial rates, as used herein, shall be [the midpoint of the range of rates approved for each interexchange carrier. The range of rates approved for each carrier is hereby determined to be plus or minus 25 percent over or under each individual initial rate approved by the Board] considered just and reasonable upon approval by the Board, and under no circumstances shall any changes pursuant to these rules create deaveraged rates.

#### 14:10-5.5 Upward adjustments in rates; notice

(a) Upward adjustments in [individual] rates [of up to 25 percent over initial rates or rates set after a rate proceeding, held according to appropriate statutory requirements,] shall be allowed without the requirement of a rate proceeding before the Board, **except as otherwise provided herein.** Such upward adjustments may be effective [14] **21** days after the required notice of the proposed adjustment as described in (b) below, absent Board determination to postpone implementation of the rate change.

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

(d) Board's Staff, Rate Counsel, or any other interested party may, upon notice of the proposed upward adjustment, oppose the change in writing [at any time] **up to seven days** prior to the proposed effective date. [A Commissioner, or the] **The Board** [']s designee] upon receipt of such objection may, by letter, postpone implementation of the proposed rates [for two weeks] **up to 30 days** from the proposed effective date. Further suspension of rates, by procedures similar to those outlined in N.J.S.A. 48:2-21 may be authorized by the Board.

(e) **Any proposed upward adjustment in rates submitted to the Board shall include the precise magnitude of the change; a statement of the reasons for the change; the degree of competition and competitive alternatives associated with the service in which the change is proposed; and a cross-reference to the quarterly data submitted as required in N.J.A.C. 14:10-5.8, to corroborate the reasons described in the filing.**

#### 14:10-5.6 Downward adjustments in rates; notice

(a) Downward adjustments in [individual] rates [of up to 25 percent, below initial rates or rates set after a rate proceeding, held according to appropriate statutory requirements,] shall be allowed without the requirement of a rate proceeding before the Board. Such downward adjustments may be effective five days after the required notice, absent Board determination to postpone implementation of the rate change.

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

(d) Opposition to a proposed downward adjustment and disposition thereof, shall be in accordance with the method outlined in N.J.A.C. 14:10-5.5 [for opposition to upward rate adjustments] (d) and, in addition, shall specifically state the basis for such objection.

(e) **Any proposed downward adjustment in rates shall contain certification by an officer of the interexchange carrier that the estimated revenue from the service affected by the tariff revision will be higher than the marginal costs of providing the service.**

#### 14:10-5.7 Rate proceedings

[(a) A rate proceeding shall be instituted:

1. Upon suspension of a rate adjustment by the Board;
2. Upon total proposed upward adjustments of individual rates of greater than 25 percent above initial rates or rates set after a rate proceeding; or
3. Upon realization of a return on equity 300 basis points or more above that authorized by the Board.]

[(b)] (a) The Board may institute a rate proceeding:

1. Upon its own motion or **consideration** of a properly filed petition;
  2. Upon a proposed downward adjustment of greater than 25 percent; or
  3. Upon realization of a return on equity 300 basis points or more below that authorized by the Board.]
2. **Upon its suspension of a price adjustment;**

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3. Upon the Board finding that the market concentration for an individual carrier results in any service(s) no longer being competitive; or

4. Upon the Board finding that an interexchange carrier is not providing safe, adequate, proper and reasonably priced service based upon an evaluation of customer complaints by Board's Staff.

[(c)] (b) A rate proceeding authorized under this regulation shall be held in accordance with the appropriate statutory requirements for adjustment of rates.

(c) In deciding whether to institute a rate proceeding, the Board may review, among other things, each individual service category or offering to determine the level and degree of competition among interexchange carriers. The Board may also consider using an economic measure of concentration such as the HHI, or any other appropriate tool to measure the market share of individual firms. The Board may use the information collected pursuant to N.J.A.C. 14:10-5.8 to conduct an analysis as to whether markets are becoming more or less competitive.

14:10-5.8 Reporting requirements

[Board Staff, in conjunction with Rate Counsel and the interexchange carriers, shall within six months of the effective date of these rules develop appropriate reporting mechanisms to insure proper notification on and oversight of earnings, return on equity and the rate changes contemplated herein. These reporting mechanisms shall be placed upon the Board's Agenda for approval.]

(a) Every interexchange carrier providing intrastate telecommunications service in New Jersey shall provide to the Board information with respect to its operations.

(b) A report shall be submitted on a quarterly basis and shall include the following information:

1. Intrastate revenues (net of uncollectibles) by service category;
2. Intrastate access and billing and collection costs by service category;
3. Total number of customers by service category;
4. Total intrastate minutes of use by service category;
5. Total intrastate number of calls by service category;
6. A description of services offered; and
7. A description of each complaint by service category.

(c) In addition, each interexchange carrier shall provide an annual summary of each category in (b) above.

(d) The reports filed with the Board pursuant to (b) above are considered proprietary and shall not be deemed as public records pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., the Right to Know Law. The Board's Staff shall take appropriate measures to maintain the confidentiality of the records and access to such records shall be limited to agents, employees and attorneys of the Board, and, in the discretion of the Board, any other appropriate governmental agency. All such governmental agencies shall be subject to the confidentiality requirements contained in this subsection. In addition, the Director of the Division of Rate Counsel, Department of the Public Advocate, shall be permitted to receive copies of such reports provided that the Director agrees to consider the information contained in the reports proprietary and confidential.

14:10-5.9 (No change.)

**TRANSPORTATION**

(a)

**POLICY AND PLANNING**

**DIVISION OF TRANSPORTATION ASSISTANCE**

**Financial and Accounting Conditions and Criteria for Bus Operating Assistance Program**

**Proposed Repeal: N.J.A.C. 16:53A**

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:25-5 et seq.

Proposal Number: PRN 1989-611.

Submit comments by December 20, 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. 16:53A, Financial and Accounting Conditions and Criteria for Bus Operating Assistance Program, will expire on April 15, 1990.

The rules were reviewed by the staff of the Department's Office of Regulatory Affairs, in compliance with provisions of Executive Order No. 66(1978) and the Departments' ongoing rulemaking review procedures. This review and analysis revealed that the responsibility for the specific function was transferred to NJ Transit whose rules on this subject are at N.J.A.C. 16:75. These rules, therefore, are no longer necessary and are proposed for repeal.

**Social Impact**

The proposed repeal will comply with the requirements of Executive Order No. 66(1978), in that the Department has removed rules and regulations no longer necessary for the purpose they were promulgated. No social impact is anticipated, as N.J.A.C. 16:75 now controls the regulated area.

**Economic Impact**

The proposed repeal will not have any economic impact on bus carriers since the responsibility was transferred to NJ Transit, which promulgated pertinent rules at N.J.A.C. 16:75. The Department will incur direct and indirect costs for personnel in the rulemaking requirements.

**Regulatory Flexibility Statement**

The proposed repeal does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 16:53A.

**HEALTH**

(b)

**DIVISION OF COMMUNITY HEALTH SERVICES**

**Newborn Biochemical Screening**

**Proposed New Rules: N.J.A.C. 8:19-2**

**Proposed Amendment: N.J.A.C. 8:19**

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 26:2-110, 26:2-111 and 26:2H-5.

Proposal Number: PRN 1989-609.

Submit written comments by December 20, 1989 to:

Ms. Doris Kramer  
Special Child Health Services  
New Jersey Department of Health  
CN 364  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed new rules set forth the implementation of N.J.S.A. 26:2-110 and 111 (P.L. 1988, c.24) the statutory basis for New Jersey's newborn biochemical screening program. Newborns in New Jersey are presently tested for biochemical disorders which, if not treated very early in life, can cause mental retardation or death. Irreversible damage may occur even before there is any clinical evidence of a problem. The purpose of the screening program is to identify affected children through special tests, and assure that they get the treatment they need before damage occurs. The program is effective. Each year, 40 to 50 New Jersey new-

borns are saved from mental retardation, death, or serious illness because of early identification and timely referral for appropriate care.

Two of the diseases, phenylketonuria (PKU) and galactosemia, are treated by diet; the third, congenital hypothyroidism, is treated by medication. Testing newborns for hemoglobinopathies, including sickle cell disease, where recent studies have demonstrated that morbidity and mortality can be reduced by prophylactic care, will begin with the adoption of these rules. It is anticipated that 50 to 75 infants with clinically significant hemoglobinopathies will be identified annually by this additional test.

While the newborn screening program in New Jersey dates from 1964, the proposed rules are the first to describe the responsibilities of all the involved health care providers. Previous rules promulgated under this statute applied only to hospitals (see N.J.A.C. 8:43B-8.24(a)13.) and have been proposed for repeal at 21 N.J.R. 2925(a). Much of the material covered in the proposed rules is included in the manual "Guidelines for Professionals for Identification of Newborns with Phenylketonuria, Hypothyroidism and Galactosemia", New Jersey Department of Health, June 1985, revised April 1987.

#### Social Impact

The impact of a newborn screening program is great, since it directly affects all newborns, parents of newborns, hospitals with maternity units, birthing centers, pediatric health care providers and the Department of Health.

Unless a parent objects for religious reasons, a small blood specimen is taken from every newborn in New Jersey and sent to the Inborn Errors of Metabolism Laboratory, Division of Public Health and Environmental Laboratories, State Department of Health, for analysis. Over 114,000 initial specimens were received and assayed in 1988. Repeat specimens were requested from two to three percent of the newborns because of some problem with the specimen or an abnormal test result.

Cases of abnormal results are followed until disposition by the follow-up unit, Special Child Health Services, Division of Community Health Services, State Department of Health. Medical specialists are available for assistance with diagnosis and management.

The collection, handling, analysis and record keeping for 114,000 initial specimens, the collection of specimens from 2,500 to 3,500 infants for requested repeats, the follow-up of all abnormal reports, the ongoing care of a cohort of identified children now numbering over 400, plus a supporting education program, presents a significant effort for the health care community, the State Department of Health and parents. The result of this effort has a demonstrable positive effect: the children, now identified and treated, can grow up to participate fully in society.

Newborn screening in New Jersey dates from 1964. The major activities required by the proposed rules are now carried out routinely. The new rules codify, but do not substantially change, established practice. The addition of testing for sickle cell disease and other hemoglobinopathies is not expected to impact in any substantial way on those who must screen and report, since this is merely the addition of a test to the current screening program. However, the rules may have a significant positive impact on the infants who are identified by the test for sickle cell anemia and other hemoglobinopathies, and on their families. Early identification can permit early treatment and a more positive outcome for the children identified.

#### Economic Impact

Newborn screening programs are effective in saving children from death and lifelong disability. The cost in dollars of identifying and treating affected children is less than the cost of maintaining untreated children in special education programs, sheltered work settings and institutions. Additionally, society does not lose potential wage earners and families are spared the anguish of raising a disabled child.

The cost of the Statewide screening program is estimated at \$1 million or approximately \$8.80 for every infant born. This includes approximately \$200,000 for the expenses of the hospital associated with securing the specimens, record keeping, and mailing the specimen. The current budget of the Department of Health Laboratories and Special Child Health Services Follow-Up Program for the existing Program of testing, follow-up and education approximate \$800,000 per year. The budget of the Department of Health for this program is partially offset by the \$6.00 fee paid per infant. The fee is paid per specimen by hospitals and birthing centers. They, in turn, charge the individual patient for the test. The current budget does not fully cover the current cost of the laboratory tests which have remained unchanged since 1985, nor does it include the marginal cost of the additional laboratory test for the sickle cell screening

and follow-up. It is anticipated that increases in the laboratory fees of approximately \$5.00 to \$9.00 will be necessary over the next 12 months to cover the cost of laboratory screening, reporting, follow-up, and care for children newly identified with sickle cell as well as the inflation which has been uncovered to date.

Before 1988, the newborn screening statute spoke only to early detection. The law was amended in 1988 to include both screening and the treatment of affected individuals. The Commissioner is directed to "... ensure that treatment services are available to all identified individuals." The amended law further requires that "... all revenues collected from the fees (be applied) to the testing and treatment procedures performed pursuant to this act." The cost of treatment for an affected child is between \$200.00 and \$2,500 per year, depending on the disease, the severity and the child's age. Untreated, the cost to society for each child would be between \$20,000 and \$40,000 each year; lifetime care expenses for a child could total over one million dollars.

Newborn biochemical screening is already in place. Promulgation of the proposed rules will not shift the expense. However, inflation, the addition of testing and follow-up for sickle cell anemia and other hemoglobinopathies and treatment for those infants affected with a biochemical disorder, as required in the amended legislation, will increase the cost of operating the program and will necessitate an increase in the testing fee.

#### Regulatory Flexibility Analysis

While these new rules impose considerable reporting, record keeping and other compliance requirements, 99.4 percent of the in-State births take place in hospitals, where the regulatory flexibility requirements are not applicable, since such hospitals employ more than 100 employees. The only small businesses possibly affected would be the two birthing centers in New Jersey, where a total of about 200 infants a year are delivered. These centers now comply voluntarily with newborn biochemical testing requirements; they would not be compelled to alter their current practice or procedures.

In effect, these rules have no adverse economic impact on small businesses. No exemption or differentiation in requirements for small businesses is, therefore, provided.

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

#### CHAPTER 19

#### NEWBORN [HEARING] SCREENING PROGRAM SUBCHAPTER 1. [GENERAL PROVISIONS] NEWBORN HEARING SCREENING

8:19-1.1 to 1.6 (No change.)

#### SUBCHAPTER 2. NEWBORN BIOCHEMICAL SCREENING

##### 8:19-2.1 Purpose and scope

This subchapter constitutes the rules governing the implementation of N.J.S.A. 26:2-110 and 111 (P.L. 1988, c.24), an act providing for the testing of newborn children for the purpose of early detection and treatment of biochemical disorders.

##### 8:19-2.2 Definitions

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

"Biohazardous specimen" means a specimen collected from an infant who may have, or whose mother may have, an infectious disease agent transmissible by blood contact, as determined by the infectious disease officer of the responsible institution.

"Birth attendant" means the physician, nurse-midwife or other person who attends a non-hospital birth and who is required to register the birth of a child under N.J.S.A. 26:8-30 or 26:8-31.

"Chief executive officer" means the person who acts as the administrative officer of the institution and who is responsible to the governing body for overall management of the hospital or agency providing birthing services.

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

"Follow-up Program" means the Newborn Biochemical Screening Program, Special Child Health Services, Division of Community Health Services, State of New Jersey Department of Health, CN 364, Trenton, NJ 08625-0364.

"Parent" means the infant's parent or legal guardian or other person legally responsible for the health and well-being of the infant.

"Public health officer" means the officer or commissioner of health of a city, town, county or region.

"Repeat specimen" means an additional satisfactory specimen submitted to the testing laboratory.

"Responsible institution" means the hospital or center providing birthing services.

"Responsible physician" means the physician or other licensed health care provider named on the specimen collection form, the infant's primary health care provider, if different, or the hospital staff physician as designated by the chief executive officer and identified to the testing laboratory.

"Satisfactory specimen" means a specimen received by the testing laboratory in an acceptable condition for testing.

"Serum specimen" means a specimen of serum collected according to established criteria of the laboratory performing the assay.

"Specimen" means a dried blood filter specimen collected on an approved specimen collection form.

"Specimen collection form" means the current specimen collection form as provided by the Department of Health.

"Testing laboratory" means the Inborn Errors of Metabolism Laboratory, Division of Public Health and Environmental Laboratories, State of New Jersey Department of Health, CN 371, Trenton, NJ 08625-0371.

"Unsatisfactory specimen" means a specimen which is received by the testing laboratory in a condition unacceptable for testing.

#### 8:19-2.3 Diseases and conditions tested

(a) The testing required by N.J.S.A. 26:2-111 and this subchapter shall be done by the testing laboratory according to recognized clinical laboratory procedures.

(b) Diseases and conditions to be tested shall include, but not be limited to:

1. Phenylketonuria;
2. Galactosemia;
3. Hypothyroidism;
4. Sickle cell anemia; and
5. Other hemoglobinopathies; as designated by the Commissioner.

#### 8:19-2.4 Responsibilities of the chief executive officer

(a) The chief executive officer shall:

1. Cause the development and implementation of written policies and procedures, to be reviewed by the Department and revised as required, for the early detection and treatment of biochemical disorders, pursuant to N.J.S.A. 26:2-110 and 111;

2. Designate a staff person to coordinate hospital or agency screening practice and function as a contact person with the Follow-up Program;

3. Assure that a satisfactory specimen is submitted to the testing laboratory for each infant born in the hospital, or admitted to the hospital within the first 28 days of life with no specimen having been previously collected;

4. Assure that the infant's parent is informed of the purpose and need for newborn screening and given newborn screening educational materials provided by the Follow-up Program;

5. Assure that specimen collection forms are properly stored in a cool and dry environment prior to use;

6. Assure that specimens are taken utilizing correct specimen collection techniques as described on the back of the specimen collection form;

7. Assure that specimens conform to the following criteria for satisfactory specimens:

i. The specimen collection forms shall be filled in completely, accurately and legibly;

ii. The sample shall be collected on S&S 903 blotter paper (located on the right side of the collection form);

iii. The blotter paper shall be attached to the forms; and

iv. The specimen quantity shall be sufficient to run all assays;

8. Assure that satisfactory specimens are collected according to the following criteria:

i. The circles on the blotting paper shall be completely and evenly saturated;

ii. The specimen shall not be contaminated or diluted;

iii. The blood shall not be clotted or caked; and

iv. The blotting paper shall not be torn or scratched because of faulty or improper collection techniques;

9. Assure that specimens are taken before the infant is 48 hours old. If an infant is transferred or discharged from a facility prior to 48 hours of life, a specimen shall be collected prior to discharge;

10. Assure that the parent shall be instructed directly and in writing of the need to collect a repeat specimen between the third and seventh day of life if the infant has been fed protein for fewer than 24 hours at the time of discharge;

11. Assure that every effort is made to obtain a specimen prior to any anticipated blood transfusion;

12. Assure that, in the event of prolonged hospitalization for specialized medical care, a specimen is taken when the child is 48 hours old. Repeat specimens shall be taken weekly until there have been 24 hours of normal oral feeding on full strength formula. If an infant is on prolonged hyperalimentation and the physician wishes to stop weekly testing, he or she should consult with a PKU specialist;

13. Assure that in the case of inter-hospital transfer of the infant, the transferring hospital shall provide written notification to the receiving hospital indicating whether or not a specimen has been taken prior to transfer. Following transfer, the chief executive officer of the receiving hospital shall assume responsibility for collection of the specimen in accordance with these regulations;

14. Assure that the date and time of specimen collection are recorded on the infant's permanent health record;

15. Assure that biohazardous specimens are thoroughly dried and then placed individually in a paper envelope. The outside of the envelope shall be labeled as a biohazardous specimen;

16. Assure that all specimens are forwarded to the testing laboratory within 24 hours of collection by first class mail or its equivalent;

17. Assure that all test results forwarded to the chief executive officer or his designee by the testing laboratory are included in the infant's permanent health record;

18. Transmit or cause to be transmitted a copy of test results to the physician of record;

19. Assure that repeat specimens are collected when requested by the testing laboratory for specimens not satisfactory for testing according to criteria in (a)7 and 8 above, or specimens for which assay results cannot be interpreted because of any of the following conditions:

i. Transfusion(s) given before specimen collection;

ii. Antibiotics given before specimen collection (if effects cannot be removed);

iii. Specimen collected before the child has received protein feeding for 24 hours;

iv. Incomplete elution from blotter during assay; and

v. Specimen received 14 days or more after collection date; and

20. Assure that written documentation is submitted to the testing laboratory of efforts made to secure a repeat specimen within 14 days of receipt of the laboratory report when either:

i. An initial specimen is not satisfactory for testing and repeat specimen is not obtained; or

ii. The responsible physician cannot be notified.

#### 8:19-2.5 Responsibilities of the birth attendant

(a) The birth attendant shall:

1. Submit or cause to be submitted to the testing laboratory an initial blood specimen taken before the infant is 48 hours old from all infants born outside of, and not admitted to, a hospital;

2. Follow the specimen collection and submission procedures specified in N.J.A.C. 18:19-2.4;

3. Collect or cause to be collected a repeat specimen when requested by the testing laboratory, and shall submit or cause such repeat specimen to be submitted to the testing laboratory within 24 hours of collection; and

4. If a repeat specimen is not obtained, submit to the testing laboratory written documentation of efforts made to secure or cause to be secured a repeat specimen within 14 days of receipt of the laboratory report.

**8:19-2.6 Responsibilities of the responsible physician**

(a) The responsible physician shall:

1. Interpret all test results;
2. Comply with the specimen collection and submission procedures specified in N.J.A.C. 18:19-2.4;
3. Promptly collect or cause to be collected repeat specimens requested by the testing laboratory. All repeat specimens shall be clearly marked REPEAT;
4. Promptly collect or cause to be collected repeat specimens or serum specimens as recommended by the laboratory in the case of abnormal test results. All repeat specimens shall be clearly marked REPEAT;
5. If a repeat specimen is not obtained within the time frame recommended on the test report, submit to the testing laboratory written documentation of efforts made to secure a repeat specimen within 14 days of receipt of the laboratory report;
6. Include in the infant's health record the test results received from the chief executive officer or from the testing laboratory;
7. In the case of confirmed abnormal test results, arrange for diagnostic evaluation; and
8. Provide case information, specimens and other information requested by the Follow-up Program.

**8:19-2.7 Responsibilities of the public health officer**

(a) The public health officer shall:

1. Provide assistance to the Follow-up Program, when requested, in locating families of infants;
2. Collect or cause a repeat specimen to be collected when notified of the need for a repeat specimen by the Follow-up Program. The specimen shall be submitted within 24 hours of collection; and
3. Submit written documentation, within 14 days of receipt of the laboratory report, to the testing laboratory of efforts made to secure or cause to be secured such repeat specimen if a repeat specimen is not obtained within the time frame recommended by the Follow-up Program.

**8:19-2.8 Responsibilities of the testing laboratory**

(a) The testing laboratory shall:

1. Determine if a specimen is satisfactory, according to the criteria listed in N.J.A.C. 8:10-2.4 (a) 7, 8, and 19;
2. Request a repeat specimen from the submitter for unsatisfactory specimens;
3. Test satisfactory specimens for disease and conditions, according to recognized clinical laboratory procedures;
4. Issue reports of not clinically significant results to the chief executive officer or to the responsible physician, that is, the submitter of the specimen; and
5. Issue reports of abnormal results to the submitter of the specimen and to the responsible physician.

**8:19-2.9 Responsibilities of the Follow-up Program**

(a) The Follow-up Program shall:

1. Make every reasonable effort to follow abnormal test results to case disposition as specified in the Follow-up Program Procedures Manual;
2. Assist families of children with abnormal test results to access health care as necessary;
3. Identify and maintain contact with medical consultants (neurologists, endocrinologists, geneticists, hematologists) for each disease tested;
4. Identify treatment resources to families and assure that they are receiving care;
5. Provide educational support for activities carried out under this rule; and
6. In conjunction with the testing laboratory:
  - i. Monitor compliance with this subchapter;
  - ii. Identify problems in compliance and assist in their remediation; and
  - iii. Prepare and distribute an annual report, to include outcome data, descriptive statistics, program evaluation and recommendations.

**8:19-2.10 Exemption from testing**

(a) This subchapter shall not apply in the case of any infant or child whose parent or guardian objects to the testing on the grounds that testing would conflict with his or her religious tenets or practices.

(b) In case of refusal to test pursuant to (a) above, the chief executive officer or responsible physician or birth attendant shall assure that documentation of refusal to test becomes part of the infant's permanent medical record.

(c) The chief executive officer or responsible physician or birth attendant shall assure that a copy of documentation of refusal to test is forwarded to the testing laboratory.

(a)

**PARENTAL AND CHILD HEALTH SERVICES****Birth Defects Registry****Live Births****Proposed Readoption with Amendments: N.J.A.C. 8:20**Authorized By: Molly J. Coye, M.D., M.P.H., Commissioner,  
Department of Health.

Authority: N.J.S.A. 26:8-40.20 et seq., specifically 26:8-40.26.

Proposal Number: PRN 1989-614.

Submit comments by December 20, 1989 to:

Barbara Kern, Director  
Special Child Health Services  
New Jersey Department of Health  
CN 364  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66, N.J.A.C. will expire on March 4, 1990. Pursuant to N.J.S.A. 26:8-40.20, the Department of Health is required to establish and maintain a Birth Defects Registry, which contains a confidential record of all birth defects that occur in New Jersey. Although some birth defects can be attributed to specific factors, such as genetics, infections and medications taken during pregnancy, the vast majority of birth defects are of unknown etiology. There has been, and continues to be, a growing Statewide and national concern about the possible reproductive effects of occupational and environmental exposures in the etiology of birth defects. In New Jersey, awareness of these issues led to the introduction of legislation by the then State Senator Daniel Dalton requiring the establishment of a Birth Defects Registry. The legislation was signed into law by Governor Thomas Kean on August 4, 1983. The law, N.J.S.A. 26:8-40.20 et seq., revised and strengthened the State's commitment to collect data on children with birth defects and to develop a system for the surveillance of adverse reproductive outcomes, and thus plan for services needed by the children and their families.

Pursuant to N.J.S.A. 26:8-40.20 et seq., the Department of Health is required to establish and maintain a Birth Defects Registry, which contains a confidential record of all birth defects that occur in New Jersey. N.J.A.C. 8:20, which contains the requirements for the maintenance of the Registry, became effective March 4, 1985 and incorporated by reference as a listing of reportable conditions portions of the International Classification of Diseases (see 16 N.J.R. 3118(a) and 17 N.J.R. 591(a)). The chapter was amended by R.1987 d.361, effective September 8, 1987, which added a requirement for the reporting of congenital anomalies and other conditions not included in Diagnostic Codes 740.00 through 759.90 of the International Classification of Diseases, Clinical Modification.

The reporting requirements currently apply to all infants from birth to age one. Physicians, dentists, and certified nurse midwives are responsible for reporting a child diagnosed as having a birth defect to the Department of Health. The information must be reported on the forms supplied by the Department and confidentiality shall be maintained. N.J.A.C. 8:20-1.1 contains the definitions which apply to the reporting requirements. N.J.A.C. 8:20-1.2 specifies the conditions which must be reported and the manner in which they are to be reported. The Department has reviewed N.J.A.C. 8:20 and has determined that the rules continue to serve the purpose for which they were originally adopted, with certain changes, and is proposing the chapter for re adoption with amendments. The amendments correct typographical errors and further

specify reporting requirements for certain conditions. A requirement to report sickle-cell anemia or other hemoglobinopathies has been added. A requirement has been added to report all presumptive, tentative, pending, or rule out diagnoses at the time of the infant's discharge, if the child will be diagnosed at a later time or if test results are pending. In addition, cytogenic laboratories are now required to report the results of all post-natal chromosomal abnormalities to the Department of Health.

#### Social Impact

It is estimated that three percent of infants born each year in this State have a birth defect. Approximately 2,000 or two percent of infants are expected to have a defect which affects the survival or physical well-being of the affected children. Birth defects are the second most common cause of infant deaths in the State and the leading cause of death next to accidents in children age one to four years.

With the growing public concern about birth defects and questions about possible environmental causes, a complete and accurate birth defects registry will enable the Department to monitor rates of birth defects that occur in this State and when indicated, to conduct epidemiologic surveys in order to effectively address this public health problem.

Effects of birth defects are not limited only to deaths in early childhood; there are life long health effects among those children who survive. The birth defects registry will enable the Department to provide for timely identification of affected children, and to promptly plan for and provide services to these children and their families. Children who have a birth defect are frequently in need of special health and educational services which can assist them to develop to their fullest potential as productive members of society.

#### Economic Impact

The economic value of the birth defects registry should be measured according to its impact on the lives and health of the residents of this State. The registry will serve as a tool for the search of etiology of birth defects, and study of mechanism to prevent and treat those malformations. Early identification of affected children through the birth defects registry will ensure the provision of appropriate health care and other support services for these children. Appropriate and prompt medical treatment can prevent the development of complications, long-term illness, disability or death which, economically, are unfavorable outcomes.

Administrative costs for the operation of the Birth Defects Registry have been budgeted at \$250,000 per year. The proposed rules, readopted, would not cause any significant financial burden to the State or health care system. To the contrary, early identification and intervention strategies can lead to significant saving in public health and family dollars. The specific amount saved cannot be determined, due to the multiplicity of factors involved.

#### Regulatory Flexibility Analysis

The proposed readoption will affect, among others, numerous small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. Physicians, dentists, certified nurse midwives, and certain health care facilities and clinical laboratories will be affected by the reporting and recordkeeping requirements of the rules. The readoption specifies the manner in which the defects shall be reported and requires recordkeeping which conforms to a prescribed standard and is maintained in a confidential manner. While the costs of these requirements on the regulated small businesses cannot be specifically determined, the Department does not consider the expense onerous, particularly in light of the potential benefit to specific individuals and to the general public. The Department does not consider it appropriate to establish differential standards based on business size, since consistent reporting is essential in the implementation of the law on which these rules are based.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:20.

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

#### 8:20-1.2 Reporting requirements

(a) Any infant who is born to a resident of the State of New Jersey, or who becomes a resident of the State before one year of age, and who shows evidence of a birth defect either at birth or any time during the first year of life shall be reported to the State Department of Health, Special Child Health Services Program.

1. For reporting purposes, the conditions listed as Congenital Anomalies (Diagnostic Codes 740.00 through 759.90) in the most

recent revision of the International Classification of Diseases, Clinical Modification, shall constitute reportable defects. In addition, there are several other conditions considered to be defects that are not listed under Diagnostic Codes 740.00 through 759.90 which describe Congenital Anomalies. The following birth defects are also required to be reported to the Special Child Health Services Program.

#### i. Congenital Anomalies, including:

(1) (No change.)

(2) Spina [Bifida] **bifida** with and without mention of hydrocephalus.

(3)-(5) (No change.)

(6) **Bulbus cordis** anomalies and anomalies of cardiac septal closure such as: common truncus; transposition of great vessels; Tetralogy of Fallot; [Common] **common** ventricle; ventricular septal defect; ostium secundum type atrial septal defect; endocardial cushion defects; cor biloculare; and any other defects of septal closure.

(7) (No change.)

(8) Other congenital anomalies of circulatory system, such as: patent ductus arteriosus (**only in infants larger than 2500 grams**); coarctation of aorta and other anomalies of the aorta, aortic arch or atresia and stenosis of the aorta; anomalies of pulmonary artery; anomalies of great veins, absence or hypoplasia of umbilical artery; other anomalies of peripheral vascular system; or other unspecified anomalies of circulatory system.

(9)-(10) (No change.)

(11) Other congenital anomalies of upper alimentary tract, such as: [tongue tie and other] anomalies of tongue; anomalies of mouth and pharynx; tracheoesophageal fistula, esophageal atresia, and stenosis and other anomalies of esophagus; congenital hypertrophic pyloric stenosis, congenital [hiatus] **hiatal** hernia; other anomalies of stomach; and other unspecified anomalies of upper alimentary tract.

(12)-(15) (No change.)

(16) Other congenital anomalies of limbs, such as: [polydactyly;] syndactyly; reduction deformities of upper limb; reduction deformities of lower limb, including shoulder girdle; and other anomalies of lower limb, including pelvic girdle.

(17)-(20) (No change.)

#### ii. Other conditions, including:

(1) Certain endocrine, nutritional and metabolic diseases and immunity disorders, includes congenital hypothyroidism; [idiopathic hypoglycemia;] congenital hypoparathyroidism; hypopituitarism; diencephalic syndrome; adrenogenital syndrome; testicular feminization syndrome; phenylketonuria; albinism; maple syrup urine disease; argininosuccinic aciduria; [hyperglycinemia;] glycogen storage diseases; cystic fibrosis; alpha-1 antitrypsin deficiency; [and] DiGeorge's syndrome; congenital deficiencies of humoral immunity; cell-[mandated] **mediated** immunity; combined immunity deficiencies; and other specified and unspecified disorders of the immune mechanisms.

(2) Certain diseases of the blood and blood forming organs, includes hemolytic diseases of the newborn; G-6PD deficiency; hemophilia (all types); [and] Von Willebrand's disease; **and sickle cell anemia or other hemoglobinopathies.**

(3) (No change.)

(4) Certain diseases of the circulatory system, includes endocardial fibroelastosis; congenital Wolfe-Parkinson-White syndrome; [cardiac arrhythmias, NEC;] and Budd-Chiari syndrome.

(5) Certain diseases of the digestive system, includes abnormalities of jaw size, micrognathia and macrognathia; **congenital** inguinal hernia with gangrene (**only in females**), **congenital** inguinal hernia with obstruction with no mention of gangrene (**only in females**), **congenital** inguinal hernia without obstruction with no mention of gangrene (**only in females**), umbilical hernia (**only if not covered by skin**), epigastric hernia.

(6) Certain complications of pregnancy, childbirth, and the puerperium, includes amniotic bands, amniotic cyst.

(7) Certain diseases of the skin and subcutaneous tissue, [includes] pilonidal sinus [or dimple (sacrodermal)].

(8) Certain conditions originating in the perinatal period, includes fetal alcohol syndrome, probable fetal alcohol syndrome (includes facies), **fetal alcohol effects**, fetal hydantoin [(dilantin)] (**Dilantin**)

syndrome, [hyaline membrane disease,] bronchopulmonary dysplasia, [neonatal hepatitis, meconium ileus, meconium peritonitis, congenital ascites, congenital hydrocele] **unspecified TORCH infection** and certain congenital infections including congenital syphilis, congenital rubella, [unspecified TORCH infection,] cytomegalovirus, toxoplasmosis, **hepatitis**, herpes simplex [including encephalitis, meningoencephalitis].

(9) Neoplasms, includes lipomas of skin and subcutaneous tissue of face and other skin and subcutaneous tissue, intrathoracic and intra-abdominal organs, spermatic cord, other specified sites, lumbar, sacral, paraspinal, and other unspecified sites; benign neoplasms of skin includes blue nevus, pigmented nevus (**include if greater than four inches in diameter**), papilloma, dermatofibroma, syringoadenoma, dermoid cyst, hydrocystoma, [syringoma] **syringoma**; other benign neoplasms of lip, eyelid, ear, [and] external auditory canal, skin and other [and] unspecified parts of face, scalp, [and] skin of neck, skin of trunk, skin of upper limb, **skin of lower limb**, other specified and unspecified sites including hairy [naevus] **nevus**; hemangioma (include if: greater than [4] **four inches in diameter**, [if] multiple, [hemangiomas] **more than five in number** or [if] cavernous hemangioma) of skin and subcutaneous tissue, [intracranial] **intracranial**, intra-abdominal cystic hygroma; lymphangioma of any site, hemangioma of other and unspecified site; and certain malignant neoplasms including Wilm's tumor, retinoblastoma, other congenital neoplasms including neuroblastoma, medulloblastoma, teratoma, fibrosarcoma, histiocytosis (malignant), neurofibromatosis.

(b) [Any live born infant with a birth defect and who subsequently expires shall be reported.] **Any live born infant with a birth defect who has not been previously registered and has expired shall be reported.** Such reports shall indicate that the infant has expired.

(c) The administrative officer of every health care facility shall be responsible for establishing the reporting procedures for that facility. The reporting procedures must insure that every infant who is initially diagnosed as having a birth defect shall be reported to the Department. [If an infant is transported from one health care facility to another, the health care facilities at which the diagnosis is made shall be responsible for reporting.] **All presumptive, tentative, pending, or rule out diagnoses will be reported at the time of discharge, if the child will be diagnosed at a later time or if test results are pending.**

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

(g) The reports made pursuant to these rules are to be used only by the Department of Health and other agencies that may be designated by the Commissioner of Health and shall not otherwise be divulged or made public so as to disclose the identity of any person; and such reports shall not be included under materials available to public inspection pursuant to P.L. 1963, c. 73 ([C.] **N.J.S.A. 47:1A-1 et seq.**)

(h) [All registrations shall be made within 30 days of the date when the birth defect was diagnosed.] **Cytogenetic laboratories shall report the results of all postnatal chromosomal abnormalities.**

(i)-(j) (No change.)

## (a)

### HOSPITAL REIMBURSEMENT

#### Procedural and Methodological Regulations Financial Elements; Uncompensated Care Audit Proposed Amendments: **N.J.A.C. 8:31B-3.3, 4.6 and 4.41**

Authorized By: Thomas A. Burke, Ph.D., Acting Commissioner,  
Department of Health (with the approval of the Health Care  
Administration Board).

Authority: N.J.S.A. 26:2H-18.4 et seq. and N.J.S.A. 26:2H-1 et  
seq., specifically 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1989-608.

Submit comments by January 4, 1990 to:

Scott Crawford, Director  
Health Care for the Uninsured Program, 8th Floor  
New Jersey Department of Health  
CN 360  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed amendments require hospitals to obtain a detailed analysis of their uncompensated care policies and practices each year from their independent auditor. The proposed amendments specify the information that must be provided and a time frame for submission. The amendments further establish penalties for late submission and for failure to have adequate uncompensated care policies and practices.

#### Social Impact

These proposed amendments will add an important new element of scrutiny of hospital uncompensated care. It will benefit consumers and payers by improving the degree of protection against excessive uncompensated care costs.

#### Economic Impact

These proposed amendments will require hospitals to increase the work required of independent auditing firms. This will increase somewhat the cost to hospitals of independent auditing services and may have a resulting impact on hospital rates. Payers of health care services derive a benefit from protection against excessive uncompensated care costs, but the amount cannot be specified at this time.

#### Regulatory Flexibility Statement

The proposed amendments affect 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-3.3 Uniform reporting: current costs

(a) (No change.)

(b) Late submission of current [cost] data, as defined in N.J.A.C. 8:31B-4.6(c), including Audited Financial Statements **and Auditor's Uncompensated Care Review**, may result in a penalty, payable to the Commission, of up to \$200.00 per working day past the appropriate submission date. The penalty shall be levied at the discretion of the Commission.

8:31B-4.6 Reporting period

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

(c) Each calendar year's Financial Elements Reporting Forms as defined in N.J.A.C. 8:31B-4.131 are due on May 31 of the following year. Each year's Audited Financial Statement is due on May 31 of the following year. **Each year's Auditor's Uncompensated Care Review as defined in N.J.A.C. 8:31B-4.41(d) is due on May 31 of the following year.** Failure to meet these time frames will result in penalties as stated in N.J.A.C. 8:1B-3.3.

8:31B-4.41 Uncompensated care audit functions

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

(d) **Before a hospital's reported uncompensated care may be approved as reasonable uncompensated care and incorporated in its rates or in the Trust Fund calculation, an independent auditor retained by the hospital shall review all calculations related to the hospital's reported uncompensated care and shall review the hospital's practices related to the management of accounts receivable. The independent auditor shall then provide a written analysis and opinion concerning the following:**

1. **Provision for bad debt, reserve for uncollectibles, and year end aging schedule, as related to provision for bad debt. An opinion shall be included as to whether the methods used to determine the provision for bad debt are conservative for the purpose of protecting the Trust Fund from excessive cost. The opinion shall state whether the hospital's methods are adequate to prevent, and whether they have prevented significant overstatement of provision for bad debt, given the goal of**

conservatism stated in this section. For purposes of this reporting, an overstatement of either five percent or \$250,000 (whichever is greater) shall be considered a significant overstatement. Analysis of at least three years' experience shall be included. A copy of the year-end aging schedule shall be included with the report.

2. Write-off practices and whether they are adequate to prevent any overstatement of write-offs in the current year and a resulting high recovery rate in a future year. An opinion shall be given regarding:

i. The appropriateness of the timing of write-offs for each category of account (including, but not limited to, self-pay, Blue Cross, commercial insurance, HMO, no-fault auto insurance, liability insurance, Medicaid and Medicare);

ii. Whether there are adequate safeguards to prevent writing off accounts where third party payment may be available; and

iii. Regarding the hospital's written policy governing the transfer of accounts to bad debt status, and whether it is followed.

3. Use of collection agencies when necessary, and whether the hospital maximizes the cost/benefit to the system, generating the optimal collection rate without unreasonably increasing the cost of outside collection itself. Quantitative analysis shall be included, analyzing collection agency placements, recoveries, and fees.

4. Management of accounts receivable as follows:

i. A quantitative analysis of changes in accounts receivable from year to year shall be provided, and an opinion given as to the reasonableness of these changes;

ii. An analysis and evaluation of the hospital's management of accounts receivable shall be included, including, but not limited to, its timeliness and aggressiveness in billing and in follow up of both insured and uninsured accounts, potential Medicaid-eligible cases, and large balance accounts;

iii. An opinion shall be given regarding the adequacy of the hospital's written formal policies and procedures to govern patient accounting activities and the extent these policies compare to industry standards in this area; and

iv. An opinion shall be given regarding whether the policies are consistently followed.

(e) The report required in (d) above shall be submitted annually to the Department. The Department shall review these reports and may recommend fines to the Commission or penalties to be imposed by the Commission in amounts up to the amount by which the inappropriate or inadequate actions or failures to act are estimated to have cost the system, in accordance with the provisions of N.J.S.A. 26:2H-1 et seq.

**(a)**

**HOSPITAL REIMBURSEMENT**

**Financial Elements Reporting Audit Adjustments**

**Proposed Amendment: N.J.A.C. 8:31B-3.17**

Authorized By: Thomas A. Burke, Ph.D., Acting Commissioner, Department of Health (with the approval of the Health Care Administration Board).

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

Proposal Number: PRN 1989-606.

Submit comments by January 4, 1990 to:  
 Scott Crawford, Director  
 Health Care for the Uninsured Program  
 New Jersey Department of Health  
 CN 360  
 Trenton, NJ 08625

The agency proposal follows:

**Summary**

This proposed amendment allows the Department to make unannounced audits of hospitals. It furthers eliminates the \$50,000 materiality threshold for uncompensated care penalties.

**Social Impact**

The proposed amendment will have a positive social impact in that it will tighten the scrutiny given to hospital costs and revenues.

**Economic Impact**

To the extent that this proposed amendment increases the veracity of uncompensated care paid through the hospital rate setting system, this proposed amendment will have a positive economic impact for consumers. Hospitals and the Department of Health may experience marginally higher costs of auditing. Hospitals that are not in compliance with the Chapter 83 rules may incur increased penalties. The threshold change should have little or no economic impact since most penalties exceed \$50,000 and are instituted prior to the time period affected by the materiality standard.

**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-3.17 Financial elements reporting audit adjustments

(a) (No change.)

(b) All reported financial information shall be reconciled by the hospital to the hospital's audited financial statement. In addition, [having given adequate notice to the hospital] **at any time deemed appropriate by the Commissioner**, the Department of Health may perform a cursory or detailed on-site review at the Department's discretion of all financial information and statistics to verify consistent reporting of data and extraordinary variations in data relating to the development of the Preliminary Cost Base (PCB). Any adjustments made subsequent to the financial review (including Medicare audit and New Jersey State Department of Health reviews) shall be brought to the attention of the Commissioner by the hospital, the Department of Health, appropriate fiscal intermediary or payor where appropriate, pursuant to N.J.A.C. 8:31B-3.63 through 3.70 or N.J.A.C. 8:31B-3.71 through 3.86, and shall be applied proportionately to the Preliminary Cost Base and Schedule of Rates (and to the extent pragmatic, applied to fixed and variable financial elements) at the time of the reconciliation to the Schedule of Rates (see N.J.A.C. 8:31B-3.71 through 3.86). All such adjustments shall be determined retroactively to the first payment on the Schedule of Rates and shall be applied prospectively. Any additional discrepancies determined beyond final reconciliation will be reflected in the hospital's current Schedule of Rates, if the net impact is greater than \$50,000 or one percent of the hospital's total gross revenue. **This threshold shall not apply to uncompensated care penalties or other adjustments to uncompensated care amounts.**

**(b)**

**HOSPITAL REIMBURSEMENT**

**Financial Elements**

**Outside Collection Costs**

**Proposed New Rule: N.J.A.C. 8:31B-4.125**

Authorized By: Thomas A. Burke, Ph.D., Acting Commissioner, Department of Health (with the approval of the Health Care Administration Board).

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

Proposal Number: PRN 1989-605.

Submit comments by January 4, 1990 to:  
 Scott Crawford, Director  
 Health Care for the Uninsured Program  
 New Jersey Department of Health  
 CN 360  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

This proposed new rule defines outside collection costs for the purpose of hospital rate setting. Outside collection costs include only those costs

of collection paid to an unaffiliated agency for the purpose of collecting accounts after the hospital has completed all of the in-house collection steps required by N.J.A.C. 8:31B-4.40. Moreover, it bars hospitals from receiving reimbursement for outside collection costs if the collection agency has not received approval from the Department of Treasury to process such accounts.

#### Social Impact

The proposed new rule will eliminate any incentives for the inappropriate use of affiliated collection agencies and foster the controls of hospital uncompensated care required pursuant to the Uncompensated Care Trust Fund Act. This new rule will benefit consumers and payers by enhancing State scrutiny of unaffiliated outside collection agencies.

#### Economic Impact

This proposed new rule will eliminate payments to the affiliated collection agencies set up by a number of hospitals. It will benefit unaffiliated agencies and consumers by fostering competition for those accounts. Unaffiliated agencies that do not receive State approval will be adversely impacted.

#### 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 amendment with fewer than 100 full-time employees. Therefore, the new 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 proposal follows:

#### 8:31B-4.125 Outside collection costs

(a) The center for outside collection costs shall be used to account for outside collection costs for accounts that have already complied with all collection steps required by N.J.A.C. 8:31B-4.40. Outside collection costs that do not meet the criteria listed in this section shall not be paid through the Chapter 83 rates.

(b) The center for outside collection costs shall not be used to report any costs associated with outside collection activities done by an entity that is affiliated in any way with the hospital, its parent or affiliated organization(s), its directors or its management. Affiliation includes, but is not limited to, ownership in whole or in part, stock interest, existence of any financial transaction not stipulated in contract (for example, a contribution to a related foundation), overlap of directors, management or staff, or existence of a contractual relationship for services other than collection.

(c) The center for outside collection costs shall not be used to report any costs associated with outside collection activities done by an entity that has not received approval from the State Department of Health. This section shall take effect for accounts turned over 90 days after the Department of Health has instituted a system to process all such requests for approval which have been submitted within timeframes established by the Department.

(d) The Department shall institute a process for approval of entities whose collection activities may be reported in this center. The Department shall base approval on criteria including, but not limited to:

1. The fee charged by the entity;
2. The willingness and ability of the entity to provide data required by the Department;
3. The demonstrated ability of the entity to comply with procedures required by the Department; and
4. The proposal by the agency of improvements to the collection procedures followed.

(e) Applicants for approval as a collection agency as provided for in this rule shall submit, in a manner prescribed by the Department, information which includes, but is not limited to, the following:

1. Name;
2. Address;
3. Other affiliations and ownership, particularly as they relate to Chapter 83 hospitals;
4. Fees and other costs; and
5. Collection experience.

(a)

## DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

### Certificate of Need

### Megavoltage Radiation Oncology Units

### Proposed Amendments: N.J.A.C. 8:33I-1.2 and 1.5

### Proposed Repeal and New Rule: N.J.A.C. 8:33I-1.3

Authorized By: Thomas A. Burke, Ph.D., M.P.H., Acting  
Commissioner, Department of Health (with approval of the  
Health Care Administration Board).

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

Proposal Number: PRN 1989-607.

Submit comments by December 20, 1989 to:

John J. Gontarski, Chief  
Health Systems Review Program  
New Jersey Department of Health  
CN 360, Room 604  
Trenton, New Jersey 08625-0360

The agency proposal follows:

#### Summary

On October 6, 1977, the Department of Health established rules to govern the planning, certification of need, and designation of megavoltage services. Following a comprehensive planning effort, a system of regionalization for megavoltage services was established, involving the establishment of regional programs statewide to provide appropriate volumes of treatment services at each site to maintain the proficiency of the treatment team.

The purpose of the rules remains to establish a means for the Department to:

1. Promote delivery of the highest quality of care to all patients requiring oncology services;
2. Maximize utilization of highly trained megavoltage personnel and facilities;
3. Promote cost effectiveness throughout the system; and
4. Emphasize a coordinated, cooperative and multi-disciplinary approach to oncology services.

The rules established minimum criteria for the establishment of a megavoltage radiation oncology service. The rules were readopted with amendments in 1981. A major megavoltage policy initiative was undertaken in 1984 which emphasized the promotion of multiple megavoltage unit programs that could offer oncology patients equipment capable of providing a full range of photon and electron beam energies as opposed to the promotion of multiple single unit programs in the State. These amendments also prohibited the establishment of new megavoltage programs in an effort to encourage multiple unit services statewide. Subsequent amendments in 1986 were adopted in order to continue this regionalized approach.

Many changes have occurred in oncology service delivery within the past five years. While no new megavoltage programs have been approved in New Jersey, the vast majority of the State's single unit megavoltage programs have gained certificate of need approval to become multiple unit programs. In addition, megavoltage equipment providing a full range of treatment energy levels with both photon and electron capability have been developed and received widespread use during this period.

In order to assure appropriate access to these megavoltage oncology services, the Department is proposing to modify its policy of accepting certificate of need application for new megavoltage radiation oncology services in those regions of the State where existing providers are all appropriately utilized and where it can be documented that an unmet need for these services exists. The following sections of the existing megavoltage rules are therefore being amended.

1. N.J.A.C. 8:33I-1.2 has been amended to require that megavoltage units with medium/high energy capability have on-site simulation.

2. The text at N.J.A.C. 8:33I-1.3 has been repealed and new text has been proposed which would permit the acceptance of applications for new megavoltage services in health service areas where all existing approved megavoltage providers are in compliance with minimum utilization requirements for their respective single or multiple unit programs. The proposed new rule also includes waiver criteria that are intended to address documented access barriers to these needed services.

3. N.J.A.C. 8:33I-1.5 has been amended to delete the requirement for consistency with the hospital's long-range plan, since such plans are no longer required, and to allow for the orderly development of new projects. Additionally, reporting requirements have been decreased so that semi-annual reports, not quarterly reports, are now required.

#### Social Impact

N.J.S.A. 26:2H-1 et seq., as amended, recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs. . . ."

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as an important factor contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by assuring an adequate patient volume for hospitals offering these expensive services, and by containing the rising costs of health care services.

The Department believes the proposed new rule and amendments will be effective in addressing the Department's established goal of promoting a higher quality of care for oncology patients.

#### Economic Impact

The rules were established to address both quality of care and cost-effectiveness goals. Through implementation of these rules to date, delivery of high-cost megavoltage radiation oncology services has been regionalized in New Jersey. The economic impact of these rules has thus been to produce initial cost efficiencies in the system of megavoltage oncology services through improving utilization of high-cost services. The amendments and new rule would continue to permit additional services only where there is documentation of sufficient unmet need to warrant the initiation of an efficient new megavoltage service without negatively impacting existing providers in the region. These requirements have the effect of containing costs to the system. The reduction in frequency of reporting, from quarterly to semi-annually, is expected to reduce costs to the units, although the specific amounts cannot be determined.

#### Regulatory Flexibility Analysis

Facilities affected by these rules consist largely of hospitals with more than 100 beds. These hospitals typically employ well over 100 full-time employees. It is possible, however, that smaller entities that are not specifically affiliated with hospitals will be considered as megavoltage radiation oncology providers under these rules. The requirements contained in these rules do require personnel to perform a limited number of recordkeeping and reporting functions. Such requirements do not necessitate the dedication of staff and should not be considered overly burdensome to the applicants that might be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

In proposing these amendments and new rule, the Department has had to balance the economic impact of added personnel costs with the need to provide a safe and effective health care service. The Department has determined that to minimize the economic impact of these proposed amendments and rule would endanger public health and safety and, therefore, no exception from coverage is provided.

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

#### 8:33I-1.2 Utilization of megavoltage units and programs

(a) Single unit megavoltage programs shall be subject to the following:

1. (No change.)
2. Failure to achieve an average minimum utilization as defined at (a)1 above, during any 36 consecutive months following November 5, 1984 may result in a recommendation for denial of reimbursement for the service by the Department to the Hospital Rate-Setting Commission and/or loss of licensure for the service.
  - i. (No change.)

ii. **Megavoltage units with medium/high energy capability must have on-site simulation.**

(b) (No change.)

#### 8:33I-1.3 New megavoltage programs

[No applications for new megavoltage programs will be accepted for processing by the Department pending annual review of these rules by the Ad Hoc Technical Advisory Committee (see N.J.A.C. 8:33I-1.5(a)(10)). In the event of a megavoltage program closure, a statewide needs assessment will be undertaken by the department to consider a one time only processing of applications for new megavoltage services.]

(a) **The Department of Health shall process certificate of need applications for new radiation oncology programs only from health service areas, designated pursuant to P.L. 93-641 and amendments thereto, where all existing Radiation Oncology Programs meet minimum levels of utilization as specified at N.J.A.C. 8:33I-1.2.**

(b) **No more than one new radiation oncology program may be approved in each health service area, designated pursuant to P.L. 93-641 and amendments thereto, where all existing radiation oncology programs are operating at minimum levels of utilization as specified by N.J.A.C. 8:33I-1.2. Additional new facilities, beyond those approved prior to the effective date of this rule, will be considered only when both existing and approved facilities in a given health service area are operating at minimum levels of utilization as specified at N.J.A.C. 8:33I-1.2.**

(c) **Competing applications for new radiation oncology programs in a health service area shall be evaluated on the basis of their ability to meet the standards established in this subchapter. In addition, the following factors shall also be considered in the review process:**

1. **Demonstration of institutional and provider competence in delivering the proposed service;**
2. **Capacity to perform the proposed service at the recommended minimum level within the stated period of time;**
3. **Commitment from the hospital's board to establish the proposed service program;**
4. **Examination of the capacity of existing facilities in the referral area;**
5. **Evidence that essential support services in the hospital (for example, radiology, counseling services) are capable of coping with an increase in medical oncology caseload;**
6. **Evidence that the project would be financially feasible;**
7. **Evidence that demographic statistics support service growth;**
8. **Evidence that the proposed service is compatible with overall health planning goals for the State and for the service area; and**
9. **Evidence that barriers to access to care do not exist, including access to primary care services, and that if no barriers exist, that access to care will remain constant or improve for individuals in the service area.**

(d) **Waivers from (a) and (b) above may be considered where an applicant and the local health planning agency have been able to document specific and quantifiable evidence that, in the absence of a waiver, serious problems of access to a needed service would result. Documentation should also be provided that indicates that existing area providers of this service will not be jeopardized (for example, experience a significant decline in volume) by the proposed new service and the proposed new provider will meet all requirements contained in this subchapter.**

(e) **All certificate of need applications for new radiation oncology programs shall document the ability of the applicant to meet the minimum standards and criteria contained in this subchapter within three years from the initiation of the service. Failure to achieve the minimum level by the end of the second year of operation will result in notification of Department of Health intention to rescind Certificate of Need approval and move for licensing sanctions. The inability to achieve minimum utilization levels during the third year of operations or thereafter will result in the loss of the license for the service and/or reimbursement sanctions as specified at N.J.A.C. 8:33I-1.2(a)2 and 1.2(b)6.**

#### 8:33I-1.5 General criteria

(a) **As part of the application for a megavoltage radiation therapy unit, each application [must] shall meet the following minimum general criteria:**

[1. Provide written evidence that the proposed acquisition of a megavoltage radiotherapy unit is both consistent with the institution's approved long-range plan submitted to the Department under requirements of N.J.A.C. 8:31-16.1, and with the health systems plan and annual implementation plan of the health systems area in which the applicant is located, once these plans are developed.]

Recodify existing 2.-8. as 1.-7. (No change in text.)

[9.]8. Each applicant [must] shall maintain and provide basic statistical data on the operation of the unit and report data to the New Jersey State Department of Health on a [quarterly] semi-annual basis and on a standardized form prepared by the Department. Copies of the full text of the required [quarterly] reporting forms may be obtained upon written request from the New Jersey State Department of Health, [Health Data Services] Center for Health Statistics, Room 404, CN 360, Trenton, New Jersey 08625.

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

## (a)

### **DIVISION OF HEALTH FACILITIES EVALUATION Standards for Licensure of Hospital Facilities Physical Plant Standards for Newborn Care Services Proposed New Rules: N.J.A.C. 8:43G-19.35 through 19.53**

Authorized By: Thomas A. Burke, Ph.D., M.P.H., Acting  
Commissioner, Department of Health (with approval of the  
Health Care Administration Board).

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

Proposal Number: PRN 1989-604.

Submit comments by December 20, 1989 to:

Joseph A. DiCara  
Health Facilities Construction Services  
Division of Health Facilities Evaluation  
New Jersey Department of Health  
300 Whitehead Road, CN 367  
Trenton, New Jersey 08625-0367  
(609) 588-7786

The agency proposal follows:

#### **Summary**

N.J.A.C. 8:43B-8, Maternal and Newborn Services, no longer reflects the current state of the art in the provision of newborn care services and has been proposed for repeal as part of the repeal of N.J.A.C. 8:43B (see 21 N.J.R. 2925(a)). New advanced technology and new health care systems have evolved which have greatly affected newborn care services. The current rules at N.J.A.C. 8:43B-8 written in general, subjective terms have created problems interpreting and enforcing the rules. New rules have been proposed at 21 N.J.R. 2926(a) which cover the provision of obstetric services in hospitals. The rules proposed here will become part of the obstetric service rules at N.J.A.C. 8:43G-19.

The proposed new rules are based on the delineation of newborn services into seven separate functional areas. Hospitals will be more able to provide care at a reasonable cost. The proposed rules are designed to simplify and clarify requirements and to provide maximum flexibility in the administration of the services, while protecting the health and safety of patients.

The proposed rules reflect the state of the art in obstetric and newborn care in that they allow, at the discretion of the facility and the facility's staff, the humanization and normalization of the birth process, in accordance with the facility's policies and procedures. The humanization and normalization process includes, for example, preparation of families and hospital staff for the birthing experience and newborn interaction with the mother and father after birth. The proposed new rules for newborn services have been written in specific language to make the rules explicit and precise, which will enhance the enforceability of the rules.

The proposed new rules delineate seven functional areas for Newborn Care: Resuscitation area; Admission/observation area; Normal Newborn Nursery (Level I); Continuing Care/Growing Nursery or area; Suspect/Isolation Nursery; Intermediate Care Nursery (Level II); Intensive Care Nursery (Level III).

The proposed rules specify when these standards shall be used for the construction of new buildings, additions, alterations or renovation of

existing buildings. In existing buildings, the extent of conformity to these standards which is required is based on the percentage of gross square footage of the area being altered.

The requirements of the seven functional areas are detailed and include square footage per bassinet, electric outlets, illumination, oxygen, air and suction outlets, charting facilities, temperature and humidity index, offices, infant formula facilities, workroom, multipurpose rooms, scrub areas and lavatory facilities.

A summary of the proposed new rules follows:

Proposed N.J.A.C. 8:43G-19.35 addresses standards for physical plant general compliance for new construction, alteration or renovation of newborn care services.

Proposed N.J.A.C. 8:43G-19.36 sets forth the seven functional areas for newborn care, which are: resuscitation area, admission/observation area, normal newborn nursery (Level I), continuing care/growing nursery, suspect/isolation nursery, intermediate care nursery (Level II) and Intensive Care Nursery (Level III).

Proposed N.J.A.C. 8:43G-19.37 addresses the general newborn care functional area requirements. These requirements are: level of illumination, viewing windows, oxygen and compressed air pressure, chime alarms, acoustic absorption units; temperature level, color of wall finishes, emergency call system, hand-washing facilities, electric outlets and air changes per hour.

Proposed N.J.A.C. 8:43G-19.38 sets forth requirements for two staff offices and a staff lounge.

Proposed N.J.A.C. 8:43G-19.39 addresses standards for infant formula facilities. The infant formula can be prepared either on site or commercially prepared and pre-packaged.

Proposed N.J.A.C. 8:43G-19.40 requires a solid utility room which contains a clinical sink, work counter, handwashing sink, liquid soap dispensers, paper towel dispenser and storage space.

Proposed N.J.A.C. 8:43G-19.41 requires a clean work area or room which contains a counter with cabinets, refrigerator, handwashing sink, liquid soap dispensers, paper towel dispenser and storage space.

Proposed N.J.A.C. 8:43G-19.42 requires a janitor's closet, which contains a floor receptor, storage space for housekeeping equipment and supplies.

Proposed N.J.A.C. 8:43G-19.43 requires a clerical area near the entrance to the nurseries.

Proposed N.J.A.C. 8:43G-19.44 sets forth the number of multi-purpose rooms required in each level. In Level I facilities, one multi-purpose room is required. In Level II facilities, two multi-purpose rooms are required. In Level III facilities, four multi-purpose rooms are required.

Proposed N.J.A.C. 8:43G-19.45 addresses the requirements for nursery areas. The nurseries shall be served by a connecting workroom, which shall contain a counter, refrigerator, handwashing sink and storage space. There shall be separate changing areas designated for men and women.

Proposed N.J.A.C. 8:43G-19.46, Resuscitation area, requires 40 square feet per station, when part of the delivery room. If the resuscitation area is a separate room, it shall have 150 square feet of clear space. The resuscitation areas shall have one oxygen, one compressed air, and one suction outlet and six electrical outlets.

Proposed N.J.A.C. 8:43G-19.47, Admission/observation area, requires 40 square feet for each infant station, one oxygen, one compressed air, and two suction outlets, and six electrical outlets.

Proposed N.J.A.C. 8:43G-19.48 addresses the requirements for a normal newborn nursery, which shall contain 24 square feet for each bassinet, with a maximum of 12 bassinets per nursery. There shall be one oxygen, one compressed air, and one suction outlet for every six infant stations and two single electrical outlets for every two infant stations. In addition, a soiled utility room, a clean utility room, a parent room, examination and treatment room and storage facilities are required.

Proposed N.J.A.C. 8:43G-19.49 sets forth the requirements for the continuing care/growing nursery. There shall be 40 square feet, one oxygen, one compressed air and one suction outlet and four electrical outlets for each infant station.

Proposed N.J.A.C. 8:43G-19.50 addresses the requirements for an isolation nursery, which shall contain 40 square feet, one oxygen outlet, one compressed air, one suction outlet and four electrical outlets for each infant station.

Proposed N.J.A.C. 8:43G-19.51 sets forth the requirements for an intermediate care nursery, which shall contain 50 square feet of floor space, two oxygen outlets, two compressed air outlets and two suction outlets, eight electrical outlets for each infant station, plus a soiled utility room, a clean utility room and storage facilities.

**PROPOSALS****Interested Persons see Inside Front Cover****HEALTH**

Proposed N.J.A.C. 8:43G-19.52 addresses the requirements for the intensive care nursery, which shall contain 100 square feet of space, three oxygen outlets, three compressed air outlets, four suction outlets, and 16 electrical outlets, as well as storage facilities for each infant care station, a soiled utility room, a clean utility room and on-call room(s) for staff.

Proposed N.J.A.C. 8:43G-19.53 sets forth the services that may be shared if the intermediate care nursery and the intensive care nursery are in the same suite.

**Social Impact**

Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, require the Department of Health to protect and promote the health of the citizens of this State. The Act also mandates the Department to develop "standards and procedures relating to the licensing of health care facilities and the institution of additional health care services" to ensure the efficient and effective delivery of health care services.

The proposed new rules establish minimum standards which ensure the provision of quality care to patients requiring newborn services in hospitals.

The proposed new rules reflect the state of the art in newborn care and emphasize concerns regarding maternal and infant mortality. The proposed rules will allow facilities to provide care intended to ensure safe outcome of a healthy pregnancy.

Since the first minutes after birth are so important, the proposed standards demand prompt, organized, and skilled responses for the care of the newborn.

Attention has been given to the provision of sufficient space and equipment to provide the necessary care needed by the newborn, since the lack of this equipment and services may result in death or permanent disability of the infant.

The rules have the traditional objective of reducing infant mortality. Appropriate physical plant design can contribute to a reduction in mortality through improved infection control. At the same time, the rules allow facilities, depending on their policies and procedures, to provide an opportunity for the humanization and normalization of the birth process.

The proposed new rules are more progressive, more responsive to the needs of individual facilities and patients, and more clearly written than the current rules. The proposed rules reflect the state of modern newborn services. Insofar as the proposed rules are less prescriptive than the current rules with respect to the content of the required policies and procedures, the proposed rules will allow the various hospitals the opportunity and flexibility to devise innovative and effective methods of providing newborn services to patients. The precise language of the proposed rules will facilitate uniform interpretation of the survey process. These characteristics of the proposed rules will render the goals of a higher level of patient care and higher level of patient safety more achievable.

Questions from providers of care, architects and engineers regarding the rules and interpretation of the rules should be more easily answered. This will give more initiative to health care professionals to provide quality care to patients.

**Economic Impact**

The New Jersey State Department of Health has the responsibility to promote the financial solvency of hospitals and contain rising costs of health care services and assures that health care facilities meet all codes and standards in order to receive Federal reimbursement under Medicare/Medicaid.

The Department does not expect the proposed new rules to have any substantial financial impact upon hospitals providing newborn care services.

Based on a current survey by the Department, many of the requirements are being performed in these facilities as part of their comprehensive program currently operating under a Department of Health license.

It is anticipated that the fire safety revisions will not require additional expenditures by existing facilities. Existing facilities that complied with an earlier edition of the life safety code would be considered as meeting the proposed rules thus relieving those facilities of the need for additional expenditures without any adverse effect on patient safety. New facilities would be subject to the 1985 Edition of the Life Safety Code which will minimize cost by offering more alternatives for meeting the specific requirements. With these rules, existing facilities have the option of provid-

ing equivalent means of compliance with these codes and standards therefore saving a great deal of construction dollars by utilizing existing plants.

In addition, these rules are in compliance with the construction regulations concerning health care facilities of the Department of Community Affairs which administers the New Jersey State Uniform Construction Code.

**Regulatory Flexibility Statement**

Newborn care services are currently provided within hospitals which are not considered small businesses as the term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All hospitals providing newborn care services employ more than 100 people; therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows:

8:43G-19.35 Physical plant general compliance for new construction, alteration or renovation for newborn care; mandatory

Physical plant standards for newborn care areas shall be in compliance with N.J.A.C. 8:43G-24.8 through 24.12.

8:43G-19.36 Functional areas for newborn care; mandatory

(a) Functional areas for newborn care shall be as follows:

1. Resuscitation Area or Room;
2. Admission Observation Area;
3. Normal Newborn Nursery (Level I);
4. Continuing Care Growing Nursery or Area;
5. Suspect Isolation Nursery;
6. Intermediate Care Nursery (Level II); and
7. Intensive Care Nursery (Level III).

8:43G-19.37 General newborn care functional area requirements; mandatory

(a) General requirements for functional areas designated in N.J.A.C. 8:43G-19.36 shall be as required in (b) through (l) below.

(b) Each nursery shall be illuminated with ceiling fixtures connected to a rheostat which shall provide a minimum of 60 foot candles to a maximum of 150 foot candles at the body surface of the infant. In addition, each Level III facility shall have a ceiling fixture centered over each patient station connected to an individual rheostat.

(c) Viewing windows shall be extensive throughout the newborn suite. Exterior windows shall be energy efficient and insulated.

(d) Newborn care areas shall have oxygen and compressed air piped from a central source at 50 to 60 pounds per square inch (psi). Reduction valves and mixers shall produce a 21 percent to 100 percent concentration of oxygen at atmospheric pressure for head hoods and 50 to 60 psi for mechanical ventilators.

(e) Oxygen air and suction systems shall have chime alarms to signal loss of suction or low oxygen and air supply.

(f) The construction of the nursery shall include acoustic absorption units or other means to keep sound intensity below 75 decibel (db).

(g) A temperature of 75 degrees Fahrenheit and a relative humidity of 50 percent shall be maintained.

(h) Wall finishes shall be off white or pale beige in color to minimize distortion of staff's color perception in patient care area.

(i) An emergency call system shall be provided in each nursery.

(j) A free-standing handwashing sink shall be provided with foot control and a bowl large and deep enough to prevent splashing. A liquid soap dispenser and disposable towel dispenser shall be provided at each sink.

(k) Electric outlets shall be supplied by at least two branch circuits of 15 amps each.

(l) In the entire newborn suite there shall be a total of six air changes per hour, with two of these changes being outside air, and filtration of 25 percent with final filtration of 90 percent before air enters the nursery. Positive pressure shall be maintained.

8:43G-19.38 Staff offices and lounge; mandatory

There shall be two staff offices and a staff lounge in, or adjacent to, the newborn suite.

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## 8:43G-19.39 Infant formula facilities; mandatory

(a) If infant formula is prepared on the hospital site, the following shall be provided:

1. Facilities for washing and sterilizing supplies;
2. A separate room for preparing infant formulas, with direct access from formula room to a nursery or to a nursery workroom; and
3. A separate refrigerator/freezer for the storage of breast milk and formula.

(b) If a commercially prepared pre-packaged infant formula is used, then a separate clean area shall be provided for the storage of formula. Such storage may be provided in the Nursery Workroom. The preparation area shall have a work counter, a handwashing sink and storage facilities. A separate refrigerator/freezer shall be provided for storage of breast milk.

## 8:43G-19.40 Neonatal unit soiled utility room; mandatory

(a) A soiled utility room shall contain the following:

1. A clinical sink;
2. A work counter;
3. A hand-washing sink foot control;
4. Liquid soap dispensers;
5. A paper towel dispenser; and
6. Space for storage of soiled equipment, soiled linen and trash receptacles.

## 8:43G-19.41 Neonatal unit clean work area or room; mandatory

(a) A neonatal unit clean work area or room shall contain:

1. A counter with cabinets;
2. A refrigerator;
3. A handwashing sink with knee control;
4. Liquid soap dispensers;
5. A paper towel dispenser; and
6. Space for storage of clean equipment and clean linen.

## 8:43G-19.42 Neonatal unit janitor's closet; mandatory

A neonatal unit janitor's closet shall be provided in the suite and shall contain floor receptor or service sink and storage space for housekeeping equipment and supplies.

## 8:43G-19.43 Neonatal unit clerical area; mandatory

There shall be a clerical area near the entrance to the nurseries which shall provide an area for recording. The clerical area shall be designed to allow staff to supervise traffic and to eliminate unwarranted entry into the patient care area. The clerical area shall have telecommunication with all nursery areas and the delivery suite.

## 8:43G-19.44 Neonatal unit multipurpose rooms; mandatory

(a) In Level I facilities, there shall be one multi-purpose room for consultation and conferences.

(b) In Level II facilities, there shall be two multi-purpose rooms, one for consultation and conferences and one for use as a parent teaching breast feeding room.

(c) In Level III facilities, there shall be four multi-purpose rooms, as follows:

1. A parent-teaching room demonstration room;
2. A consultation conference room;
3. A parent room for breast feeding; and
4. A parent sleeping room with adjoining toilet and shower.

## 8:43G-19.45 Neonatal unit nursery area; mandatory

(a) The normal newborn nursery, continuing care nursery and admission nursery shall be served by a connecting workroom. One workroom may serve several normal newborn nurseries, provided that required services are convenient to each. The workroom shall contain work space, with:

1. A counter;
2. A refrigerator;
3. A handwashing sink with foot control; and
4. Storage space.

(b) There shall be separate changing areas for men and women, located so that staff are able to change clothing prior to entering the clean area of the nursery.

(c) A scrub gowning area shall be provided for staff and house-keeping personnel at the entrance of each nursery, but separated from

the work area. The scrub gowning area shall contain a free standing handwashing sink with foot control and a bowl large enough to prevent splashing. The following shall be provided:

1. Racks, hooks or lockers for storage of street clothes and personal items;
2. Cabinets for clean gowns;
3. Receptacle for used gowns; and
4. A large wall clock with sweep second hand for timing hand washing.

## 8:43G-19.46 Neonatal unit resuscitation area; mandatory

(a) The resuscitation area shall be part of the delivery room or shall be a separate resuscitation room adjacent to an opening into the delivery room.

(b) The resuscitation area shall contain:

1. An overhead source of radiant heat;
2. A large wall clock with a clearly visible second hand;
3. A flat working surface for charting; and
4. A table or flat surface for trays.

(c) The resuscitation area shall contain a minimum of 40 additional square feet of clear floor area when included as part of the delivery section room.

(d) If the program requires a separate resuscitation room, it shall contain a minimum of 150 square feet of clear floor area.

(e) The neonatal resuscitation area shall have a minimum of:

1. One oxygen outlet;
2. One compressed air outlet; and
3. One suction outlet.

(f) A minimum of six single or three duplex electrical outlets shall be provided in each resuscitation area or room. If a separate resuscitation room is provided, an electrical outlet to accommodate a portable X-ray machine shall also be provided.

(g) If a separate resuscitation room is provided, the room shall contain a free-standing handwashing sink.

## 8:43G-19.47 Neonatal admission/observation area

(a) The admission/observation area shall be near or adjacent to the delivery room and convenient to the postpartum Nursing Unit. One patient station for every 400 annual births shall be provided. There shall be a minimum of two stations in this area. In Level I facilities, the admission/observation area may be located in the newborn nursery or continuing care area, if a separate room is not provided.

(b) There shall be a minimum of 40 square feet of floor area for each infant station with a minimum of three feet between bassinets.

(c) One oxygen outlet, one compressed air outlet and two suction outlets shall be provided at each infant station.

(d) Six single or three duplex electrical outlets shall be provided at each infant station.

(e) A free-standing handwashing sink shall be provided in the room.

(f) The admission/observation area shall contain:

1. An overhead source of radiant heat;
2. A large wall clock with clearly visible second hand;
3. A flat working surface for charting; and
4. A table or flat surface for trays.

## 8:43G-19.48 Normal newborn nursery (Level I)

(a) Normal newborn nurseries shall be located close to the postpartum unit and shall be inaccessible to unrelated traffic.

(b) The number of bassinets shall exceed the number of licensed obstetric beds by at least 20 percent, in order to accommodate multiple births and extended hospitalization beyond mother's discharge date, as well as beyond 28 days.

(c) A minimum of 24 square feet for each bassinet shall be provided, with three feet between bassinets in all directions from edge of one to the other with a separate aisle four feet wide, in addition to the required bed space.

(d) A maximum of 12 bassinets shall be permitted in one normal newborn nursery.

(e) One oxygen outlet, one compressed air outlet and one suction outlet for every six infant stations shall be provided. One such group of outlets shall be located at each end of the room.

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(f) Two single or one duplex wall-mounted electrical outlets shall be provided for every two infant stations.

(g) A free-standing handwashing sink shall be provided for every two infant stations.

(h) A soiled utility room shall be provided.

(i) A clean utility room or area shall be provided.

(j) A parent room shall also be provided, to be used for breast feeding after mother's discharge and for sibling visitations. The parent room shall be equipped with a handwashing sink.

(k) An examination and treatment room or work area shall be provided within the suite. Such room or work area shall contain a workcounter, storage, and a free-standing sink equipped for handwashing with foot control.

(l) Storage facilities for the newborn nursery shall be as follows:

1. There shall be bedside cabinet storage of eight cubic feet per infant station;

2. There shall be three cubic feet per infant for secondary storage of items such as linens and formula within the area; and

3. There shall be six square feet per infant for large items of equipment in a clean storage area.

### 8:43G-19.49 Continuing care/growing area

(a) The continuing care/growing nursery shall be provided for low birth weight infants who are not sick but require frequent feedings or infants who no longer require intermediate care but still require more nursing hours and closer observation than normal infants. This area shall be close to the intensive and intermediate care nursery or may be a part of the intermediate care nursery.

(b) There shall be a minimum of 40 square feet for each infant station with four feet between bassinets.

(c) There shall be one oxygen outlet, one compressed air outlet and one suction outlet for each infant station.

(d) There shall be four electrical outlets for each infant station.

(e) If the continuing care nursery is a separate nursery, then a separate work area with a scrub sink shall be provided.

### 8:43G-19.50 Isolation nursery

(a) Each isolation nursery shall be an enclosed and separate room within the newborn nursery unit.

(b) The isolation nursery shall provide a minimum of 40 square feet of space per infant, exclusive of lavatory. There shall be a minimum of two stations with either one room or two rooms which may share a common anteroom.

(c) A free-standing handwashing sink shall be provided at the entrance inside the isolation nursery anteroom with foot or knee control.

(d) One oxygen outlet, one compressed air outlet and one suction outlet shall be provided for each infant station.

(e) Four electrical outlets shall be provided for each infant station.

### 8:43G-19.51 Intermediate care nursery (Level II)

(a) The intermediate care nursery shall be located away from general hospital traffic and should be close to the delivery room and the intensive care nursery.

(b) Each infant patient station shall have a minimum of 50 square feet of floor space, excluding ancillary space for storage. There shall be four feet between incubators or bassinets with a separate aisle five feet wide, in addition to required bed space.

(c) Each infant care station shall have two oxygen outlets, two compressed air outlets and two suction outlets.

(d) Eight electrical outlets shall be provided for each infant station. A separate outlet shall be provided to supply power for a portable X-ray machine for the intermediate care nursery.

(e) A free-standing handwashing sink, soap dispenser and towel dispenser shall be provided at the entrance of the intermediate care nursery. One sink shall be provided for every three infant care stations within the nursery.

(f) A soiled utility room shall be provided.

(g) A clean utility room or area shall be provided.

(h) Storage facilities for the intermediate care nursery (Level II) shall be as follows:

1. There shall be eight cubic feet of storage for each infant care station for supplies needed for immediate use of shelves and cabinets within patient area;

2. There shall be at least 20 square feet of floor space for equipment for each infant care station adjacent to or with the intermediate care nursery outside of the patient area; and

3. There shall be 16 cubic feet of shelf or cabinet space for each infant care station adjacent to or within this area but outside of the infant care area.

### 8:43G-19.52 Intensive care nursery (Level III)

(a) The intensive care nursery shall be near the delivery room and shall be accessible from an ambulance entrance. This area shall be removed from routine hospital traffic.

(b) The intensive care nursery shall provide 100 square feet per bassinets or incubator allowing a minimum of six feet between bassinets and at a minimum, an eight foot wide aisle.

(c) There shall be three oxygen outlets, three compressed air outlets and four suction outlets for each infant care station.

(d) There shall be 16 electrical outlets for each infant care station. A separate outlet shall be provided to supply power for a portable X-ray machine to serve the neonatal area.

(e) Storage facilities for the intensive care nursery (Level III) shall be as follows:

1. There shall be 16 cubic feet of storage counter and cabinet for supplies needed for immediate use within the infant's room for each infant care station;

2. There shall be at least 30 square feet of floor space adjacent to or within the intensive care nursery but outside of patient area for each infant care station; and

3. There shall be 24 cubic feet of shelf or cabinet space adjacent to or within the intensive care nursery but outside of the patient area for each infant care station.

(f) A soiled utility room shall be provided.

(g) A clean utility room or area shall be provided.

(h) A free-standing handwashing sink shall be provided at the entrance to the intensive care nursery. One sink with foot or knee controls shall be provided for every three infant care stations within the nursery.

(i) There shall be on-call room(s) for staff on the same floor of the hospital with an adjoining toilet, lavatory and shower.

### 8:43G-19.53 Shared services (Level II and Level III)

(a) If intermediate care nursery (Level II) and intensive care nursery (Level III) are located in the same suite, then the following services may be shared:

1. Janitor's closet;
2. Soiled utility;
3. Clean utility;
4. Demonstration/conference room;
5. Storage room;
6. Formula storage room;
7. Male/female staff lockers, lounge and toilets;
8. Parent waiting room;
9. Consultation room;
10. Public toilet and telephone; and
11. On-call room.

## LAW AND PUBLIC SAFETY

(a)

### DIVISION OF STATE POLICE

#### Motor Vehicle Race Track Rules

**Proposed Repeal: N.J.A.C. 13:22**

**Proposed New Rules: N.J.A.C. 13:62**

Authorized By: Colonel Clinton L. Pagano, Superintendent,  
Division of State Police.

Authority: N.J.S.A. 5:7-8 et seq. and Attorney General's  
Executive Directive 1982-2.

Proposal Number: PRN 1989-615.

Submit comments by December 20, 1989 to:  
Colonel Clinton L. Pagano, Superintendent  
c/o Lieutenant R. Avalone  
Division of State Police  
Special Projects Unit  
River Road  
P.O. Box 7068  
West Trenton, New Jersey 08628-0068

The agency proposal follows:

#### Summary

N.J.A.C. 13:22 became effective January 7, 1985, for a period of five years, which expires on January 7, 1990. For the sake of clarity, the Division of State Police proposes that N.J.A.C. 13:22 be repealed and N.J.A.C. 13:62 be adopted in order to incorporate changes in language, format and organization of material. N.J.S.A. 5:7-8 requires the regulation of the operation or conduct of motor vehicle races and exhibitions of motor vehicle driving and the tracks or places at which the same are operated and conducted, providing for the issuance of licenses. Pursuant to this statute and the Executive Directive 1982-2, the Division of State Police is entrusted with the regulation of motor vehicle races and exhibitions of motor vehicle driving. The Division of State Police is proposing to repeal the present rules and adopt new rules in accordance with the Division's statutory responsibility.

Proposed N.J.A.C. 13:62-2 sets forth the motor vehicle race track license requirements and the licensee's responsibilities.

Proposed N.J.A.C. 13:62-3 sets forth the construction requirements to be imposed on the licensee at all licensed facilities.

Proposed N.J.A.C. 13:62-4 sets forth the safety requirements for vehicles and personnel at open cockpit events.

Proposed N.J.A.C. 13:62-5 sets forth the following requirements for acceleration and performance tests: constructing; location, vehicle equipment; spectator protection; pit area fences; vehicle positioning; and burnouts.

Proposed N.J.A.C. 13:62-6 sets forth the following requirements at motorcycle, motorcross and quad vehicle events: licensed facilities; hubrail construction; flagmen and eye protection; braking system; shutoff device; minimum age requirements for motorcycle events; motorcross racing events and quad vehicle requirements.

Proposed N.J.A.C. 13:62-7 sets forth the following requirements for snowmobile events: track construction; safety requirements, vehicles and personnel; exhaust systems; snowflaps; shutoff device; and engine and transmission shielding.

Proposed N.J.A.C. 13:62-8 sets forth the following requirements for go-cart events: licensed facilities; track construction; safety requirements; serpentine go-cart race courses.

Proposed N.J.A.C. 13:62-9 sets forth the following requirements for demolition derby and tractor pulls: vehicles; participants; exhibition area; tow vehicles; tractor pull age requirements; and tractor kill switch requirement.

Proposed N.J.A.C. 13:62-10 sets forth the following requirements for enduro events: construction requirements; driver and vehicle requirements; windshield; mirrors; vehicle interior and exterior requirements; tires; gas tanks; fuel lines; engine and suspension requirements; seat belts, rollover cage; bumpers; batteries; seats; miscellaneous equipment requirements; and additional track responsibilities.

Proposed N.J.A.C. 13:62-11 sets forth the following requirements for mud hop events: construction requirements; licensed facilities; alcohol and drug prohibition; driver requirements; equipment requirements; wind-dows; vehicle interior and exterior requirements; seat belts; rollover cage;

bumpers; batteries; miscellaneous equipment requirements; braking system and pedal reserve; automatic transmission safety mats; seats; and additional safety requirements.

Proposed N.J.A.C. 13:62-12 sets forth the requirement of licensed facilities and vehicle equipment for reaction power vehicles, thrill shows, and gymkhanas.

#### Social Impact

The proposed new rules will have a positive social impact. They would ensure public safety and minimize property damage during racing events at licensed facilities.

#### Economic Impact

Original and renewal race track facility licensees are required to pay the statutory license fee. The Division anticipates from the proposed new rules little, if any, additional expense on the part of licensees and event participants already in compliance with the rules proposed for repeal. For those not in compliance with the new rules, the cost of compliance will vary with the areas and degree of non-compliance.

#### Environmental Impact

The proposed new rules would have no direct, significant environmental impact.

#### Regulatory Flexibility Analysis

The Division estimates that 12 small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., may be impacted by the proposed new rules. Besides the license application process, a licensee is subject to only minimal reporting and record keeping requirements. No such requirements are imposed on event participants.

As stated in the Economic Impact, the compliance requirements imposed upon small business applicants, licensees and participants should involve minimal cost if there has been compliance with the rules proposed for repeal. Compliance costs and the need for professional services (engineers, mechanics, etc.) for first-time applicants and participants will vary depending upon the extent of non-compliance and the business' internal staff resources. As these rules are promulgated to ensure the safety of participants, spectators and track personnel, no differentiation of the requirements based upon business size is possible.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:22.

Full text of the proposed new rules follows:

### CHAPTER 62

### MOTOR VEHICLE RACE TRACK RULES

#### SUBCHAPTER 1. DEFINITIONS

##### 13:62-1.1 Words and phrases defined

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

"Acceleration and performance tests" means a straightaway race against time or another vehicle, including acceleration and deceleration.

"Ambulance" means a motor vehicle certified to provide emergency medical services pursuant to the New Jersey Highway Traffic Safety Act of 1987, N.J.S.A. 27:5F-18 et seq., and the New Jersey Medical Assistance Health Services Act, N.J.S.A. 30:4D-6.2 et seq.

"Enduro event" means an oval race in which the winner is determined by the leading car at the expiration of a determined time or number of laps.

"Go-cart" means a small four-wheel vehicle consisting of a frame, seat, one or more engines mounted to the rear of the driver's seat, steering mechanism and a braking system, and having no spring suspension system.

"Go-cart racing event" means a race involving vehicles commonly known as go-carts as defined in this chapter, either on a circular or oval track or on a road course involving curves, chicanes or other track characteristics designed to simulate varied road conditions.

"Motorcycle special events" means motorcrosses, scrambles and other events utilizing open road courses.

"Mud hops" means an event exhibiting driving skill in which the winner is determined by distance or time on a mud obstacle course.

"Pit area" means that portion of a racing location where vehicles are serviced, repaired, or refueled during a racing event.

"Racing event" means a motor vehicle race or exhibition of driving skill, including that time period prior to the actual race or exhibition, as well as the time period during the race or exhibition and until the conclusion of the race or exhibition wherein all competing vehicles have been removed from the racing surface.

"Reaction powered vehicles" means vehicles powered by jet or rocket engines.

"Snowmobile" means an engine driven motor vehicle designed primarily to travel over ice or snow of a type that uses sled type runners, skis, continuous belt tread, cleats or any combination of these similar means of contact with the surface upon which it is operated.

"Snowmobile racing event" means a race involving vehicles commonly known as snowmobiles as defined in this chapter on a circular or oval track, a road course involving curves, chicanes, or a straight-away race against time or other snowmobiles.

"The Superintendent" means the Superintendent of the Division of State Police.

"Thrill shows" means events specifically designed to demonstrate driving skill including, but not limited to, ramp jumps and events requiring the intentional crashing or crushing of participating vehicles.

"Trained first aid attendant" means a person certified as an emergency medical technician to provide emergency medical services pursuant to the New Jersey Highway Traffic Safety Act of 1987, N.J.S.A. 27:5F-18 et seq. and the New Jersey Medical Assistance Health Services Act, N.J.S.A. 30:4D-6.2 et seq.

## SUBCHAPTER 2. MOTOR VEHICLE RACE TRACK LICENSE REQUIREMENTS AND LICENSEE RESPONSIBILITIES

### 13:62-2.1 License application procedure

(a) A license shall be required for any operation or conduct of motor vehicle races and exhibitions of motor vehicle driving and the tracks or places at which the same are operated and conducted. The application for a motor vehicle race track license must be submitted at least 90 days prior to the first day of racing or exhibition. An application for renewal of a license shall be submitted within 60 days of the expiration date of the license and is to be accompanied by:

1. An insurance certificate;
2. A duplicate of the insurance policy;
  - i. The policy shall be issued by a company approved by the Superintendent;
  - ii. The policy and the certificate are to contain a statement to the effect that they are noncancellable except upon 30 days prior written notice to the Superintendent;
3. A certified check or postal money order in the amount prescribed by law as the license fee;
4. A certification from the building inspector of the municipality where the track is located to the effect that he has inspected the spectator seats and found them safe for use. Where the municipality does not have a building inspector, or a building code, a certification from a New Jersey State licensed structural engineer may be accepted; and
5. A sketch or sketches of the track and associated areas, as near to scale as practicable, indicating the location of required safety features such as hub rails, fences, light or flagman positions, spectator seating, entrances and exits, pit facility locations and other physical factors affecting the safety of spectators and participants. This requirement shall not apply to locations licensed prior to January 1, 1963, unless alterations are made to the track and associated areas on or after January 1, 1963.

### 13:62-2.2 Licensee's responsibility

The licensee is responsible for any violations of N.J.S.A. 5:7-8 et seq. or any of the provisions of this chapter.

### 13:62-2.3 Restrictions upon licensee

- (a) The Superintendent may impose reasonable restrictions upon any licensee.
- (b) The restrictions may include, but shall not be limited to:

1. Requirements for special protective devices for the participants in, or spectators attending, any race or exhibition; and/or
  2. Limitations concerning spectator areas; and/or
  3. Limitations concerning types of events and classes of vehicles; and/or
  4. Requirements for the protection of participants and spectators.
- (c) The licensee will comply with any special restriction imposed by the Superintendent after receiving written notice thereof from the Superintendent.

### 13:62-2.4 Procedures for approval of unspecified events

(a) When a licensee requests for approval to conduct a racing event as defined herein which is not specifically addressed by these rules, the licensee shall apply to the Superintendent for approval for the conduct of said event. Approval shall not be granted unless the Superintendent is satisfied that:

1. The request for an approval was made in writing to the Superintendent at least 20 days prior to the racing event;
2. The request contains a sufficient description of the event; and
3. The approval will not adversely affect the safety of the public or participants at a racing event.

### 13:62-2.5 Infield pit areas; inspection

(a) Tracks having the pit area in the infield of a substantially circular or oval track will be subject to special inspection to determine whether arrangements are sufficient to provide reasonable protection for pit area personnel.

(b) Such inspection will be made following application to the Superintendent which shall be filed in conjunction with the application for the race track license.

### 13:62-2.6 Alcoholic beverages and drugs

(a) No alcoholic beverages, nor narcotic, hallucinogenic or habit producing drugs will be permitted on the race track proper, the pit area, or any other area having unrestricted access to the race track proper. No person who has partaken of any alcoholic beverage or narcotic, hallucinogenic or habit producing drug in any amount whatsoever shall participate in any race or exhibition of driving skill, or perform any duties in the pit or pit area.

(b) Any vehicle containing alcoholic beverages or narcotic, hallucinogenic or habit producing drugs, and any person found to have partaken of alcoholic beverages or narcotic, hallucinogenic or habit producing drugs shall be removed from the pit area as soon as is practicable and shall be prohibited from returning to the pit area.

(c) No person who has been convicted of the use or possession of a controlled dangerous substance, as provided in the Comprehensive Drug Reform Act of 1986, N.J.S.A. 2C:35-1 et seq., shall be permitted to enter into a pit area for a period of one year from the date of conviction.

### 13:62-2.7 Pit credentials

(a) The track management shall be responsible for the issuance of pit credentials and only those credentials issued by the track management shall be recognized as valid.

(b) Only persons holding pit credentials shall be admitted to the pit area or racing area.

(c) Reporters and photographers of the working press in possession of valid pit credentials shall be limited to safe areas.

(d) The issuance of pit credentials shall be limited to:

1. Mechanics assigned to race cars with a maximum of four to each car;
2. Drivers having cars entered in one of the events in the race;
3. Members of the track staff having business in the pit area;
4. Race officials; and
5. Accredited photographers and reporters of the working press.

(e) The track management shall be responsible for the checking of credentials of persons entering the pit area to determine that no person shall enter the pit area or engage in a race or exhibition unless such person shall produce credentials showing age which satisfies the age requirement for a particular event.

(f) The licensee or the Superintendent may require a person to produce satisfactory evidence attesting to said person's physical and mental well-being as a prerequisite to obtaining permission to enter

the pit area. Such evidence shall be on a form signed by a New Jersey licensed physician.

#### 13:62-2.8 Announcements

(a) The licensee shall be responsible to make a suitable announcement over the public address system in the pit area, advising the public and pit personnel of the following:

1. The minimum age of persons permitted in the pit area;
2. The prohibition against smoking in the area where fuel is stored or refueling of vehicles takes place;
3. The prohibition against the use of alcoholic beverages in the pit area; and
4. The prohibition against the use of narcotic, hallucinogenic or habit producing drugs in the pit area.

(b) The announcement is to be made approximately 15 minutes before the start of the day's program and twice during the program.

(c) The licensee shall post a sign at all entrances to the pit area advising authorized persons in the pit area of the following:

1. The minimum age of persons permitted in the pit area;
2. The prohibition against the possession or use of alcoholic beverages or narcotic, hallucinogenic or habit producing drugs in the pit area; and
3. The prohibition against smoking in areas where fuel is stored or refueling of vehicles takes place.

#### 13:62-2.9 Monthly reports

The licensee shall file with the Superintendent a monthly report on the form approved and provided by the Superintendent. This report shall include the date of racing events held in the reported month, the type of event, the attendance, the number of vehicles as well as an account of any other unusual incidents occurring at the track during the reporting period. The report shall further include the monthly schedule of events.

#### 13:62-2.10 Accident reports and impounding of certain vehicles

(a) Accidents involving injury or death must be reported to the office of the Superintendent, by telephone, no later than the first business day following the accident.

(b) Such a report must be followed within 48 hours by a complete written report of the accident.

(c) Any vehicle which is involved in a crash resulting in serious or fatal injuries to a driver or spectators thereof shall be impounded by the licensee and detained until such time as an inspection of the vehicle may be made by a representative of the Superintendent.

#### 13:62-2.11 Report of deaths to local police

In addition to the reports to the Superintendent, the licensee shall report any accident resulting in a fatality to the police agency having jurisdiction by the quickest means available.

#### 13:62-2.12 Inspection of vehicles

(a) The licensee shall arrange for the inspection of each participating vehicle prior to the event, to determine that it meets the requirements of this chapter. Vehicles not meeting the requirements set forth for the specified event shall be barred by the licensee from participation or practice.

(b) Vehicles which are to be used in automobile races or exhibitions of driving skill are subject to unannounced inspection and approval at any time by the Superintendent or designee.

#### 13:62-2.13 Braking system and pedal reserve

(a) The licensee will be required to test and approve each race car for pedal reserve before the car leaves the pit area to enter the track.

(b) The licensee shall not permit any vehicle to participate in any race or exhibition if the braking system includes the direct application of pressure to any of the tires or with any apparent deficiency.

#### 13:62-2.14 Refueling

(a) In all instances where refueling is permitted with the engine running, the licensee shall insure that a member of the pit crew equipped with an approved type fire extinguisher be in close proximity to the fill pipe of the fuel tank.

(b) The licensee shall not permit smoking in any area where fuel is being transferred or stored.

(c) The licensee shall not permit the use of welding and acetylene torches in any area where fuel is being transferred or stored unless a fully charged fire extinguisher is in close proximity.

#### 13:62-2.15 Water overflow tanks

The licensee shall not permit water overflow tanks or reservoirs to be installed inside the driver compartment. Tanks or reservoirs mounted in the roll cage must be fully shielded to protect the driver.

#### 13:62-2.16 Security personnel

(a) The licensee shall furnish sufficient security protection to maintain peace and good order.

(b) Guard personnel will be furnished by the licensee at each unlocked gateway between the spectator areas and the track and/or pit areas.

(c) Guard personnel will be furnished by the licensee at each unlocked gateway between the pit area and the track area.

#### 13:62-2.17 Ambulances; first aid attendant

The licensee shall not permit any race or exhibition of driving skill to be conducted unless there is available for immediate use at the licensed location at least one vehicle suitable for ambulance purposes, together with one trained first aid attendant.

#### 13:62-2.18 Fire fighting equipment

(a) The licensee shall not permit any race or exhibition of driving skill to be conducted unless there is available at suitable locations around the track Class B Underwriter labeled approved fire extinguishers.

(b) All extinguishers shall be fully charged at the beginning of each day's activities.

(c) The licensee shall check all extinguishers at least once a year and carry a label to show the date of inspection.

(d) In addition there shall be a reserve consisting of a recognized paid or voluntary fire company with their equipment or at least 350 pounds of dry chemical available to move to the scene of any major fire.

#### 13:62-2.19 Wreckers

(a) The licensee shall permit only authorized personnel to ride on any wrecker.

(b) No person shall be permitted to ride outside the cab of any wrecker.

(c) Wreckers shall be operated with due care and circumspection.

### SUBCHAPTER 3. CONSTRUCTION REQUIREMENTS

#### 13:62-3.1 Hubrails

(a) Hubrail construction shall comply in all respects with the requirements of this chapter, or in the alternative, the owner or operator must have written authority for any changes from the Superintendent.

(b) Hubrails must be provided and maintained on the outer circumference of the track and around the entire circumference thereof and where spectators are allowed in the infield or within the inner circumference of the track, a hubrail, as described in this section, will be required around the inner circumference of the track.

(c) The hubrail shall consist of at least two planks of hard wood or other suitable materials, at least 10 inches in width by three inches in thickness.

(d) The hubrail shall be supported by posts of similar material of at least six inches in width and six inches in thickness or round posts not less than seven inches in diameter, which are set in the ground at least four feet and shall extend above the ground at least two feet. The post shall be no higher than the hubrail planking and shall be spaced no more than six feet apart.

(e) Two planks of hardwood or other suitable material shall be mounted on the side of the post facing the track and running horizontally and parallel to each other.

(f) On the opposite side of the posts, not more than eight inches from the top thereof, there shall be a three-quarter inch steel cable running around the circumference of the track and securely fastened to the post with eye bolts.

(g) The hubrail entrance and exit gates to the pit area shall be closed while vehicles are in motion on the track, unless alternate

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arrangements have been made by the installation of barriers of a type which will prevent cars out of control from leaving the track and entering the immediate pit working area.

(h) Where the licensee wishes to use methods other than gates, an inspection of such installations by a representative of the Superintendent will be required.

(i) The hubrail opening for vehicles shall be so located that a vehicle leaving the track must turn 90 degrees before entering the pit area.

(j) At locations using methods other than gates between the pit area and track, a guard will be required to prevent unauthorized persons from entering the track area.

(k) The use of baled hay or straw or any similar material as a protective device between participating vehicles and spectators is specially prohibited.

**13:62-3.2 Fences**

All fences installed for the purpose of limiting spectator areas shall be constructed of welded wire fabric or chain link and shall be at least six feet in height and so constructed as not to be easily lifted, climbed over or moved aside, except at motorcross events the fence shall be of the same construction but at least five feet in height.

**13:62-3.3 Red and amber lights**

(a) Each track used for automotive racing, except those used for acceleration and performance tests, must be equipped with a system of at least four red lights and four amber lights so arranged that at least one light of each color will be visible to the drivers as they enter each turn.

(b) Strips used for acceleration and performance tests need be equipped with only one red light on the starting tree.

(c) The lights shall be so arranged as to be controlled by a single switch and a responsible person must be assigned to be on duty, and to operate such switch during the entire time of each race.

(d) When the red lights are illuminated, all racing vehicles on the track will be required to stop as soon as possible and to remain stopped until such time as the red lights are turned out.

(e) When the amber lights are illuminated, all racing vehicles on the track will be required to slow down and maintain their position unless otherwise directed to change position by a track official.

**13:62-3.4 Flagmen**

(a) Tracks over one mile in length may use flagmen in lieu of the red and amber lights, provided the assistant flagman in the starter's stand is in constant two-way radio or telephone communication with all flagmen.

(b) Where flags are used, the display of the red flag will cause all racing vehicles to stop as soon as possible and to remain stopped until such time as the red flag is removed from display.

(c) Where flags are used, the display of the amber flag will cause all racing vehicles to slow down and maintain their position.

**13:62-3.5 Starters**

(a) Starter(s) shall be located within a starter's stand with an unobscured view of the entire racing surface from which to control the racing event.

(b) All circular or oval tracks, road courses and other locations utilizing the services of flagmen to control the event shall also have an assistant flagman in the starter's stand. The assistant flagman used to control or start a race shall be in the starter's stand when starting and during the race.

**13:62-3.6 Maximum protection**

(a) All hubrails, fences, stands and buildings must be constructed and maintained so as to afford maximum protection for spectators.

(b) Any spectator stand erected or relocated on or after April 1, 1960, must be located at least 25 feet from the hubrail.

**SUBCHAPTER 4. SAFETY REQUIREMENTS FOR VEHICLES AND PERSONNEL: OPEN COCKPIT****13:62-4.1 Construction requirements**

All construction requirements as set forth in N.J.A.C. 13:62-3 shall be satisfied by the licensee.

**13:62-4.2 Safety belts, shoulder harness and crotch belt**

(a) A quick release type safety belt, shoulder harness and crotch belt in good condition shall be compulsory on all vehicles.

(b) Both ends of the safety belt, shoulder harness and crotch belt must be fastened to the frame of the vehicle.

(c) All fittings and connections of the safety belt, shoulder harness and crotch belt must be metal.

(d) All safety belts and shoulder harnesses must be worn properly the entire time the vehicle is being driven in a race.

(e) All safety belts and shoulder harnesses must bear the date of manufacture and shall not be used for more than five years from that date.

(f) The shoulder harness shall be secured to the frame of the vehicle and come over a round bar at the driver's shoulder height.

(g) No alterations shall be allowed to any manufactured design of seat belts.

**13:62-4.3 Inspection of vehicles**

(a) The licensee shall arrange for the inspection of each participating vehicle prior to the event, to determine that it meets the requirements of this chapter. Vehicles not meeting the requirements of this chapter shall be barred by the licensee from participation or practice.

(b) Vehicles which are to be used in automobile races or exhibitions of driving skill are subject to unannounced inspection and approval at any time by the Superintendent or designee.

**13:62-4.4 Number of persons in vehicle**

No vehicle shall carry more than one person at any time during a race or warm-up, except during a bona fide training period an instructor may accompany the trainee.

**13:62-4.5 Seats**

A molded metal or fiberglass seat with openings which allow a seat belt bolted to the frame to come through, shall be attached to the frame with at least four three line five-sixteenths inch bolts. Two bolts shall be installed at the bottom of the seat not more than three inches from the outside edge and two bolts shall be installed at the two most practical widely spaced points at the top of the seat back. A metal strap at least two inches in width and at least one-eighth inch thick shall connect each set of bolts.

**13:62-4.6 Bumpers**

(a) All vehicles shall be equipped with bumpers on the rear.

(b) The bumper shall be fastened to the frame or structural component of the car.

(c) The height of the bumper must be as high as the center of the wheel and at least two inches in height.

**13:62-4.7 Rollover bars**

(a) All vehicles shall be equipped with a rollover bar of a design, construction and quality recognized by industry standard and maintained with a view toward affording the driver maximum protection against injury.

(b) Rollover bars must be a minimum of three inches above the driver's head.

(c) Rollover bars must be bolted or welded to the frame of the vehicle.

**13:62-4.8 Nerfing bars**

(a) All vehicles shall be equipped with auxiliary bumpers, also known as nerfing bars, of a construction and design to afford the driver maximum protection against injury.

(b) Nerfing bars shall extend within two inches of, but not beyond, the outside edge of the tire.

**13:62-4.9 Exhaust system**

(a) The outlet for the exhaust system shall be outside of the vehicle and extend at least to the rear of the front firewall.

(b) The exhaust system shall be designed and constructed so as to direct the exhaust flow out and away from the driver.

**13:62-4.10 Fire wall and flooring**

(a) All vehicles shall have suitable metal flooring.

(b) All vehicles shall have a permanent fire wall between the fuel supply and driver, unless the fuel supply consists of a shell with an inner rubber bladder in which case the fire wall is not required.

#### 13:62-4.11 Fuel lines and fuel pumps

(a) No fuel line or fuel pump will be permitted in the driver's compartment unless shielded properly to prevent leakage in the event the line or pump is damaged or broken.

(b) Fuel lines must be more than three inches from the headers, or if closer than three inches, be shielded by metal.

#### 13:62-4.12 Fuel tanks

(a) Except as set forth in (b) below, vehicles using a self-contained fuel cell with an inner rubber bladder shall bolt the self-contained fuel cell to the frame of the vehicle with at least three five-sixteenths inch three line bolts.

(b) Units not bolted to the frame shall require a one inch metal strap, two-eighths inch thick, bolted to the frame of the vehicle by at least two three-eighths inch three line bolts and angled in such a manner so as to apply maximum pressure against the tank to the frame.

(c) A conventional type tank shall be bolted within the frame of the vehicle.

(d) A reinforcing member of the same kind and size material as that used in the roll cage of the chassis shall be installed to the rear of the fuel tank joining the rearmost portion of the chassis.

(e) A vehicle utilizing a fuel tank mounted to the front of the front fire wall shall have a reinforcing member of the same kind of material as that used in the roll cage or chassis, installed in such a manner as to afford maximum protection to the tank.

#### 13:62-4.13 Fuel supply shutoff valve

(a) All vehicles shall be equipped with a fuel shutoff valve or switch which is easily accessible to the driver.

(b) The fuel shutoff valve or switch shall be conspicuously marked with a brightly colored paint.

#### 13:62-4.14 Refueling

(a) In all instances where refueling is permitted with the engine running, a member of the pit crew, equipped with a 10 BC or greater fire extinguisher, shall be in close proximity to the fill pipe of the fuel tank.

(b) Smoking shall not be permitted in any area where fuel is being transferred or stored.

(c) The driver compartment shall not be occupied when the vehicle is being refueled if the fill pipe is located within 24 inches of the cockpit, except that the driver compartment may be occupied when the vehicle is being refueled from gravity fed fuel containers.

(d) The use of welding and acetylene torches is not permitted in any area where fuel is being transferred or stored unless a fully charged fire extinguisher is in close proximity.

#### 13:62-4.15 Batteries

(a) Wet cell batteries, if located in the driver compartment, shall be shielded to prevent leakage in the event of damage or turnover.

(b) Batteries shall be properly secured and not located adjacent to the fuel supply of the vehicle.

#### 13:62-4.16 Braking system and pedal reserve

(a) The licensee or designee shall test and approve each race car for pedal reserve before the car leaves the pit area to enter the track.

(b) Licensee or designee shall not permit any vehicle to participate in any event or exhibition if the braking system includes the direct application of pressure to any of the tires or with apparent deficiencies.

#### 13:62-4.17 Tires

(a) No vehicle shall be permitted to participate in any race if the tires are equipped or fitted with any studs, hobs, or other projections.

(b) This section is not intended to prohibit the use of rubber knobbed tires normally used on dirt race tracks.

(c) No vehicle shall be permitted to participate in any race if the tires are in an unsafe condition.

#### 13:62-4.18 Ignition switch

All vehicles shall have an ignition switch which is easily accessible within the driver compartment and conspicuously marked.

#### 13:62-4.19 Repairs

No repairs shall be made on any vehicle during the course of a race unless the vehicle is removed to the pit area.

#### 13:62-4.20 Drivers

(a) All drivers must be at least 18 years of age.

(b) All drivers are required to wear fire resistant underwear and one piece fire resistant clothing covering their body, legs, and arms.

(c) All drivers are required to wear gloves of a fire resistant material.

#### 13:62-4.21 Helmets and head cushions

(a) All drivers must wear a helmet in safe condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

(b) All vehicles shall be equipped with a head cushion attached to the roll-on bar or to the back portion of a one-piece seat. The cushion shall be mounted so that it shall be at the approximate height of the center of the driver's helmet.

(c) The head cushion shall be a minimum of 16 square inches in area with at least two inch padding. The minimum length of any side of the head cushion shall be four inches.

(d) A support cushion shall be located behind the rear portion of the seat, attached to the roll cage and at least one eighth of an inch thick.

#### 13:62-4.22 Goggles or face shield

Windproof, shatterproof goggles or a face shield of the type which meets or exceeds U.S.A. Standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard shall be worn by the driver of all vehicles not equipped with windshields.

#### 13:62-4.23 Arm restraints; window nets

All drivers are required to use arm restraints or window nets.

#### 13:62-4.24 Transmission safety mats

(a) Any vehicle equipped with an automatic transmission shall have a steel mat, plate, or blanket installed over the transmission so as to protect the driver from injury caused by the fragmentation of the automatic transmission upon explosion.

(b) All cooling devices within the driver's compartment shall be shielded from the driver to protect against injuries.

#### 13:62-4.25 Enclosed drive shaft

The drive shaft of a vehicle shall be enclosed or secured, front and rear, by a steel strap one-quarter inch thick by one inch wide, a one-half inch steel rod, or one inch steel tubing with .06 wall thickness.

#### 13:62-4.26 Water overflow tank

Water overflow reservoirs shall not be installed inside the driver compartment. Tanks or reservoirs mounted in the roll cage must be fully shielded to protect the driver.

### SUBCHAPTER 5. ACCELERATION AND PERFORMANCE TESTS

#### 13:62-5.1 Construction requirements

All construction requirements as set forth in N.J.A.C. 13:62-3 shall be satisfied by the licensee.

#### 13:62-5.2 Location

(a) A location approved for acceleration and performance tests shall provide for a stopping distance at least equal to the acceleration and timing distance.

(b) The acceleration area shall not exceed 1,386 feet.

(c) The entire racing strip, including the deceleration area, must be paved.

(d) The end of the acceleration area may be marked by an overhead banner; provided, the supports are of such construction that they will not present a hazard to the vehicles. The height of the banner shall be at least 14 feet above the surface of the strip.

**13:62-5.3 Vehicle equipment**

(a) All of the safety devices and precautions specified in N.J.A.C. 13:62-4 for other types of automobile racing shall be required for this type event with the exception that cars need not have rollover bars or door fastening; provided, there has been no modification of either body or engine.

(b) Exhaust systems shall be designed and constructed so as to direct the exhaust flow out and away from the driver.

(c) All vehicles equipped with parachutes shall have a red streamer attached to the safety pin. The safety pin shall be removed from the parachutes before the starting lights are activated.

(d) All vehicles utilizing two or more parachutes shall have at least two anchoring points for each parachute, each separate from the other.

**13:62-5.4 Spectator protection**

Spectator protection is to be provided by a standard hubrail and six-foot high welded wire fabric or chain link fence so constructed as not to be easily lifted, climbed over or moved aside.

**13:62-5.5 Pit area fences**

The pit area, if located behind the starting line, shall be separated from the track by a six-foot high welded wire fabric or chain link fence so constructed as not to be easily lifted, climbed over or moved aside.

**13:62-5.6 Vehicle positioning**

Racing vehicles may line up behind the starting line, provided that only drivers and officials may be permitted in this area.

**13:62-5.7 "Burnouts"**

No "burnouts" shall be made unless the driver is secured in the vehicle and the doors are firmly closed.

**SUBCHAPTER 6. MOTORCYCLE, MOTORCROSS AND QUAD VEHICLES****13:62-6.1 Licensed facilities**

Motorcycle, motorcross and quad vehicles events shall only take place in licensed facilities.

**13:62-6.2 Hubrail construction**

(a) Hubrail construction shall comply in all respects with the provisions of N.J.A.C. 13:62-3.1 or, in the alternative, the licensee shall obtain written authority for any changes from the Superintendent or designee.

(b) Hubrail posts shall be no higher than the hubrail planking.

(c) Hubrails constructed for use on motorcycle tracks shall consist of safety rails two feet high, constructed of two two-inch by 12-inch planks, on four-inch by four-inch stanchions spaced not more than six feet apart, and so embedded in the ground that they will not pull out if struck.

(d) As an alternative to the two-inch by 12-planks, two planks made of marine plywood, three-quarter inches thick and 12 inches wide may be used on motorcycle tracks. These rails shall be backed up either by a wire cable similar to the wire cable used on automobile hubrails, except that it need not exceed one-half inch in diameter, or in the alternative, a mound of packed earth shall be constructed in the back of the safety rail at least 18 inches high, and tapering to the ground level between the rail and the spectators.

**13:62-6.3 Flagmen and eye protection**

(a) Flagmen may be used in lieu of red and amber lights. Flagmen shall be positioned so as to be visible to drivers entering each turn on the track or course.

(b) All working personnel and officials having access to the pit area or racing surface shall be at least 18 years of age, except additional motorcross and quad vehicle flagmen.

(c) All competitors, while engaged in an event, shall wear goggles or a face shield protecting their eyes. Any person not properly utilizing this equipment shall be disqualified from the event.

**13:62-6.4 Braking system**

(a) A representative of the track licensee will be required to test front and rear brake application before the vehicle leaves the area to enter the track.

(b) This section is not to be construed to require brakes on racing motorcycles with a compression ratio higher than 10 to one or with a compression ratio which, in the opinion of the Superintendent, is sufficiently high to bring the motorcycle to a stop when the ignition is cut off.

**13:62-6.5 Shutoff device**

(a) A "shutoff" device must be affixed to the handlebars on all competing motorcycles.

(b) A "shutoff" device must be of a type which is designed, constructed and maintained to stop the motor of the motorcycle immediately upon releasing or pressing the said device.

**13:62-6.6 Minimum age requirements of motorcycle racing events**

(a) No person will be permitted to participate in a motorcycle race or to enter the pit area while a motorcycle race is in progress unless that person shall have reached 18 years of age and shall produce documentation of the participant's operation of a motorcycle upon request.

(b) A motorcycle driver's license bearing appropriate date of issuance will be accepted as proof that the holder has had the requisite driving experience.

(c) All persons participating in an event shall have proper documentary evidence to substantiate proof of age.

**13:62-6.7 Motorcross racing events**

(a) The following guidelines shall be utilized for motorcross events:

1. Participants ages 10 to 15 may compete provided the vehicle does not exceed 85 cc.

2. Participants ages 12 to 15 may compete in any additional class not exceeding 125 cc, provided the driver possesses one year racing experience and can demonstrate racing ability to the satisfaction of track officials.

3. Participants ages 14 to 18 may compete in a separate class.

4. A person competing in any one of the above classes shall not participate in any other class.

5. Motorcross flagmen must be 16 years of age. The designation "cc" shall be conspicuously marked on the racing vehicle.

**13:62-6.8 Quad vehicle requirements**

(a) Quad vehicles shall be equipped with a functional tether type mechanical kill device, so that the ignition may be shut off upon the driver's separation from the vehicle.

(b) Quad vehicle engines shall be fitted with a guard completely enclosing the primary drive.

(c) Rear chain guards, roll bars and seat belts are not required. Quad vehicle flagmen must be 16 years of age.

**SUBCHAPTER 7. SNOWMOBILE EVENTS****13:62-7.1 Track construction**

Construction of hubrails, fences and other safety devices for snowmobile events must comply with the provisions of this chapter or in the alternative the licensee must have written authority for any changes from the Superintendent.

**13:62-7.2 Safety requirements; vehicles and personnel**

(a) All participants in a snowmobile race must wear a safety helmet which meets or exceeds the American National Standard Institute (ANSI) Z-90.1 testing standard.

(b) All participants in a snowmobile race shall wear windproof goggles or face shields which meet or exceed U.S.A. Standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

**13:62-7.3 Exhaust system**

All exhaust systems shall be directed out of the cowl area and away from the operator.

13:62-7.4 Snow flaps

All snowmobiles shall be equipped with a rear snow flap designed and maintained to contain snow, water, mud and the like at all speeds.

13:62-7.5 Shutoff device

A "shutoff" device must be affixed to the handlebars near the hand position. This device must be of the type which is designed, constructed, and maintained to stop the motor immediately upon releasing or pressing of said device.

13:62-7.6 Engine and transmission shielding

All snowmobiles shall have engine and transmission shields designed and constructed to protect the driver or bystander from fragments in the event of disintegration.

SUBCHAPTER 8. GO-CART EVENTS

13:62-8.1 Licensed facilities

Go-cart events shall only take place in licensed facilities.

13:62-8.2 Track construction

(a) Construction of hubrails, fences and other safety devices for go-cart events must comply in all respects with provisions of this subchapter or in the alternative, the licensee must have written authority for any changes from the Superintendent or his designee.

(b) The hubrail construction for go-cart events may be the same as the hubrail construction used for motorcycle events in that planks made of marine plywood three-quarter inches thick and 12 inches wide may be used.

(c) The licensee shall erect along any part of the track where spectators are permitted, whether outside of the track or in the infield, in addition to the hubrail, a fence six feet in height and located not less than four feet from the edge of the track.

13:62-8.3 Safety requirements

(a) Go-carts and personnel participating in races or exhibitions of driving skill on any track or facility licensed by the Superintendent shall comply with the following requirements except as provided by N.J.A.C. 13:62-8.4.

1. No person under 18 years of age may operate a go-cart in any race or exhibition of driving skill, nor shall any such person be permitted in the pit area during any such race or exhibition of driving skill.

2. Go-carts participating in races or exhibitions of driving skill shall have a wheel base of not less than 40 inches nor greater than 50 inches measured from the center of the axle.

3. Go-carts participating in races or exhibitions of driving skill shall be of a length not exceeding 72 inches.

4. Go-carts participating in races or exhibitions of driving skill shall be of a width at least two-thirds of the wheelbases as measured from the center of the tread of the front tires.

5. Go-carts participating in races or exhibitions of driving skill shall be of a height not exceeding 26 inches as measured from the top of the driver's seat.

6. The frame of all go-carts shall be of metal construction.

7. All go-carts shall contain a metal fire wall between the driver and engine with no openings between engine and driver. The fire wall shall be so constructed as to not present any sharp edges.

8. All go-carts shall contain a floor plan of metal constructions with no openings between the driver and the ground.

9. Steering must be direct with all linkage bolts and nuts cotter-keyed or safety-wired. All rods ends must have universal type swivel joints.

10. No go-cart will be permitted to participate in any race or exhibition of driving skill unless it is equipped with a braking system which is operated by a foot pedal. No go-cart will be permitted to participate if the braking system includes direct application of pressure to any of the tires or with apparent deficiencies.

11. The exhaust system must be designed and constructed so that exhaust gases are carried away from and to the rear of the driver.

12. All go-carts shall be equipped with a foot-operated throttle.

13. The fuel and lubrication system on all go-carts must be designed so as to prevent leakage or spillage during competition.

14. No go-cart shall be equipped with a transmission, gear-box or other device which permits a change of gear or sprocket ratios while the vehicle is in motion.

15. All go-carts must be equipped with a suitable chain guard or guards.

16. The driver's compartment shall be equipped with side rails, side plates or such other device as to afford the driver lateral support and protection.

17. Every go-cart must be equipped with a quick release type of seat belt in good condition. The seat belt must be fastened to the frame of the cart at both ends. The seat belt must be in use during the entire time the vehicle is being driven in a race. All fittings and connections on the safety belt must be metal. Safety belts with cloth or plastic fittings on connections may not be used. All safety belts must bear the date of manufacture and may not be in use for more than five years.

18. Every go-cart shall be equipped with a rollover bar mounted so as to be a minimum of three inches above and six inches behind the driver's head designed and constructed so as to provide maximum protection for the driver.

19. Every go-cart must be equipped with auxiliary bumpers, sometimes known as "nerfing bars," of a construction and design to afford a participant maximum protection against injury.

20. Windproof, shatterproof goggles must be worn by all drivers of a go-cart in any race or exhibition of driving skill. Such goggles shall meet or exceed U.S.A. Standard Specifications for Head, Eye, and Respiratory Protection Z2.1-1959 testing standards.

21. No repairs may be made on any go-cart during the course of a race unless the vehicle is removed to the pit area.

22. A starting apron shall be provided where the go-carts are to be started. Persons shall not enter the race course to push a go-cart. A go-cart which has not been started on the starting apron may not be pushed on to the track proper but must be returned to the pit area or to the rear of the starting apron. No person may enter the race course for the purpose of starting a stalled car while any race or exhibition is in progress.

23. Safety helmets shall be worn by all participants as set forth in N.J.A.C. 13:62-4.20(a).

13:62-8.4 Serpentine go-cart road course

(a) When a go-cart race course has been designed with a winding or serpentine roadway, for the purpose of reducing the overall speed of the go-carts, the following applies:

1. Persons aged 10 to 13 may compete in a special class of vehicles equipped with a restriction plate placed behind the carburetor to restrict the flow of fuel to the engine.

2. Competitors aged 14 to 17 may race in a separate class.

3. Seventeen year olds with a minimum of one year racing experience, and who possess a valid driver license, may compete in the 18 year old and up class, provided they can demonstrate their racing ability to the satisfaction of track officials.

4. Sixteen year olds and up may compete in a lower horse power senior class (5 H.P. stock, 4 cycle or U.S. 820 class, 2 cycle), provided any entrant below the age of 18 years has had at least one year of racing experience and has demonstrated their racing ability to the satisfaction of track officials.

5. Hub rails are not required except in those areas where the roadways are within 25 feet of each other.

6. Safety belts and roll-over bars are not required.

7. All additional requirements as set forth in N.J.A.C. 13:62-8.2 and 13:62-8.3 shall be met.

SUBCHAPTER 9. DEMOLITION DERBY AND TRACTOR PULLS

13:62-9.1 Demolition derby vehicles

(a) In a demolition derby event, any stock, American made, hard-top automobile may be used.

(b) In a demolition derby event, jeeps, carryalls, station wagons, ambulances, and other vehicles utilizing a truck chassis are not permitted.

(c) All glass, including rear windows, headlights, tail lights, and parking lights, must be removed with the exception of the windshield.

If the windshield is removed it must be replaced with heavy mesh screening with a center post or plexiglass.

(d) All chrome strips must be removed from a participating vehicle.

(e) Gas tanks may be moved to a different position, but may not be located within the driving compartment. A metal fire wall must be between the driver and the gas tank.

(f) Fuel lines and pumps will not be allowed in the driving compartment.

(g) All doors must be securely fastened by either welding, metal strips or chains.

(h) Doors opening during an event will automatically disqualify that automobile.

(i) Batteries located within the driver compartment must have a suitable cover and be securely fastened.

(j) All vehicles must be equipped with a securely installed safety belt.

(k) Rear seats must be removed from a participating vehicle.

(l) No vehicle emitting heavy smoke will be allowed to participate. A vehicle discharging heavy smoke after an event has started must be disqualified.

#### 13:62-9.2 Demolition derby participants

(a) Participants in a demolition derby event shall be 18 years of age or older.

(b) A participant must remain in the vehicle until the event has been completed.

(c) All drivers must wear a safety belt and approved safety helmet as set forth in N.J.A.C. 13:62-4.20 while participating in an event.

#### 13:62-9.3 Demolition derby exhibition area

(a) The demolition derby exhibition area shall be no more than 250 feet wide with a depth of 100 feet.

(b) The outer edge of the exhibition area shall be marked with poles or similar devices so as to contain the participants' vehicles.

(c) No one shall be allowed within this area except track officials and participants.

(d) If mechanics or newsmen are allowed in the infield portion, a suitable fence shall be erected 50 feet from the outer edge of the exhibition area.

(e) Spectators shall not be permitted within infield portions of the exhibition area unless protected by a fence of at least 6 feet in height erected no closer than 50 feet from the outer edge of the exhibition area.

#### 13:62-9.4 Demolition derby tow vehicles

(a) Tow vehicles shall be permitted to enter the demolition derby exhibition area for vehicle removal.

(b) There shall be no more than two persons per tow vehicle.

(c) No riders shall be permitted on outside of tow vehicle.

#### 13:62-9.5 Tractor pull age requirement

All competitors, working personnel and officials of a tractor pull event having access to the pit area or racing surface must be at least 18 years of age.

#### 13:62-9.6 Tractor pull kill switch requirement

All vehicles competing in a tractor pull event shall be equipped with a kill switch in operating order.

### SUBCHAPTER 10. ENDURO EVENTS

#### 13:62-10.1 Construction requirements

All construction requirements as set forth in N.J.A.C. 13:62-3 shall be satisfied by the licensee.

#### 13:62-10.2 Driver and vehicle requirements

(a) All drivers in enduro events shall be a minimum of 18 years of age and must be in possession of a valid driver's license recorded on the entry form which shall be checked by the licensee for validity.

(b) Drivers shall wear safety helmets as set forth in N.J.A.C. 13:62-4.20.

(c) The driver's helmet shall possess a face shield or goggles.

(d) All drivers in enduro events shall wear fire retardant suits. Fire retardant underwear is recommended.

1. Fire resistant clothing shall be one piece covering body, legs and arms.

2. Gloves of a fire resistant material are recommended.

(e) No driver shall compete with their head or arm extended outside of the doors or windows.

(f) A driver shall remain with his vehicle if it is disabled during the race.

1. During a red light or red flag, the driver must exit the vehicle and return to the pit area at direction of track personnel.

2. Racing should be stopped (red flagged) at 15-minute intervals to allow drivers to exit to pit area. The time intervals may be extended if no disabled vehicles are located on the track.

(g) Each vehicle shall have a minimum 104-inch wheelbase.

(h) No convertibles, pickup trucks, station wagons, or vans shall participate in enduro events.

#### 13:62-10.3 Windshield

(a) The originally installed windshield may remain and all other glass must be completely removed from a participating vehicle.

(b) Window net or screen shall be securely installed on the driver's side.

#### 13:62-10.4 Mirrors

Inside rear view mirrors shall be permitted. No outside view mirrors shall be allowed.

#### 13:62-10.5 Vehicle interior and exterior requirements

(a) Chrome and nonmetallic trim shall be removed from sides of the vehicle.

(b) Passenger seats shall be removed from the interior of the vehicle.

(c) A safety hub or reinforced wheel shall be required on the vehicle's right front wheel.

(d) All doors shall be bolted, chained or welded closed. Any door opening during an event shall constitute automatic disqualification.

(e) The exterior of the driver's side door must have at least one metal brace at bumper height.

1. All vehicles must retain stock appearance with no alterations to fenders or wheel wells.

2. A guardrail type portion of the inner door installed by manufacturer will not be considered as a brace to satisfy this requirement.

3. The portion of the inner roll cage will not be considered a brace to satisfy this requirement.

#### 13:62-10.6 Tires

(a) Passenger tires with United States Department of Transportation numbers shall be allowed with a maximum tread width of seven inches.

(b) Studs or "cheater-slicks" are prohibited.

(c) Wheel rim width shall not exceed seven inches.

#### 13:62-10.7 Gas tanks

(a) The gas tank or fuel cell shall be installed in the trunk and secured by chain or metal strap to the body.

(b) A metal fire wall shall be installed between the fuel tank and driver's compartment to afford the driver maximum protection.

#### 13:62-10.8 Fuel lines

Fuel lines shall not pass through the passenger compartment of the vehicle.

#### 13:62-10.9 Engine and suspension requirements

(a) The engine shall remain stock with a factory installed carburetor and manifold.

(b) Altering of suspension or torching of springs shall be prohibited.

#### 13:62-10.10 Seat belts

(a) A shoulder harness and four point racing lap belt in good working condition shall be installed and properly worn during the event.

(b) A lap belt and shoulder harness installed in a position other than manufacturer's shall be affixed to the outer floor utilizing four inch by four inch steel plate and bolts of adequate tempered steel strength.

**13:62-10.11 Rollover cage**

(a) All race cars shall be equipped with a rollover cage surrounding the driver of a design, construction and quality affording the driver maximum protection against injury.

(b) Rollover bars installed in vehicle shall be a minimum of three inches above and six inches behind the driver's head.

(c) The outside diameter of the rollover bars shall be a minimum of one and three-quarters inch and wall thickness a minimum of .09 inch.

(d) Rollover bars welded, bolted or fastened to the flooring shall utilize a six inch by six inch by one-quarter inch base plate.

(e) Vehicles having uni-body construction may install a rollover bar welded to the frame of the vehicle utilizing six inch by six inch by one-quarter inch base plate affixed to outer flooring.

(f) Rollover bars shall be plainly visible with the exception of built-in or integral rollover bars.

(g) Vehicles with built-in or integral rollover bars shall maintain and provide upon request by the Superintendent or designee the manufacturer's detailed drawing establishing the dimensions and material utilized.

**13:62-10.12 Bumpers**

All vehicles shall be equipped with stock bumpers securely fastened on the front and rear. Outside bracing of bumpers shall be prohibited.

**13:62-10.13 Batteries**

Batteries shall be securely installed under the front hood and not adjacent to the fuel supply.

**13:62-10.14 Seats**

(a) A factory installed front seat shall be utilized provided it is equipped with a headrest.

(b) Seats shall be attached to the main frame of the vehicle, the frame of the roll cage or to a substantial metal plate utilizing a minimum of six, three line, five-sixteenths inch bolts.

(c) The base of the seat shall be installed with four five-sixteenths inch bolts not more than three inches from the outside edge at the four most practical points.

(d) Two bolts shall be installed at the two most practical points at the top of the back of the seat and a metal strap of at least two inches in width and one-eighth inch in thickness shall connect every two bolts.

**13:62-10.15 Miscellaneous equipment requirements**

(a) The drive shaft loop shall be installed not more than 24 inches from the front and rear yokes of the vehicle.

(b) All vehicles shall have an opening in the hood to properly expose the carburetor.

(c) The radiator shall remain in the manufacturer's position. Any movement of the radiator shall be prohibited.

(d) The front and rear trunk lid shall remain securely fastened with cable or chain throughout the entire event. Any incidental opening shall disqualify the vehicle from the event.

(e) Outer decorations on the vehicle utilizing poles, flags, staffs or other hazardous protuberances shall be prohibited.

(f) Transmission and radiator cooling cores located inside the vehicle shall be prohibited.

**13:62-10.16 Additional track responsibilities**

(a) The licensee shall maintain safe conditions during all pit stops.

(b) The licensee shall insure that disabled vehicles are left at the point of disablement.

(c) The licensee shall maintain adequate fire apparatus on location during the event.

1. A fire vehicle with a minimum of 300 pounds of dry chemical shall be utilized and shall meet the National Fire Protection Association standards of a mini pumper.

2. Twenty-pound fire extinguishers, at a minimum, with a minimum of 10 B.C. rating shall be maintained on location during an event.

3. A minimum of two sets of protective turn-out gear shall be available to track personnel.

**SUBCHAPTER 11. MUD HOP**

**13:62-11.1 Construction requirements**

All construction requirements as set forth in N.J.A.C. 13:62-3 shall be satisfied by the licensee.

**13:62-11.2 Licensed facilities**

Mud hop events are prohibited from non-licensed facilities.

**13:62-11.3 Alcohol/drugs prohibited**

No alcohol or drugs will be permitted within the pit area. Anyone departing the pit area shall be prohibited from returning during the duration of the event.

**13:62-11.4 Driver requirements**

(a) Mud hop drivers shall be a minimum 18 years of age and be in possession of a valid driver's license.

(b) The driver's license shall be recorded on an entry form and checked by the licensee for validity.

(c) The driver shall remain with a disabled vehicle until properly escorted from the racing track.

**13:62-11.5 Equipment requirements**

(a) Mud hop participants shall wear a safety helmet as set forth at N.J.A.C. 13:62-4.20.

(b) Drivers shall be suitably attired with a minimum of shirt, long pants and shoes.

(c) The extension of the driver's head or arm outside the vehicle shall be prohibited.

**13:62-11.6 Windows**

(a) The windshield of the participating vehicle may remain as originally installed.

(b) Heavy mesh screening with a metal post covering the entire opening or plexiglass with a center post shall be utilized where the original windshield is removed.

**13:62-11.7 Vehicle interior and exterior requirements**

(a) Sharp edges created by accidental vehicle contact shall be folded over to render the vehicle safe.

(b) Alterations to the fenders or wheel wells are prohibited.

(c) All doors of participating vehicles shall remain closed during an event. Any opening shall constitute automatic disqualification.

**13:62-11.8 Seat belts**

(a) Seat belts shall be required and properly worn during the event.

(b) A racing lap belt and shoulder harness shall be installed and utilized provided they are:

1. Approved through technical inspection and found to be in good condition; and

2. Securely affixed to the outer flooring and reinforced by a four inch by four inch steel plate and bolts of adequate tempered steel strength.

(c) Cable, chain or straps securing devices for seat belts are prohibited.

**13:62-11.9 Rollover cage**

(a) Open cab vehicles shall be equipped with a rollover cage surrounding the driver of a design, construction and quality affording the driver maximum protection against injury.

(b) Rollover bars installed in vehicle shall be a minimum of three inches above and six inches behind the driver's head.

(c) The rollover bars' outside diameter shall be a minimum of one and three-quarters inch and wall thickness a minimum of .09 inch.

(d) Rollover bars welded, bolted or fastened to the flooring shall utilize a six inch by six inch by one-quarter inch base plate.

(e) Vehicles having uni-body construction may install a rollover bar welded to the frame of the vehicle utilizing six inch by six inch by one-quarter inch base plate affixed to outer flooring.

(f) Rollover bars shall be plainly visible with the exception of built-in or integral rollover bars.

(g) Vehicles with built-in or integral rollover bars shall maintain and provide upon request by the Superintendent or designee the manufacturer's detailed drawing establishing the dimensions and material utilized.

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**13:62-11.10 Bumpers**

All vehicles shall be equipped with bumpers securely fastened on the front and rear. Outside bracing of bumpers shall be prohibited.

**13:62-11.11 Batteries**

Batteries shall be securely fastened and not within the driver's compartment or adjacent to the fuel supply.

**13:62-11.12 Miscellaneous equipment requirements**

(a) The drive shaft loop shall be installed not more than 24 inches from the front and rear yokes of the vehicle.

(b) All vehicles shall have an opening in the hood to properly expose the carburetor.

(c) The radiator shall remain in the manufacturer's position. Any movement of the radiator shall be prohibited.

(d) The front and rear trunk lid shall remain securely fastened with cable or chain throughout the entire event. Any incidental opening shall disqualify the vehicle from the event.

(e) Outer decorations on the vehicle utilizing poles, flags, staffs or other hazardous protuberances shall be prohibited.

(f) Transmission and radiator cooling lines or cooling cores shall be equipped with a metal fire wall separating the driver and insuring maximum security.

(g) Tow hooks or tow bars shall be installed and secured to the frame of the vehicle.

(h) No vehicle shall transport more than one person at any time during an event or warm-up.

**13:62-11.13 Braking system and pedal reserve**

(a) The licensee shall test and approve each vehicle for pedal reserve prior to the vehicle departing the pit area.

(b) No vehicle shall be permitted to participate in any event if the braking system includes a direct application of pressure to any of the tires or any apparent deficiencies.

**13:62-11.14 Automatic transmission safety mats**

Any vehicle equipped with an automatic transmission shall have a steel mat, plate, or blanket installed over the transmission so as to protect the driver from injury caused by the fragmentation of the automatic transmission upon explosion.

**13:62-11.15 Seats**

(a) Factory installed front seats may be utilized provided it is equipped with a head rest.

(b) Seats shall be attached to the main frame of the vehicle, the frame of the roll cage or to a substantial metal plate utilizing a minimum of six, three line, five-sixteenths inch bolts.

(c) The base of the seat shall be installed with four five-sixteenths inch bolts not more than three inches from the outside edge at the four most practical points.

(d) Two bolts shall be installed at the two most practical points at the top of the back of the seat and a metal strap of at least two inches in width and one-eighth inch in thickness shall connect every two bolts.

**13:62-11.16 Additional track responsibilities**

(a) The licensee shall meet the necessary requirements set forth at N.J.A.C. 13:62-2.

(b) The licensee shall maintain safe conditions during all pit stops.

(c) The licensee shall maintain adequate fire apparatus on location during the event.

1. A fire vehicle shall meet the National Fire Protection Association standards of a mini pumper.

2. Twenty-pound fire extinguishers, at a minimum, with a minimum of 10 B.C. rating shall be maintained on location during an event.

3. A minimum of two protective turn out gear shall be available to track personnel.

**SUBCHAPTER 12. REACTION POWER VEHICLES, THRILL SHOWS AND GYMKHANAS**

**13:62-12.1 Licensed facilities**

(a) Reaction powered vehicles and thrill shows are prohibited from non-licensed facilities.

(b) Notification shall be given to the Superintendent at least 20 days prior to any such scheduled event. Notification of an upcoming thrill show shall include a full description of the type of event.

**13:62-12.2 Vehicle equipment**

(a) All vehicles equipped with parachute(s) shall have a red streamer attached to the safety pin(s). The safety pin shall be removed from the parachute prior to the starting lights being activated.

(b) All vehicles utilizing two or more parachutes shall have at least two anchoring points for each parachute, each point separate from the other.

**SUBCHAPTER 13. SPECIAL AGE PROVISION**

**13:62-13.1 Participant requirements**

(a) Notwithstanding any other provision of this chapter to the contrary, a person between the ages of 14 and 18 years of age may be permitted to participate in go-cart, snowmobile, motorcycle, and motorcross events providing the following conditions are met:

1. The participant between the ages of 14 and 18 is covered by accidental death and dismemberment insurance in an amount not less than \$10,000 for accidental death and \$3,000 for dismemberment.

2. The participant between the ages of 14 and 18 shall be required to furnish proof of successful completion of an operational and safety course for the particular vehicle which the participant desires to operate.

**13:62-13.2 Licensee responsibilities**

(a) It shall be the responsibility of the licensee to insure that all conditions set forth in this chapter are met prior to permitting an individual to participate in any event.

(b) It shall further be the responsibility of the licensee to insure that the operation of vehicles covered by this subchapter by persons between the ages of 14 and 18 shall be restricted to the confines of an approved race or exhibition area and adjoining pit area.

**SUBCHAPTER 14. APPEALS OF ADMINISTRATIVE ACTION**

**13:62-14.1 Hearings**

(a) In the case of the suspension, denial or refusal to renew a license the Superintendent shall notify the applicant or licensee in writing of such action and the reasons for the action shall be stated in the notice.

(b) Upon such notification the Superintendent shall afford the applicant or licensee an opportunity for a hearing to appeal the action of the Superintendent. A request for a hearing of the Superintendent's action shall be made in writing to the Superintendent within 15 days from the receipt of the notice.

(c) If a request for a hearing is timely received, the Superintendent shall take the appropriate action in accordance with the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

**(a)**

**DIVISION OF CONSUMER AFFAIRS  
NEW JERSEY STATE BOARD OF MORTUARY  
SCIENCE**

**Continuing Education**

**Proposed New Rules: N.J.A.C. 13:36-10**

Authorized By: The State Board of Mortuary Science,

David Danaher, President.

Authority: N.J.S.A. 45:7-38.

Proposal Number: PRN 1989-616.

Submit written comments by December 20, 1989 to:

Maurice W. McQuade, Executive Director

Board of Mortuary Science, Room 513

1100 Raymond Boulevard

Newark, New Jersey 07102

The agency proposal follows:

#### Summary

The New Jersey State Board of Mortuary Science proposes new rules establishing a continuing education requirement for its licensees. As a condition to renewal, licensees must accumulate 10 credit hours of Board approved courses, seminars or programs during the biennial licensing period. The 10 credit hour requirement applies to all licensees except those individuals who are in their first licensing period or are serving on active duty in the United States Armed Forces. Subsection (b) of proposed N.J.A.C. 13:36-10.4 provides the Board with the discretion to waive the continuing education requirement upon showing of good cause by the licensee. The remaining sections establish a credentials committee, the requirements for program and sponsor approval, and a credit hour reporting procedure.

#### Social Impact

The proposed new rules are designed to encourage mortuary science professionals to keep abreast of changes in their profession. By requiring funeral directors and practitioners licensed by the Board to take continuing education courses, the profession will maintain a higher level of skill and in turn will be better able to serve the public.

#### Economic Impact

The economic impact upon licensees is expected to be relatively slight, since only the fees paid to cover the costs of the continuing education course, seminar or program are involved. However, there is always the possibility that licensees may increase amounts charged to consumers in order to help recoup the licensees' costs.

#### Regulatory Flexibility Analysis

It is unclear whether the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., was intended to cover individual practicing professionals, but on the assumption that it is applicable, the following statement is relevant:

The Board of Mortuary Science currently licenses 803 funeral directors and 1,959 practitioners. The proposed new rules are uniformly applicable to all licensees, without distinction as to the size of the professional practice. Compliance requirements—10 hours of continuing education during a biennial period—are minimal, yet carry out the Board's intended purpose of protecting the public's best interests. Renewal of licensure will now necessitate the reporting of continuing education credits and the retention of records related thereto.

Additional rules applying to program sponsors, who may or may not be licensees, simply mandate Board approval of courses represented as fulfilling continuing education requirements; the filing of the necessary application for approval cannot be considered a burden.

No adverse economic impact on small businesses is anticipated because the cost of continuing education is a negligible component of the total cost of doing business, well-justified by the need to maintain professional competence. Professional instructional services will obviously be necessary, however, and must be utilized by all licensees (except those with exemptions or waivers) if the rules are to accomplish their goal.

Full text of the proposal follows:

### SUBCHAPTER 10. CONTINUING EDUCATION

#### 13:36-10.1 Purpose and scope

(a) The rules established by this subchapter were designed to ensure that the practitioners of mortuary science maintain the highest degree of quality in their profession.

(b) The requirements set forth under this subchapter apply to all Board licensees actively participating in the practice of mortuary science within the State of New Jersey except where the rules provide for exemption or waiver.

#### 13:36-10.2 Definitions

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

"Actively participating" means practicing mortuary science within the State of New Jersey for more than three months out of any calendar year.

"Board" means the New Jersey State Board of Mortuary Science, 1100 Raymond Boulevard, Room 513, Newark, New Jersey 07102.

"Committee" means the standing Credentials Committee established by N.J.A.C. 13:36-10.5.

"Division" means the Division of Consumer Affairs, 1100 Raymond Boulevard, Newark, New Jersey 07102.

"Person" means any person as defined in N.J.S.A. 56:8-1.

"United States Armed Forces" means the United States Army, United States Navy, United States Air Force, United States Marine Corps, and the United States Coast Guard.

#### 13:36-10.3 Minimum amount of credit hours

(a) By the completion of each biennial licensing period, every licensee shall, as a condition of license renewal, successfully complete 10 credit hours of approved continuing education courses, seminars or programs recommended by the Credentials Committee and approved by the Board.

(b) No licensee shall be permitted to carry over excess credit hours from one licensing period to the next.

(c) New licensees shall not be required to comply with the continuing education requirements during their first biennial licensing period.

#### 13:36-10.4 Exemptions and waivers

(a) The following groups of licensees will be exempt from complying with the continuing education requirements:

1. Licensees serving on active duty in the United States Armed Forces; or

2. Licensees in their first biennial licensing period immediately following successful completion of the Board's examination requirements.

(b) The Board may, for good cause, waive all or part of the continuing education requirement for any biennial licensing period. A licensee may request that the Board grant a waiver. Such requests shall be in writing and accompanied by any documentation verifying the reasons for the request. Waivers shall be granted only for one biennial licensing period at a time. However, should the situation for which the waiver was granted continue past the specified biennial period, the licensee must apply in writing to the Board for an extension of the waiver no less than three months prior to the expiration of the specified biennial period.

#### 13:36-10.5 Credentials Committee

(a) The Director of the Division of Consumer Affairs shall annually appoint a standing committee to be known as the Credentials Committee to assist the Board in establishing guidelines and criteria for the approval of continuing education courses, seminars, and programs.

1. The Director shall receive from the Board a list of nominees for consideration, and shall make the appointments in consultation with the Board;

2. The Committee shall consist of no fewer than four members, at least two of whom are members of the Board; the remaining members shall be either members of the Board or Board licensees;

3. At least one member of the Committee shall be an educator with a degree in mortuary science who is currently teaching or working in the mortuary science area.

(b) The Committee's responsibilities shall include:

1. Making recommendations to the Board as to approval of specific continuing education programs;

2. Developing procedures for the internal operation of the Committee;

3. Developing criteria for continuing education credit which shall include courses:

i. Concerning professional competency and ethics, as well as legal aspects relating to the practice of mortuary science;

ii. Designed to examine and train licensees in the utilization and application of new techniques, and scientific and clinical advances relating to mortuary science;

iii. Dealing with business management concepts as they relate to the delivery of efficient and professional services to consumers.

4. Developing standards for determining which, if any, out-of-State courses, seminars or programs qualify for the credit hour requirement of these rules; and

5. Reviewing and monitoring of all approved courses, seminars or programs. Upon evidence that the courses, seminars or programs fail to meet the criteria established by the Committee, the sponsoring

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institution or agency shall lose its approved status and shall be required to reapply for such approval.

**13:36-10.6 Program and sponsor approval**

(a) Any person desiring approval as a sponsor of a continuing education course, seminar or program shall apply to the Credentials Committee. Such application shall be supplied by the Board upon written request and shall include:

1. The person's educational history;
2. Approximate dates that the course, seminar or program is to be offered;
3. The subject of the course, seminar or program;
4. The total hours of instruction and credit; and
5. The names and educational qualifications of instructors.

(b) All sponsors shall secure Board approval prior to representing that any course, seminar or program fulfills the requirements of this subchapter.

(c) The Board may, at its discretion, grant credit to licensees who attend or participate in an educational course, seminar or program which is not approved or which is conducted by a non-approved sponsor. Licensees seeking such credit shall submit to the Board, within 30 days of completing the course, seminar or program, a written application setting forth:

1. The date and place where the course, seminar or program was given;
2. The subject matter covered;
3. The total hours of instruction; and
4. The names and educational qualifications of the instructors.

**13:36-10.7 Credit hour reporting procedure**

(a) The Board shall accept verification of credit hours accumulated by the licensee provided the licensee, at the time of license renewal, submits appropriate evidence of the successful completion of an approved course, seminar or program, in the form of an original certificate or similar official record of completion, signed by the approved sponsor.

(b) The licensee shall also complete and sign the continuing education report card provided to the licensee by the Board. The licensee shall list on the report card all approved courses, seminars or programs which he or she successfully completed, as well as the number of hours of credit earned by the licensee.

(c) For those licensees registered in the New Jersey State Funeral Directors Association educational organization's continuing education reporting system, the Board shall recognize written verification from the Association stating the number of credit hours the licensee has accumulated during the biennial license renewal period.

(d) Where the Board denies a licensee's application for continuing education credit, either in whole or in part, the licensee may appeal the denial to the Board.

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**DIVISION OF CONSUMER AFFAIRS**

**Sellers Of Health Club Services**

**Registration Fee**

**Proposed Amendment: N.J.A.C. 13:45A-25.2**

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.

Authority: N.J.S.A. 56:8-40 and 56:8-48.

Proposal Number: PRN 1989-602.

Submit written comments by December 20, 1989 to:

James J. Barry, Jr., Director  
 Division of Consumer Affairs, Room 504  
 1100 Raymond Boulevard  
 Newark, New Jersey 07102

The agency proposal follows:

**Summary**

N.J.S.A. 56:8-39 et seq., an Act regulating the sellers of health club services and supplementing the Consumer Fraud Act, requires sellers of health club services to register with the Division of Consumer Affairs and to pay a registration fee. N.J.A.C. 13:45A-25.2(b), which became effective on November 7, 1988, established a biennial registration fee of \$100.00 for each health club facility operated by the seller. Since that time, the Division has found that its administrative costs for the mandated registration program far exceed the revenues generated by the registration fee. Therefore, the Division is proposing to amend N.J.A.C. 13:45A-25.2(b) to raise the biennial registration fee from \$100.00 to \$200.00. This fee increase is calculated to provide the Division with funding to discharge its statutory obligation of protecting the consumer by ensuring that sellers of health club services provide relevant data on ownership and operations.

**Social Impact**

The proposed fee increase would enable the Division of Consumer Affairs to meet the responsibilities imposed upon it by the Legislature in regard to registration of sellers of health club services, thereby ensuring the protection of the consumer.

**Economic Impact**

The proposed fee increase would have an economic impact on the 203 currently licensed facilities. However, the increase is necessary to defray administrative costs, which have far exceeded those originally anticipated. If the Division allowed its current fee structure to remain in place over the next two years, it would not be in a position to properly discharge its statutory responsibilities. The Division recognizes the difficulties and financial problems presently burdening health clubs, but it cannot ignore its duty to administer the registration procedure. The fee proposed, in the Division's view, is reasonable and is calculated in such a manner as to significantly defray, although not entirely cover, the Division's rising expenses in connection with health club registrations. Also, it should be noted that the proposed fee is substantially less than that charged by many other states. No economic impact on the public is anticipated; it is unlikely that the additional \$50.00 per year—\$1.00 a week per facility—would necessitate an increase in health club membership fees.

**Regulatory Flexibility Analysis**

The proposed amendment applies to all sellers of health club services. The Division of Consumer Affairs currently licenses 203 facilities, the majority of which are small businesses. The annual cost of compliance with the proposed amended rule is, as a business expense, slight, and was specifically designed to minimize the financial impact on small businesses. While the fee increase may have a greater impact upon registrants with a more limited income-producing capacity, the Division bears the mandatory obligation to meet its expenses in registering health clubs; it has no choice but to increase the fee. There are no additional reporting or recordkeeping requirements related to the proposed fee increase, other than completion of the registration application which will accompany payment.

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

**13:45A-25.2 Registration; fees**

(a) (No change.)

(b) Any person who offers for sale or sells health club services shall pay to the Director of the Division of Consumer Affairs a registration fee of [~~\$100.00~~] **\$200.00** every two years for each health club facility operated, [~~\$50.00~~] **\$100.00** if paid during the second half of the biennial period.

(c)-(g) (No change.)

# RULE ADOPTIONS

## COMMUNITY AFFAIRS

### (a)

#### OFFICE OF THE COMMISSIONER

#### Organization of the Department of Community Affairs

#### Adopted Amendment: N.J.A.C. 5:2-1.1

Adopted: October 6, 1989 by Anthony M. Villane, Jr., D.D.S.,

Commissioner, Department of Community Affairs.

Filed: October 19, 1989 as R.1989 d.578.

Authority: N.J.S.A. 52:27D-3 and 52:14B-3 and 4.

Effective Date: October 19, 1989.

Expiration Date: April 10, 1994.

This adopted amendment to N.J.A.C. 5:2-1.1 is organizational in nature and, as such, in accordance with N.J.S.A. 52:14B-4(b), may be adopted without prior notice or hearing and is effective upon filing.

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

5:2-1.1 Office of the Commissioner; Divisions

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

(f) The Division of Local Government Services includes the Office of the Director, **the Office of the Deputy Director**, the Local Finance Board, the Distressed Cities Program and the following [bureaus:] **elements: Local Assistance and Regulatory Services.**

1. [Financial Regulation] **The Local Assistance Element includes the Assistant Director's Office, the Bureau of Local Management Services, and the Office of Fiscal and State Aid;**

2. [Local Management Services; and

3. Authority Regulation] **The Regulatory Services Element includes the Assistant Director's Office, the Bureau of Authority Regulation, the Bureau of Financial Regulation, and the Quality Audit Assurance Unit.**

## ENVIRONMENTAL PROTECTION

### (b)

#### DIVISION OF SOLID WASTE MANAGEMENT

#### Solid and Hazardous Waste Licensing and Revocation—Disclosure Statements and Integrity Review

#### Adopted Amendments: N.J.A.C. 7:26-16.5 and 16.13

Proposed: August 7, 1989 at 21 N.J.R. 2275(a).

Adopted: October 26, 1989 by Christopher J. Daggett,

Commissioner, Department of Environmental Protection.

Filed: October 26, 1989 as R.1989 d.586, **without change.**

Authority: N.J.S.A. 13:1E-1 et seq., specifically, N.J.S.A.

13:1E-128d, 13:1E-18, 13:1E-6, 13:1E-11, and N.J.S.A.

13:1D-9.

DEP Docket Number: 034-89-07.

Effective Date: November 20, 1989.

Expiration Date: November 4, 1990.

#### Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting amendments to N.J.A.C. 7:26-16, Solid and Hazardous Waste Licensing and Revocation—Disclosure Statements and Integrity Review, hereinafter referred to as the "disclosure rules." The disclosure rules implement the State's solid and hazardous waste licensing statute, N.J.S.A. 13:1E-126 et seq., commonly known by its Assembly bill number, A-901.

In particular, the Department is adopting an amendment to N.J.A.C. 7:26-16.13, Fees charged by the Attorney General and the Department, which establishes a new fee for all waste entities which must file a disclosure statement pursuant to N.J.A.C. 7:26-16.3. The amendment requires this fee to be paid on an annual basis. Additionally, the Department is adopting an amendment to N.J.A.C. 7:26-16.5, Investigative Report by Attorney General, which sets the maximum amount of time for which temporary approvals to construct or operate are issued to solid and hazardous waste haulers and facility license applicants prior to review and approval of their disclosure statements and investigative reports. The adopted amendment sets the term for temporary approvals at six months instead of one year and allows for the renewal of such temporary approvals where a public exigency exists.

A public hearing was held on September 6, 1989 to provide interested parties the opportunity to present testimony on the proposed rule amendment. The comment period closed on September 8, 1989. The Department received written testimony from five persons and five persons presented comments at the public hearing. The comments received have been grouped together in some instances where common issues have been raised and where a single response can sufficiently address those issues.

COMMENT: It is not clear from the proposal to amend N.J.A.C. 7:26-16.13 whether the proposal requires retroactive payment of fees that have been paid with disclosure statements submitted in earlier years. The proposed increased fees should apply to future disclosure statements submitted six months after the amendment is promulgated.

RESPONSE: Companies which have been assessed and have paid a fee with disclosure statements submitted prior to the current billing cycle will not be required to pay a retroactive filing fee commensurate with the amended fees in N.J.A.C. 7:26-16.13 for any prior billing cycle. These companies will, however, be required to pay an annual fee pursuant to the fee schedule in N.J.A.C. 7:26-16.13. All companies which have filed with the Department for A-901 approval, or which are currently operating under final or temporary A-901 approval, will be assessed an annual fee in the first billing following the effective date of this adoption. All applicants for A-901 approval filing after the effective date of this adoption will pay an initial filing fee based on the amended fee schedule in N.J.A.C. 7:26-16.13 on the date of application and an annual fee thereafter.

COMMENT: The costs sought to be imposed by the proposed amendment are substantial. The fees set forth in the amendment are, with particular reference to the annual requirements, excessive, and should be modified by streamlining the review procedures in order to reduce company compliance costs, State oversight costs, and, therefore, costs to the public.

It is difficult to believe that the sizable funding needed for Fiscal Year 1990, \$6.5 million, will be necessary every year thereafter. In particular, post-licensing compliance checks should not require the same effort as is needed to reduce the overwhelming backlog which is stated to exist. Post-licensing reviews should not be as time-consuming and expensive as initial reviews. The Department should offset this fee or include a review after the first year.

Based on the proposed amendment, it appears that the annual fees set forth will never be reduced or eliminated. Once all solid waste companies have been subjected to the initial investigation process, the workload should be reduced and the Department and Attorney General should concentrate on updating existing licenses and occasionally investigating new entries into the solid waste business. Thus, in the long term, the A-901 program does not appear to require 100 employees and their related expenses. The Department should reevaluate its post-licensing requirements and maintain only those employees that are necessary to perform the tasks that are required. A thorough analysis of the Department's role and need should be made once the A-901 program has caught up to its backlog. Fees should be adjusted downward accordingly.

RESPONSE: The fees contained in the proposed amendment to N.J.A.C. 7:26-16.13 are substantially higher than the fees previously called for by this rule. The Department and the Attorney General have concluded that a substantially increased fee is necessary to fund the work needed to eliminate the backlog of investigations for the approximately 1,700 waste entities known to be subject to A-901 which have not yet been investigated.

The Department and the Attorney General have carefully assessed the staffing needs of the three agencies charged with enforcing A-901: the Department, the Division of Law (DOL) within the Department of Law

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and Public Safety (L&PS), and the State Police Solid Hazardous Background Investigation Unit (SHU) within L&PS. This assessment is based on a two-pronged strategy of eliminating the aforementioned backlog and of conducting critical follow-up compliance investigations.

The Department and the Attorney General have concluded that new personnel will have to be added to each of the three A-901 agencies to speed up the pace of current investigations to reduce the existing backlog. These personnel will increasingly be shifted to post-licensing compliance work as the backlog diminishes. The Department believes that the number of personnel needed to perform these tasks has not been overestimated given the thousands of investigations that need to be completed and the thousands of waste entities that must subsequently be monitored for compliance with A-901 by the three agencies.

To date there have been approximately 1,800 applicants for A-901 licenses. Additionally, there are approximately 5,000 entities which have claimed exemption from A-901. Investigations of these entities could show that they are indeed subject to A-901 and hence add to the overall number of regulated waste entities. It should be noted that estimates of investigative legal analysis time within L&PS are based only on the 1,800 applicants and do not include any of the 5,000 entities claiming exemption from A-901, some of which may be shown to indeed be subject to A-901.

Once SHU, DOL and the Department have completed initial investigations of these applicants, personnel added to reduce the investigations backlog may then be partially free to engage in post-licensing compliance activities while also processing investigations for new entities and newly-disclosed individuals. The Department and Attorney General believe that the post-licensing compliance activities are vital to the successful operation of the A-901 program and will take a considerable effort on the part of all three A-901 agencies.

Post-licensing compliance will involve keeping track of the activities of over 4,000 individuals disclosed to date and of the operations of almost 1,800 waste entities. Among the activities that SHU must undertake in post-licensing compliance are periodic spot checks, special investigations, pre-licensing of new applicants, litigation assistance, intelligence, data control, and administrative support. Additionally, DOL and the Department must expend significant resources in administering the post-licensing compliance program. Post-licensing reviews and litigation associated with denials of applications and revocations of licenses or permits is expected to be time-consuming and resource intensive.

The fact that an initial investigation has revealed no information which would disqualify an individual or entity from participation in the solid or hazardous waste industries does not mean that these individuals or entities will not in the future engage in activities which would lead to disqualification under A-901. Without careful, comprehensive and detailed post-licensing compliance checks, the completed investigations would quickly become outdated and the benefits of the initial A-901 effort would be lost.

In addition to post-licensing compliance checks of currently registered waste entities, the Department, SHU and DOL must, of course, continue to conduct initial investigations of new entrants to the solid and hazardous waste industries. These new investigations will be processed more expeditiously than is the case with existing applications with the additional personnel brought into the three agencies with the increased fees. Without the continued presence of the additional personnel after the elimination of the current backlog, it is likely that new backlogs would arise.

The proposed new fees will not simply be put toward the investigation of the particular entity submitting a fee, however, but rather will support a comprehensive program of regulation of the entire solid and hazardous waste industries. The State does not intend to scale back the A-901 program once the current backlog of investigations is eliminated. The ongoing investigation of all waste entities, both those currently operating and prospective entrants, will benefit the industries as a whole inasmuch as the presence of dishonest companies and unscrupulous business activities will be minimized. For this reason, investigations must be ongoing. Eliminating the current backlog of A-901 investigations is only the beginning of a much more comprehensive regulatory program than currently exists.

Thus, given the extensive post-licensing compliance work needed to keep A-901 investigations up to date, and given the constant turnover in key individuals and entities in the solid and hazardous waste industries, the Department believes that the additional personnel brought into the Department and the Department of Law and Public Safety in Fiscal Year 1990 will be necessary well beyond the elimination of the current investigations backlog.

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COMMENT: The current structure for licensing companies in which many states currently require disclosure of information for investigations similar to that sought by New Jersey is burdensome due to the great overlap of information. Companies operating in more than one state are subject to multiple filing requirements and fees. States should work together to perform the necessary investigative work.

RESPONSE: As explained in the introduction to this document, the disclosure rules were promulgated and are being amended in response to the passage by the New Jersey Legislature of the Disclosure Act, P.L. 1983 c.392 (N.J.S.A. 13:1E-126 et seq.). The fact that other states currently require disclosure of information for investigations similar to the information required by N.J.A.C. 7:26-16 should not impose an undue burden on waste companies that must compile the necessary information. Rather, the fact that there are certain overlaps in information sought by New Jersey and other states should ease compliance with N.J.A.C. 7:26-16 since a company operating in other states with disclosure requirements will have already compiled information which is necessary to meet New Jersey's requirements.

The suggestion that states work together to perform the necessary investigative work could not be effectively implemented in New Jersey since all licensing and permitting of solid waste entities occurs at the State level. Except for a small group of large waste companies, most solid waste entities in the State operate only on a Statewide basis and involve individuals who have restricted their business interests to within New Jersey. Further, the confidentiality requirements in the rules (see N.J.A.C. 7:26-16.14(k)) may preclude a full exchange of investigative information on a routine basis.

COMMENT: For companies under common ownership or management there is a significant overlap in individuals required to be listed by each of these companies pursuant to N.J.A.C. 7:26-16.3 and 16.4. Although N.J.A.C. 7:26-16.13(f) allows for fees to be calculated on the basis of the total number of individuals where disclosure statements are filed concurrently, it is not always possible to file concurrently due to events requiring filing at a particular time, business practices, or other reasons. There is no apparent reason why non-concurrent filing in any way affects the Department's costs in reviewing the disclosure statements, or why companies not filing concurrently should be penalized. These companies could cross-reference filings or otherwise assist the Department to avoid duplicative effort on the part of the State and expense for the companies.

The proposed fee amendment makes no effort to recognize that most of the investigative work by the Department and Attorney General in reviewing disclosure statements will be the same for each of the divisions under a common parent company. Since each division shares the same set of directors and officers, and hence, the same corporate structure, it appears that the Department has overestimated the scope of investigative work necessary for the divisions of a large company and has, accordingly, set the overall fee for the company too high. Divisions of large corporations should not require the tremendous effort that is referred to in the proposed amendment and to impose annual fees ranging from \$20,000 to \$50,000 per division is unreasonable.

RESPONSE: The Department recognizes that a few very large waste companies are organized such that one or more individuals in the parent corporation may serve as key individuals for each of that corporation's operating divisions in the State. Consequently, there is a potential that more than one operating division of a corporation will be paying a disclosure fee pursuant to N.J.A.C. 7:26-16.13 for the same individual or individuals in the parent corporation. The Department's rules do, however, provide for relief from the payment of multiple fees via N.J.A.C. 7:26-16.13(f) which allows for a group filing of disclosure statements in which only one fee must be paid for individuals whose names appear on more than one disclosure statement.

Contrary to the commentator's contention, the Department believes that concurrent filing is the only fully effective means by which the requirements of N.J.A.C. 7:26-16 can be applied to waste companies with multi-level corporate structures. Although each operating division of a large corporation may indeed share certain management at the corporate level, the Attorney General and the Department must evaluate the disclosure statements of each operating division on the same basis that they evaluate the disclosure statements of waste entities which are not part of a larger corporate structure. This is so because the Attorney General and the Department consider the initial SHU investigations of all waste entities to be of diminishing value over time. The greater the passage of time between the initial investigation and a new filing, the greater the need for the most current review of disclosed individuals to assure that they

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have not engaged in activities which would disqualify them pursuant to N.J.A.C. 7:26-16.8.

Given the temporal limitation described above, an investigation of key individuals of a corporation disclosed by one of its operating divisions may not necessarily be valid six months later when those same individuals are disclosed by another operating division of the same corporation. It is, therefore, appropriate that the Department assess a separate fee to an operating division of the corporation to account for the re-investigative work.

With regard to the comment that the overall fee for large corporations with several operating divisions is too high, the Department's and the Attorney General's experience in administering the A-901 program to date has revealed that investigations of these operating divisions and their corporate parent organizations consume a great deal of program resources. These investigations often require additional disclosure statement filings and subsequent investigations of previously undisclosed individuals. The Attorney General and the Department must also spend considerable time investigating whether all persons meeting the criteria for being key individuals have been disclosed by these companies. Thus, the relatively larger fee for operating divisions of large corporations reflects the proportionally greater time spent in the investigation of these companies than is spent with other, non-multilevel waste firms.

It is for these reasons that the Department does not believe that the scope of investigative work for large corporations has been overestimated inasmuch as the Attorney General's and the Department's work is not duplicative where additional investigations of previously disclosed individuals must be undertaken and given the complexity of the investigative work.

COMMENT: N.J.S.A. 13:1E-126 clearly expresses the Legislature's intent that no license to operate a solid waste facility shall be issued to a company prior to the Department's review and approval of the disclosure statement. The Department, in its attempt to implement this statutory requirement, has found that it is impossible to meet the legislative intent and has, therefore, attempted to subvert and contradict this intent by writing regulations which allow for temporary approvals prior to a complete review. The more appropriate course would be for the Department to return to the Legislature and seek an amendment of the statute.

The Department is undermining the intent of the A-901 legislation by continuing to grant temporary permits before issuing a final ruling and by allowing companies with poor track records to continue to operate in our State.

RESPONSE: In accordance with the criteria of N.J.A.C. 7:26-16.5(c) and (d) as adopted herein, the Department cannot issue or renew a temporary registration unless two conditions are met. First, the issuance or renewal must be necessary to prevent or ameliorate a hazard to the public health, safety or the environment; to prevent economic hardship to a public body; or otherwise serves the interest of the general public. Second, the issuance or renewal of a temporary registration is, in all instances, conditional upon the applicant signing an agreement that it will cease its solid or hazardous waste operations upon the expiration of the temporary registration if not renewed by the Department or if a license has not been approved. These two conditions ensure that temporary registrations are only issued or renewed under conditions of public exigency and that the Department retains the right to terminate the permit upon expiration where a completed investigation shows that the applicant or any of its key individuals have not met the criteria of A-901.

The issuance and renewal of temporary registrations by the Department in accordance with the standards set out above is clearly within the authority granted to the Department by the Legislature through the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (the Act). Pursuant to the Act, the Department is vested with comprehensive powers to supervise the collection and disposal of solid waste, including express authority to license facilities and operations. The Disclosure Act, which supplements the Solid Waste Management Act, imposes limiting conditions on the Department's authority to approve licenses but expressly recognizes the need to protect the public interest, notwithstanding that the preconditions for licensing have not been met. Specifically, N.J.S.A. 13:1E-135 provides as follows:

Notwithstanding the disqualification of the applicant or licensee pursuant to the act, the department may issue or renew a license if the applicant or licensee severs the interest of or affiliation with the person who would otherwise cause that disqualification or may issue or renew a license on a temporary basis for a period not to exceed six months if, upon the recommendation of the Attorney General, the department de-

termines that the issuance or renewal of the license is necessitated by the public interest.

Thus, the Solid Waste Management Act authorizes the Department to issue temporary registrations to a licensee or applicant where the public interest will be served.

The Department and the Attorney General believe that the authority to issue temporary registrations and approvals prior to completion of a disclosure review in a situation where a public exigency exists is clearly implicit in the Solid Waste Management Act given the above-cited authority of N.J.S.A. 13:1E-135. The Department has been supported in this position by the decision in *I/M/O Steam Encroachment Permit No. 12400*, 231 N.J. Super. 443 (App. Div. 1989), *certif. den.* \_\_\_\_ N.J. \_\_\_\_ (1989). According to the Court:

There is no prohibition in the Solid Waste Management Act against the issuance of the temporary permit prior to disclosure statement approval. See, e.g., N.J.S.A. 13:1E-133d which allows the DEP to defer a decision upon request if there are pending proceedings. Hence, N.J.A.C. 7:26-16.5(c) does not exceed the authority granted to the DEP to adopt implementing regulations.

*ID.* at 458-459. Thus, the Department has determined that its authority under the Solid Waste Management Act is clearly sufficient to support the issuance of temporary registrations prior to the completion of disclosure review where the criteria of N.J.A.C. 7:26-16.5(c) have been met.

With regard to the issue of whether the Department can renew a temporary registration upon its expiration, the Department believes that its authority under the Solid Waste Management Act supports the re-issuance of temporary registrations where such re-issuance continues to be supported by an underlying public exigency. Prior to this amendment, N.J.A.C. 7:26-16.5(c) allowed for the issuance of temporary approvals for solid and hazardous waste hauler and facility license applicants "for not more than one year." A one year temporary approval was anticipated to provide sufficient time for dealing with any backlogs in the Attorney General's investigative report on applicants.

Due to the A-901 program funding difficulties in the Attorney General's Office and due to the size of many of the investigations, however, this backlog has proven to be too large to be eliminated using a one year temporary permit time period. For this reason the Department began in 1988 to reissue certain temporary registrations upon their expiration where the public exigency which gave rise to the original temporary registration continued to exist.

The Department perceived N.J.A.C. 7:26-16.5(c) as restricting the issuance of temporary registrations to a one-year period but allowing for re-issuance for additional periods of up to one year. As a result of the litigation in *I/M/O Stream Encroachment Permit No. 12400*, 231 N.J. Super. 443, 447 (App. Div. 1989), *certif. den.* \_\_\_\_ N.J. \_\_\_\_ (1989), the Department became aware that N.J.A.C. 7:26-16.5(c) was not framed with sufficient clarity to put the public on notice of this discretion. Therefore, the Department is now adopting an amendment to N.J.A.C. 7:26-16.5 to expressly allow for renewals of temporary permits where necessary to address the public exigency which was the focus of the original rule.

The adopted amendment to N.J.A.C. 7:26-16.5 eliminates the one year restriction previously in the rule and replaces it with language authorizing temporary permit approvals of six-month duration subject to six-month renewals. Multiple renewals are permissible so long as the criteria supporting the original finding of public exigency remain satisfied. Moreover, in limiting the original temporary approval and any subsequent renewals to a six-month duration, the Department will review each situation more frequently to ensure that pre-licensing temporary approval will last no longer than the underlying public exigency.

In conclusion, the Solid Waste Management Act allows for the issuance of temporary registrations where the public interest will be served, thereby supporting the Department's authority to reissue temporary registrations where a public exigency continues to exist. (see N.J.S.A. 13:1E-1, et seq., specifically, N.J.S.A. 13:1E-135).

COMMENT: In reference to the amendment of N.J.A.C. 7:26-16.5, the Department should not be allowed to grant as many renewals of a temporary permit as are necessary. By allowing continual granting of temporary permits, a garbage disposal company may never have a full investigation, and may be allowed to operate critical facilities despite the fact that they've been convicted of A-901 crimes in the past. There should be no granting of temporary permit extensions.

With regard to the proposed amendment of N.J.A.C. 7:26-16.5, why is the Department so anxious to remove a procedure which at the very least would protect the public and the environment against those who

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have previously polluted or been indicted or in fact been involved in anything detrimental to the public and the environment?

The fact that the proposed amendment of N.J.A.C. 7:26-16.5 contains no time-frame for any action by the Department means that the Department can issue an unlimited number of temporary permits. Thus, the regulation seems to be designed to perpetuate inaction in those cases that present difficult questions.

**RESPONSE:** The Department recognizes that there have been long delays in completing investigations of waste entities subject to A-901. The amendment to N.J.A.C. 7:26-16.13 has been proposed precisely so that additional personnel might be brought into the Department, SHU and DOL, in part, to eliminate the current backlog of investigations and to ensure that all future investigations are completed in a timely manner. Until such time as this backlog is eliminated, however, there is a need for the Department to ensure that certain waste facilities that are vital to communities throughout the State are able to operate while undergoing A-901 investigation.

Only those facilities and operators which meet the public interest standard of N.J.A.C. 7:26-16.5(c) can be given temporary registrations. They are then required to sign an agreement that they will cease operating upon the expiration of the temporary registration. In this way the Department can be sure that no final permit will be given to a facility where a completed investigation shows that the facility does not meet the criteria of A-901.

The intent of issuing temporary registrations is not to allow companies to circumvent the A-901 investigation while continuing to operate solid or hazardous waste facilities, nor to "perpetuate inaction in those cases that present difficult questions," but rather is to provide the Department with the flexibility to allow facilities which meet an important public need to operate subject to a final A-901 investigation. Likewise, the amendment of N.J.A.C. 7:26-16.5 has not been undertaken to "remove a procedure" that protects the public and environment, but rather is simply a clarification of the Department's position that renewal of temporary approvals may be necessary in some instances to prevent a public harm.

The amendment to N.J.A.C. 7:26-16.5 must, therefore, be looked at in conjunction with the amendment to N.J.A.C. 7:26-16.13: as the increased fees from the latter amendment are utilized to speed up investigations and reduce the backlog, temporary registrations under the former amendment will become less and less necessary. In addressing both of these problems simultaneously, the Department and Attorney General are balancing the need to maintain critical solid and hazardous waste facility operations in the State with the ultimate goal of eliminating from the State's solid and hazardous waste industries those persons with criminal records and those persons who are seriously deficient in competence and reliability.

For this reason, the Department and the Attorney General have developed the two-pronged strategy discussed in the response to an earlier comment. The first prong is designed to eliminate the current backlog in investigations. During this time the Department will need to issue temporary registrations to qualifying facilities until they have been fully investigated. The second prong is designed to maintain a consistent and timely schedule of completing new investigations while also establishing an increasingly pervasive post-licensing compliance presence. During this second-prong phase, the Department will need to issue fewer temporary registrations to qualifying facilities since investigation turnaround time should be substantially reduced. The Department believes that this strategy will most adequately provide the public with critical solid hazardous waste services while ensuring that the intent of A-901 to exclude from the solid and hazardous waste industries those people with criminal backgrounds or those who are dangerously deficient in competence is accomplished as expeditiously as possible.

**COMMENT:** Has the Legislature or legislative communities responsible for this aspect of oversight of the Department been informed specifically by any Department official of the proposed amendments to N.J.A.C. 7:26-16?

**RESPONSE:** According to N.J.S.A. 52:14B-4(a)(1), all rule proposals, along with their summary, economic, social and environmental impact statements and regulatory flexibility statement, must be filed with the President of the New Jersey Senate and the Speaker of the General Assembly by the Office of Administrative Law at least 30 days prior to the intended action. These procedures have been followed with regard to the amendment of N.J.A.C. 7:26-16.

**COMMENT:** With regard to the proposed amendment of N.J.A.C. 7:26-16.5, who instigated the revisions to this rule and for what justification?

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**RESPONSE:** The Department and the Attorney General have worked closely together in identifying the practical consequences of the current backlog in A-901 investigations. One of these consequences has been an inability to complete in a timely manner the initial background checks of waste facilities which serve an important public function in the State. N.J.A.C. 7:26-16.5 clarifies that the Department may issue temporary approvals to waste facilities which have not completed A-901 investigation and review but which need to continue operating in order to meet an important public need for waste removal and disposal. Prior to this amendment, N.J.A.C. 7:26-16.5 allowed for temporary approvals for "not more than one year," which the Department interpreted to mean one year per issuance, renewable upon expiration of that year.

Subsequent to the expiration of initial temporary approvals issued by the Department, a backlog of investigations continued to exist in the Attorney General's Office. At that point, the Department and the Attorney General concluded that certain facilities which continued to meet the criteria of serving a critical public function should be re-issued temporary approvals rather than be forced to cease operations pending final A-901 review. For the reasons set out in the response above, the Department determined that N.J.A.C. 7:26-16.5 should be amended to clarify that temporary approvals could be re-issued. In order to ensure that temporary approvals are in place no longer than necessary to meet a critical public need, however, this amendment limits such approvals to six months at a time rather than no more than one year at a time.

**COMMENT:** In the incinerator field, the lead time for siting and permitting a garbage incinerator is at least three to five years. It is inconceivable that while that process is going on and a vendor has been identified that the Department is unable to reach a determination upon a company that will be handling hundreds of millions of dollars of the public's money and will be building a facility that poses a risk to the environment. Therefore, garbage incinerators and similar disposal facilities such as landfills should not be put in the category where, because of an administrative backlog, there is an inability to render a decision prior to that company getting a permit to operate.

While the A-901 program may be underfunded for certain things, the issue of how to fund it and how to keep it going is a smoke screen designed to try to explain why a number of the largest companies involved with the A-901 program have already been granted permits to construct incinerators despite the fact that background investigations have not been completed. These incinerator projects should be given the highest priority in completing background investigations because of their large cost and significant environmental and health impacts.

**RESPONSE:** The Department agrees that large, capital intensive and environmentally sensitive projects should be given top priority in being processed through the A-901 investigation and review. Accordingly, the disclosure statements filed by companies seeking temporary approval for such projects have been given priority attention by the Attorney General, the Department, and SHU.

Due to the scope of the current investigations backlog, however, even these applications for A-901 approval have not been immune from administrative delay. Indeed, the fact that most of the companies constructing large waste facilities are large organizations with complex corporate structures and a high number of key individuals has been a contributing cause to the administrative delay regarding these applications.

It continues to be a key concern of the Department's that background investigations of individuals in companies seeking permits for significant waste facilities be completed as expeditiously as possible. This concern is supported by the substantially increased fees called for by the amendment of N.J.A.C. 7:26-16.13. The intent of this amendment is to resolve the very real investigations backlog problem, particularly regarding investigations related to the most significant waste projects.

It should be noted that the large companies mentioned by the commenter as already having received "permits to construct incinerators despite the fact that background investigations have not been completed" have received only temporary approvals pursuant to N.J.A.C. 7:26-16.5(c).

**COMMENT:** The Department has been issuing a series of temporary permits for some facilities for a number of years. What is the public emergency that allows for these facilities to be given temporary permits? In particular, what is the public emergency that allows for the issuance of a temporary permit to a garbage incinerator which takes five years from concept to construction?

What are the criteria used by the Department to determine that a public emergency exists which warrants a temporary approval pursuant to N.J.A.C. 7:26-16.5? Where are these criteria found? The criteria do not exist.

## ENVIRONMENTAL PROTECTION

## ADOPTIONS

Have the criteria for granting temporary approvals pursuant to N.J.A.C. 7:26-16.5 changed since their inception and how have they changed?

**RESPONSE:** The criteria upon which the Department bases issuance and renewal of temporary A-901 registrations are located at N.J.A.C. 7:26-16.5(c) and (d). Pursuant to these criteria, the Department may issue or renew a temporary registration for not more than six months at a time to an applicant if such issuance or renewal is:

Necessary to prevent or ameliorate a hazard to the public health, safety or to the environment; to prevent economic hardship to a public body; or if the issuance [or renewal] of a temporary registration otherwise serves some interest of the general public.

In any case, the issuance or renewal of a temporary registration is conditional upon the applicant signing an agreement that it will cease its operations upon the expiration date of the temporary registration if it has not been renewed or if the Department has not granted a final license.

There are primarily two sets of circumstances in which the Department has been issuing temporary A-901 registrations to facilities deemed critical to the State's solid waste removal and disposal needs and hence which meet the criteria of N.J.A.C. 7:26-16.5. First, the Department has issued temporary A-901 registrations to applicant companies involved with the construction of facilities that are currently providing short-term out-of-State disposal arrangements for counties that were deficient in siting and constructing new facilities for the final disposition of their solid waste. Second, temporary A-901 registrations have been issued to companies involved with the construction and operation of solid waste incinerators that are necessary to meet the State's goal of self-sufficiency in its solid waste disposal needs by 1992.

Under both of these circumstances there is clearly a public exigency which warrants the granting of temporary registrations pursuant to N.J.A.C. 7:26-16.5. In the first case, temporary registrations which allow for the operation of facilities to transfer a county's solid waste to out-of-State disposal facilities clearly serve to "prevent . . . a hazard to the public health, safety or the environment," inasmuch as the absence of such facilities would result in a complete lack of solid waste disposal options for many counties.

In the second case, temporary registrations which allow for the development of solid waste incinerators also meet the public exigency criteria of N.J.A.C. 7:26-16.5 inasmuch as the potential for scarce out-of-State disposal options in the near future has resulted in the urgent need to find in-State solutions. For example, the states of Pennsylvania and Ohio which are currently the destination of most of New Jersey's solid waste are considering legislation and other means which would preclude the disposal of out-of-state waste. Since the Department's position has been and continues to be that New Jersey counties be self sufficient in waste disposal by 1992, and due to the always tenuous nature of out-of-State disposal, the State can ill afford to delay the development of these facilities. Without the construction of solid waste incinerators or the siting of new landfills, the State will be left with no viable alternatives for solid waste disposal in the near future.

Thus, the Department's criteria for granting temporary A-901 approvals have remained substantially constant and primarily limited to the two circumstances described above.

**COMMENT:** The Department's regulations implementing A-901 create the impression that the waste disposal process in the State will be purified if we simply take care of corrupt individuals in the waste disposal industry through disclosure and investigation. The main problem in the waste disposal process, however, is from within the Department. The lack of full disclosure on the part of the top level management in the Department has led to current problems in the waste disposal process. There is a relationship between the policy that has been formulated with regard to solid waste facilities and those people within the Department who have made the policy and then left the Department to benefit from those policies. Therefore, there should be full disclosure review of all top level management in the Department involved in formulating solid waste disposal policy.

**RESPONSE:** The concerns raised by the commenter are not within the scope of the amendments to N.J.A.C. 7:26-16.5 and 16.13. Additionally, the Department does not have the authority to require full disclosure, as suggested, within these rules. Department employees are governed by the State's conflict of interest laws. Any changes to these laws to require disclosure by State agency personnel must be initiated by the State Legislature through legislative changes.

**COMMENT:** How does the Department communicate to the public the effect of the proposed changes to these rules? There is no real com-

munication network on the subject addressed by these rules. The public does not understand the regulatory process and does not understand what the environmental impact of these changes will be.

**RESPONSE:** As with all proposed changes to regulations of agencies of the State of New Jersey, the Department must follow the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. (APA) when proposing and adopting changes to its rules. The APA contains requirements regarding public notice and opportunity for public comment on all rule proposals. Specifically, the APA requires that the Department give at least 30 days notice to the public of its intended action, and that the Department afford all interested parties a reasonable opportunity to submit data, views or arguments orally or in writing. N.J.S.A. 52:14B-4(a)(1) and 52:14B-4(a)(3).

The Department complied with the APA requirements by publishing notice of the proposed changes to N.J.A.C. 7:26-16 in the August 7, 1989 editions of the Newark Star Ledger, Trenton Times, Asbury Park Press, and Courier Post. Additionally, the full proposal was published in the August 7, 1989 New Jersey Register at 21 N.J.R. 2275(a). A public hearing on the proposed amendments was held on September 6, 1989 at the War Memorial Building in Trenton, and the public comment period closed on September 8, 1989.

In terms of communicating to the public the effect of the proposed changes to the rules, the Department is required to prepare various background statements which must accompany the rule proposal (see N.J.A.C. 1:30-3.1). The Summary statement explains the purpose of the rule, who and what will be affected by it, and how, when and where the effect will occur. The Social Impact statement describes the expected social impact of the rule on the public and on any special segment of the public impacted differently than others. The Economic Impact statement describes the expected costs, revenues and other economic impact on the State, the public, and on the group directly regulated by the rule. The Environmental Impact statement, which the Department provides for its proposals, assesses whether there will be a positive or negative environmental impact resulting from the rule, and describes what that impact will be. Finally, the Regulatory Flexibility Statement describes the methods utilized to minimize any adverse economic impact of the rule on small businesses.

The Department has included each of the above statements in its notice of proposed rule amendments to N.J.A.C. 7:26-16 published in the August 7, 1989 New Jersey Register at 21 N.J.R. 2275(a). Additionally, the public was afforded a 30-day comment period including a public hearing in which individuals had the opportunity to question the Department concerning any of the conclusions contained in these statements or to seek clarification of the impact of the rule.

**Full text of the adoption follows:**

#### 7:26-16.5 Investigative Report by Attorney General

(a) The Department shall not issue any license to an applicant until it has received and reviewed an investigative report from the Attorney General.

(b) (No change.)

(c) In its discretion, the Department may issue a temporary registration for not more than six months at a time to an applicant if such issuance is necessary to prevent or ameliorate a hazard to the public health, safety or the environment; to prevent economic hardship to a public body; or the issuance of a temporary registration otherwise serves some interest of the general public. The issuance of a temporary registration in all cases is conditional upon the applicant signing an agreement that it will cease its solid or hazardous waste operations upon the expiration date of the temporary registration if not renewed by the Department and a license has not been approved by the Department, or upon order of the Department.

(d) In its discretion, the Department may renew a temporary registration for incremental periods of six months at a time prior to its receipt and review of an investigative report from the Attorney General if such renewal is necessary to prevent or ameliorate a hazard to the public health, safety or to the environment; to prevent economic hardship to a public body; or if the renewal of a temporary registration otherwise serves some interest of the general public. The renewal of a temporary registration in all cases is conditional upon the applicant signing an agreement that it will cease its solid or hazardous waste operations upon the expiration date of the temporary registration if not renewed by the Department and a license has

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not been approved by the Department, or upon order of the Department.

**7:26-16.13 Fees charged by the Attorney General and the Department**

Note: The fee for the Attorney General is adopted pursuant to Section 3.d of P.L. 1983, c.392, N.J.S.A. 13:1E-128d. The fee for the Department is adopted pursuant to N.J.S.A. 13:1E-18.

(a) Every business concern of any type subject to the disclosure requirements of P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.) shall submit, upon initial filing and annually thereafter, a fee to the Attorney General to cover the cost of enforcing P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.) and a fee to the Department to cover the cost of reviewing disclosure statements, contracting with the Attorney General for post-licensing compliance checks, including special investigations, conducting investigations to verify claims of exemption from A-901, securing confidential documents, and other functions in the administration and performance of duties by the Department pursuant to P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.). The fee for the Attorney General shall be \$100.00 per each individual and the fee for the Department shall be \$500.00 per each individual required to be listed in the disclosure statement (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26-16.4(a)9 or shown to have a beneficial interest in the business of the applicant or licensee other than an equity interest or debt liability interest), in addition to a per-company fee to be calculated as follows:

1. Business concerns with one individual required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of \$635.00;
2. Business concerns with two or three individuals required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of \$1,775;
3. Business concerns with four to seven individuals required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of \$5,150; and
4. Business concerns with more than seven individuals required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of \$15,650.

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

(d) If a business concern subject to P.L. 1983 c.392 (N.J.S.A. 13:1E-126 et seq.) files a change of information pursuant to N.J.A.C. 7:26-16.6, and discloses thereon an individual not listed in the disclosure statement information (including any amendments) currently on file with the Department, the business concern shall pay additional separate fees of \$100.00 to the Attorney General and \$500.00 to the Department per each individual so disclosed (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26-16.4(a)9). Individuals disclosed pursuant to N.J.A.C. 7:26-16.6 shall be considered to be additions to previously disclosed individuals for the purpose of calculating the per-company portion of the fee. Business concerns shall be required to pay the difference between a lower and higher per-company fee where newly disclosed individuals bring the total number of disclosed individuals to a level requiring a higher fee pursuant to (a) above.

(e) All individuals or business concerns required to be disclosed pursuant to N.J.A.C. 7:26-16.4(a) 1 and 2 as holding any equity in or debt liability of the original business concern filing the disclosure statement shall be considered to be additions to the original business concern filing the disclosure statement for the purpose of calculating the per-company portion of the fee. The original business concern filing the disclosure statement shall be required to pay the difference between a lower and higher per-company fee where newly disclosed individuals or business concerns bring the total number of disclosed individuals and business concerns to a level requiring a higher fee pursuant to (a) above.

(f) (No change.)

**HEALTH**

**(a)**

**DIVISION OF HEALTH FACILITIES EVALUATION  
Public Notice of Staffing Requirements for Long-term Care Facilities**

**N.J.A.C. 8:39-7.4(a), 17.4(a), 25.2(b)1 and (b)2, and 39.3(a)**

**Take notice** that the Department of Health will not enforce the mandatory staffing requirements for long-term care facilities found at N.J.A.C. 8:39-7.4(a), 17.4(a), 25.2(b)1 and (b)2, and 39.3(a) until April 1, 1990. These requirements, which were scheduled to take effect July 1, 1989, concern new staffing levels for patient activities, dietary, nursing, and social work services.

In accordance with N.J.A.C. 8:39-43.1, the Commissioner has evaluated these new staffing requirements and has found that they are not feasible at this time, due to administrative and budgetary considerations. Therefore, long-term care facilities will not be surveyed against these new standards until April 1, 1990. Any deficiencies which have been recorded with respect to these staffing requirements by the Division of Health Facilities Evaluation prior to April 1, 1990, will be removed from the facility's records.

This decision to delay enforcement of the new staffing requirements until April 1, 1990, is based on an agreement with the Division of Medical Assistance and Health Services of the Department of Human Services. This agreement provides that Medicaid reimbursement will be offered to long-term care facilities commensurate with the new staffing requirements as of April 1, 1990. This delay recognizes the need for the Division of Medical Assistance and Health Services to promulgate new rules, to develop new payment mechanisms, and to amend the Medicaid State Plan.

In the interim, until April 1, 1990, the interim mandatory staffing requirements specified in N.J.A.C. 8:39-43.3(a) and (b) will be used for purposes of licensing surveys and enforcement for all long-term care facilities.

**(b)**

**PUBLIC HEALTH COUNCIL**

**Local Health Development Services  
Recognized Public Health Activities and Minimum  
Standards of Performance for Local Boards of  
Health in New Jersey**

**Human Immunodeficiency Virus (HIV) Infection  
Basic Educational Program**

**Adopted New Rule: N.J.A.C. 8:52-4.6**

Proposed: September 5, 1989 at 21 N.J.R. 2696(a).

Adopted: October 16, 1989 by the Public Health Council,  
Milton Prystowsky, M.D., Chairperson.

Filed: October 18, 1989 as R.1989 d.574, **without change**.

Authority: N.J.S.A. 26:3A2-13 and 26:1A-1 et seq.

Effective Date: November 20, 1989.

Expiration Date: December 15, 1991.

**Summary of Public Comments and Agency Responses:**

The proposed Human Immunodeficiency (HIV) Infection Standard was published in the September 5, 1989 New Jersey Register. The public comment period ended on October 5, 1989. Four persons submitted written comments. The comments and the Department's responses are summarized as follows:

**COMMENT:** Three of the commenters opposed the proposed new rule because they believed it would effect Special Education Program requirements of the Office of Administrative Law concerning legal representation at contested case hearings or would impose an educational requirement for Special Education Program enrollees dealing with Human Immunodeficiency Virus (HIV) Infection.

**RESPONSE:** The three respondents have been advised that the HIV rule proposed by the Department of Health mandates that local boards

of health provide basic educational programs to prevent and control the transmission of the HIV infection and AIDS within their communities. This rule is to be included in Chapter 52 of the Administrative Code under the statutory authority of Title 26.

The proposed HIV rule is unrelated and does not impact in any way on the rules established by the Office of Administrative Law for the Special Education Program in N.J.A.C. 1:6A of the Administrative Code whose statutory authority is derived from Title 52. Proposed changes in the Office of Administrative Law rules appeared directly in front of the proposed HIV infection standard at 21 N.J.R. 2693(a). The similarity in Administrative Code and statutory citations and the proximity of the two proposals resulted in comments on the Office of Administrative Law proposal being directed to the Department of Health. The Department of Health proposal does not require or suggest that HIV education be provided in programs falling under the Special Education Program requirements of the Department of Education or in any way affect the right of legal representation in contested case hearings.

COMMENT: Without direct financial assistance from the State and detailed epidemiological data about HIV infected persons, the proposed standard will not impact on local health departments. HIV should be a State and local priority yet the proposed standards represent the first time the State Health Department has cut out a role for all local health departments. It is too little too late.

RESPONSE: It is true that there is no direct categorical funding to local health agencies to support the proposed activity. However, local health officials may apply for grants on a competitive basis to provide AIDS/HIV education and/or related services such as counseling and testing. Several local health departments currently receive such grant funds from the Department. The scope of activities mandated by the proposed standard are minimal in nature in recognition of the lack of monies to directly fund each local health department. The Department worked closely with the New Jersey Health Officers Association in developing the proposed standard to require that minimal but necessary services be provided by all local health departments with due recognition to the lack of additional funding.

Epidemiological data for municipalities with less than 50 reported AIDS cases may be obtained by special request to the Data Unit of the Department's Division of Aids Prevention and Control.

If additional funds become available, the involvement of local health departments in AIDS/HIV activities will change accordingly.

Full text of the adoption follows:

8:52-4.6 Human Immunodeficiency Virus (HIV) infection

(a) The local board of health shall administer a planned program to prevent and control HIV infection and shall:

1. Utilizing seroprevalence and case reporting data provided by the Department of Health, identify ways to reach persons at high risk within the community and develop and implement a strategy to disseminate HIV prevention and control information to these groups;
2. Maintain supplies of educational materials to meet information requests on the transmission, prevention and control of HIV;
3. Provide or arrange for other suitable local health education resources (for example, Planned Parenthood, Red Cross) to conduct education programs addressing the epidemiology, prevention and control of HIV to civic and community organizations and occupationally at risk groups utilizing state prepared or equivalent curricula;
4. Provide or arrange for in-service training addressing the epidemiology, prevention and control of HIV to all local health department personnel;
5. Develop and implement a protocol to refer individuals concerned about their HIV status to counseling and testing sites and other health care providers;
6. Refer HIV infected persons and their families seeking services to appropriate provider agencies such as mental health, drug treatment and other social service agencies; and
7. Participate in the planning, development and implementation of a county or regional program to control HIV infection and the progression to AIDS.

(a)

**DRUG UTILIZATION REVIEW COUNCIL  
Interchangeable Drug Products**

**Adopted Amendments: N.J.A.C. 8:71**

Proposed: July 3, 1989 at 21 N.J.R. 1790(a).

Adopted: October 16, 1989 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: October 18, 1989 as R.1989 d.573, with portions of the proposal not adopted and portions not adopted but still pending.

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

Effective Date: November 20, 1989.

Operative Date: November 20, 1989, but December 6, 1989 for the Albuterol product.

Expiration Date: February 17, 1994.

**Summary of Public Comments and Agency Responses:**

COMMENT: Concerning Albuterol, one manufacturer of the branded product for which Albuterol is a substitute pointed out that their patent does not expire until December 5, 1989, and requested that the Drug Utilization Review Council not adopt Albuterols until after that date.

RESPONSE: The Council agrees and has adopted Albuterols with an operative date of December 6, 1989.

The following products and their manufacturer were adopted with an effective date of December 6, 1989:

**Albuterol tabs 2, 4 mg** **Biocraft**

The following products and their manufacturers were adopted:

**Cefadroxil tabs 1 g** **Zenith**  
**Indomethacin ER caps 75 mg** **Inwood**

The following product was not adopted:

**Cyclacillin tabs 250, 500 mg** **Biocraft**

The following products were not adopted but are still pending:

Albuterol tabs 2, 4 mg	Purepac
Albuterol tabs 2, 4 mg	Danbury
Amantadine caps 100 mg	Invamed
Amiloride/HCTZ tabs 5/50	Danbury
Amiloride/HCTZ tabs 5/50	PharmBasics
Amoxapine tabs 25, 50, 100, 150 mg	Chelsea
Amoxapine tabs 25, 50, 100, 150 mg	Watson
Atenolol/chlorthalidone tabs 50/25, 100/25	Par
Betamethasone diprop. crm, oint, lot 0.05%	Clay-Park
Carisoprodol/aspirin tabs 200/325	Par
Clindamycin HCl caps 75, 150 mg	Danbury
Clonazepam tabs 0.5, 1, 2 mg	PharmBasics
Cyclopentolate ophth soln 1%	Paco
Dexamethasone/neomycin/polymyxin B ophth	Paco
Doxepin caps 10, 25, 50 mg	Purepac
Doxycycline caps 50, 100 mg	Interpharm
Doxycycline tabs 100 mg	Interpharm
Doxycycline tabs 100 mg	Pharbita
Erythromycin ER caps 250 mg	AmerTher
Fluocinolone acetonide cream 0.01, 0.025%	G&W
Fluocinolone acetonide oint 0.025%	G&W
Folic acid tabs 1 mg	Charlotte
Ibuprofen tabs 400 mg	Pharbita
Ibuprofen tabs 400, 600, 800 mg	Invamed
Indomethacin caps 25, 50 mg	Danbury
Loperamide caps 2 mg	Mylan
Lorazepam tabs 0.5 mg	PharmBasics
Methyldopa/HCTZ tabs 250/15, 250/25	Invamed
Metoclopramide inj. 5 mg/ml	Lemmon
Metoclopramide tabs 10 mg	Invamed
Metoclopramide tabs 10 mg	Sidmak
Minocycline caps 100 mg	Danbury
Nifedipine caps 20 mg	Purepac
Oxazepam caps 10, 15, 30 mg	Danbury
Prazepam caps 20 mg	PharmBasics
Prazosin caps 1, 2, 5 mg	Chelsea
Prednisolone acetate ophth sol 1%	Paco

**ADOPTIONS**

Procainamide ER tabs 500 mg	Invamed
Propranolol ER caps 60, 80, 120, 160 mg	Inwood
Propranolol tabs 10, 20, 40, 60, 80, 90 mg	Invamed
Ritodrine inj. 10 mg/ml, 15 mg/ml	TEVA
Sulfacetamide sodium ophth soln 10%	Paco
Thiothixene caps 20 mg	Cord
Timolol maleate tabs 5, 10, 20 mg	Danbury
Timolol maleate tabs 5, 10, 20 mg	Mylan
Timolol maleate tabs 5, 10, 20 mg	Novopharm
Timolol tabs 5, 10, 20 mg	Chelsea
Tobramycin ophth soln 0.3%	Paco
Trazodone tabs 150 mg	Chelsea
Tropicamide ophth soln 1%	Paco
Verapamil tabs 40 mg	Purepac
Vincristine inj. 1 mg/ml	TEVA

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 21 N.J.R. 2997(a).

**(a)**

**DRUG UTILIZATION REVIEW COUNCIL**

**Interchangeable Drug Products**

**Adopted Amendments: N.J.A.C. 8:71**

Proposed: March 20, 1989 at 21 N.J.R. 662(a).  
 Adopted: October 16, 1989 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: October 18, 1989 as R.1989 d.575, with portions of the proposal not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).  
 Effective Date: November 20, 1989.  
 Operative Date: December 6, 1989.  
 Expiration Date: February 17, 1994.

**Summary of Public Comments and Agency Responses:**

No comments were received concerning the product adopted herein. However, see the comment on albuterol made in the other adoption concerning N.J.A.C. 8:71 published in this issue of the New Jersey Register.

The following product and its manufacturer was adopted, with an operative date of December 6, 1989:

**Albuterol tabs 2, 4 mg** **Mutual**

The following products were not adopted but are still pending:

Albuterol tabs 2, 4 mg	PharmBasics
Amantadine caps 100 mg	Chase
Amoxapine tabs 25, 50, 100, 150 mg	Cord
Atenolol tabs 50, 100 mg	Par
Atenolol/HCTZ tabs 50/25, 100/25	Par
Baclofen tabs 10, 20 mg	Danbury
Chlorzoxazone tabs 500 mg	Danbury
Clonidine tabs 0.1, 0.2, 0.3 mg	Chelsea
Cyclobenzaprine tabs 10 mg	Cord
Disulfiram tabs 250, 500 mg	Danbury
Erythromycin ethylsucc. susp 200 & 400/5	Barr
Fenoprofen tabs 600 mg	Mutual
Fluphenazine tabs 1, 2.5, 5, 10 mg	Chelsea
Gemfibrozil caps 300 mg	Purepac
Hydroxyzine pamoate caps 25, 50, 100 mg	Cord
Ibuprofen tabs 400, 600 mg	Lederle
Imipramine tabs 10 mg	Vitarine
Imipramine tabs 10, 25, 50 mg	Mutual
Lactulose syrup 10 g/15 ml	Inalco SPA
Lorazepam tabs 0.5, 1, 2 mg	Mutual
Methylprednisolone tabs 16 mg	Chelsea
Metoclopramide syrup 5 mg/5 ml	Charter
Metoclopramide tabs 5 mg	Chelsea
Minocycline caps 50, 100 mg	Chelsea
Minocycline tabs 50, 100 mg	Chelsea
Nifedipine caps 10 mg	Cord
Perphenazine tabs 2, 4, 16 mg	Chelsea
Propranolol tabs 60, 90 mg	Watson

**CORRECTIONS**

Sulindac tabs 150, 200 mg	Cord
Sulindac tabs 150, 200 mg	Purepac
Tetracycline caps 500 mg	Vitarine
Theophylline ER tabs 100, 200, 300 mg	Sidmak
Thiothixene conc. 5 mg/ml	Charter
Valproic acid caps 250 mg	Chelsea

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 21 N.J.R. 2107(c) and 2996(a).

**CORRECTIONS**

**(b)**

**THE COMMISSIONER**

**Records**

**Expungement or Sealing of Records**

**Adopted New Rules: N.J.A.C. 10A:22-4**

Proposed: September 18, 1989 at 21 N.J.R. 2852(a).  
 Adopted: October 25, 1989 by William H. Fauver, Commissioner, Department of Corrections.  
 Filed: October 25, 1989 as R.1989 d.582, without change.  
 Authority: N.J.S.A. 30:1B-6 and 30:1B-10.  
 Effective Date: November 20, 1989.  
 Expiration Date: July 5, 1993.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows:

**SUBCHAPTER 3. (RESERVED)**

**SUBCHAPTER 4. EXPUNGEMENT OR SEALING OF RECORDS**

**10A:22-4.1 Procedures for expungement of records**

(a) Pursuant to N.J.S.A. 2C:52 et seq., whenever a correctional facility, Bureau Chief or an administrative unit head receives an Order from the Courts or from the Bureau of Correctional Information and Classification Services (C.I.I.S.) directing the expungement of inmate records, all records and information that are subject to said Order of Expungement shall be removed from the files and forwarded to the Bureau of Correctional Information and Classification Services.

(b) Inmate records shall include, but not be limited to:

1. Classification;
2. Identification;
3. Medical;
4. Education;
5. Professional services;
6. Payroll;
7. Business Office;
8. Management control;
9. Operations;
10. Internal Affairs; and
11. Mail records.

(c) To avoid any confusion and/or complication relative to permanent numerical files that may be maintained in various areas, a blank card reflecting only the appropriate number and in bold print, "NO RECORD", shall be inserted in place of the permanent record being removed.

(d) In the event there are reports, documents or material wherein more than one individual is mentioned, the name of the individual whose record has been expunged may be obliterated, rather than purging said record in its entirety.

(e) Any future Court Orders concerning the expunged records shall be forwarded immediately to the Bureau of Correctional Information and Classification Services.

(f) When an Order of Expungement is received and the individual named in such Order cannot be identified from the files, or if it is determined that the records have been transferred to another location

**CORRECTIONS**

**ADOPTIONS**

or holding area, the Order shall be forwarded immediately to the Bureau of Correctional Information and Classification Services.

(g) When handling inquiries for information relative to records affected by Orders of Expungement, the appropriate response shall be "NO RECORD".

(h) Disclosure of any information and/or records which have been expunged by Order of the Court is punishable in accordance with N.J.S.A. 2C:52-30.

**10A:22-4.2 Expungement of disciplinary records**

When an inmate is adjudicated not guilty of a disciplinary charge, the inmate's records shall be expunged in accordance with the procedures outlined in N.J.A.C. 10A:4-9.26, Expungement.

**10A:22-4.3 Procedures for sealing juvenile records**

(a) Whenever a correctional facility, Bureau Chief or an administrative unit head receives an Order from the Courts or from the Bureau of Correctional Information and Classification Services (C.I.C.S.) directing the sealing of juvenile records, all records concerning the inmate set forth in the Court Order shall be forwarded to the Bureau of Correctional Information and Classification Services for placement in the established sealed records file.

(b) All index references shall be marked "NOT AVAILABLE" or "NO RECORD".

(c) When correctional facility administrators receive inquiries for information relative to sealed juvenile records, the appropriate response shall be that there are no records with respect to such juveniles.

(d) Any future Court Orders concerning juvenile records shall be forwarded to the Bureau of Correctional Information and Classification Services.

(e) Any subsequent conviction of a crime or adjudication of delinquency or in need of supervision has the effect of nullifying the sealing Order.

**INSURANCE**

**(a)**

**DIVISION OF ADMINISTRATION**

**Notice of Administrative Correction Unfair Claims Settlement Practices Rules for Fair and Equitable Settlements Applicable to Property and Liability Insurance**

**N.J.A.C. 11:2-17.10**

**Take notice** that the Department of Insurance has discovered an error in the text of N.J.A.C. 11:2-17.10(a)13 currently in the New Jersey Administrative Code. In the text of the information required to be disclosed by an insurer to a claimant, the words "and warranties" should be deleted, and the words "quality and" inserted between "fit" and "performance." This change is in accordance with a change upon adoption (see R.1988 d.480) which was erroneously not printed in the notice of adoption (see 20 N.J.R. 2578(a)) or in the subsequent October 17, 1988 update to the Administrative Code. This notice is published pursuant to N.J.A.C. 1:30-2.7.

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

**11:2-17.10 Rules for fair and equitable settlements applicable to property and liability insurance**

(a) This section, unless otherwise noted in this subchapter, is applicable to claims arising under all property/liability coverages. This section is organized so that the requirements for all lines of property/liability insurance are found in (a)1 through 6 below; for automobile insurance only, in (a)7 through 13 below; and for other than automobile insurance only, in (a)14 and 15 below. The requirements of this section with respect to motor vehicle claims are in addition to the requirements of N.J.A.C. 11:3-10. In addition to the provisions of this section, the requirements for auto physical damage first party claims found in N.J.A.C. 11:3-10.1 through 10.4 shall also be con-

strued to apply to automobile property damage third party claims from the time that liability becomes reasonably clear. The requirements are as follows:

1.-12. (No change.)

13. Where the insurer specifies the use of after market parts, the insurer shall disclose to the claimant, in writing, either on the estimate or on a separate document attached to the estimate, the following information, which shall appear in print no smaller than 10 point type:

**THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN LIKE KIND AND QUALITY IN TERMS OF FIT, QUALITY AND PERFORMANCE [AND WARRANTY] TO REPLACE-MENT PARTS AVAILABLE FROM THE ORIGINAL MANU-FACTURER.**

The insurer shall clearly identify on the estimate of such repair all after market parts installed on the vehicle.

14.-15. (No change.)

**(b)**

**DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS**

**Motor Vehicle Self-Insurance**

**Adopted New Rules: N.J.A.C. 11:3-30**

Proposed: September 18, 1989 at 21 N.J.R. 2876(a).

Adopted: October 26, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: October 26, 1989 as R.1989 d.584, **without change.**

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 39:6-50.1 and 39:6-52 to 39:6-54.

Effective Date: November 20, 1989.

Expiration Date: January 6, 1991.

**Summary of Public Comments and Agency Responses:**

**COMMENT:** One comment was received in which it was suggested that the proposed rules should specifically state that motor vehicle self-insurers are subject to the Unfair Claims Settlement Practices rules set forth at N.J.A.C. 11:2-17.

**RESPONSE:** The Department believes that this change is unnecessary since N.J.S.A. 39:6-50.1 specifically provides that the Commissioner has the authority to exercise any power granted to him by Title 17 of the Revised Statutes with respect to vehicles which are self-insured in accordance with N.J.S.A. 39:6-52 to 39:6-54.

**Full text** of the adoption follows:

**SUBCHAPTER 30. MOTOR VEHICLE SELF-INSURANCE**

**11:3-30.1 Purpose**

This subchapter sets forth the filing requirements for motor vehicle self-insurers pursuant to N.J.S.A. 39:6-50.1, and 39:6-52 to 39:6-54.

**11:3-30.2 Scope**

The provisions of this subchapter apply to any person seeking to qualify as a motor vehicle self-insurer in New Jersey, except public entities pursuant to N.J.S.A. 39:6-54.

**11:3-30.3 Definitions**

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

"Applicant" means a person applying for a certificate of self-insurance who does not currently possess a valid certificate.

"Association" means the New Jersey Automobile Full Insurance Underwriting Association created pursuant to N.J.S.A. 17:30E-1 et seq.

"Certificate" means certificate of self-insurance.

## ADOPTIONS

"Certificate holder" means a person who currently possesses a valid certificate of self-insurance.

"Certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to do business.

"Commissioner" means the Commissioner of Insurance.

"Motorized bicycle" means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 cubic centimeters (cc.) or said motor is rated at no more than 1.5 brake horsepower and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.

"Motor vehicle" means all vehicles propelled otherwise than by muscular power, excepting such vehicles as run upon rails or tracks and motorized bicycles.

"Person" means a natural person, firm, co-partnership, association or corporation.

"Public entity" means this State, any political subdivision of this State or any municipality therein.

## 11:3-30.4 General requirements

(a) Any person in whose name more than 25 motor vehicles are registered or in whose name more than 25 motor vehicles are leased may qualify as a self-insurer by obtaining a certificate of self-insurance issued at the discretion of the Commissioner as provided in this subchapter.

(b) All filings for certificates of self-insurance, renewals, and any other filings deemed necessary by the Commissioner pursuant to this subchapter shall be sent to:

New Jersey Department of Insurance  
Financial Exams Division  
20 West State Street  
CN 325  
Trenton, New Jersey 08625  
Attention: Self-insurers

## 11:3-30.5 Certificate of self-insurance

(a) Any person applying for a certificate of self-insurance shall submit the following to the Commissioner:

1. A completed application form on forms to be provided by the Commissioner;

2. The most current financial statement and financial statements for the two years immediately preceding the date of such current financial statement:

i. All financial statements shall be certified by a Certified Public Accountant;

ii. If the applicant is a subsidiary of a corporation, the applicant shall also submit the financial statements of the subsidiary's ultimate parent corporation;

iii. If the applicant is a corporation, the Commissioner may also include the name of any subsidiary corporation under the control of that corporation in the certificate of self-insurance if the ultimate parent corporation guarantees that it will discharge the subsidiary's liability as evidenced by the filing of an indemnity agreement. If the ultimate parent corporation does not provide such a guarantee, the subsidiary shall make a separate application and receive independent qualification as a self-insurer. If the name of the subsidiary is included in the certificate of self-insurance of the ultimate parent corporation and ownership of the ultimate parent or subsidiary corporation changes, the ultimate parent or subsidiary shall reapply for a certificate of self-insurance within 30 days of the ownership change; and

3. A \$1,000 filing fee.

(b) After the submission of an application, the Commissioner may require an additional fee to cover the costs of further examinations which may include a credit report to be prepared by a credit agency acceptable to the Commissioner.

(c) If an application is approved and the Commissioner receives notification from the Association that the applicant has paid any applicable policy constant or RMEC pursuant to N.J.S.A. 17:29A-37.1 and 17:30E-1 et seq., respectively, the Commissioner shall issue a certificate of self-insurance to the applicant.

## INSURANCE

(d) All certificates of self-insurance are valid from the date of issuance until June 30 immediately following and may be renewed thereafter, pursuant to N.J.A.C. 11:3-30.6, for a one year period beginning July 1 and ending June 30 the following year.

## 11:3-30.6 Renewals

(a) Any certificate holder applying for renewal shall submit the following so that it is received by the Commissioner not later than June 1 of the year of the expiration date of such certificate:

1. An accident and claim activity report on forms to be provided by the Commissioner;

2. A financial statement for the calendar year immediately preceding the expiration date of the certificate of self-insurance certified by a Certified Public Accountant;

3. An updated vehicle listing which shall include a listing of the vehicles subject to any applicable policy constant or RMEC pursuant to N.J.S.A. 17:29A-37.1 and 17:30E-1 et seq., respectively;

4. A \$1,000 renewal fee; and

5. Any other information that is substantially different from the information provided in the original application form or from the information provided in the last renewal period.

(b) After the submission of an application for renewal, the Commissioner may require an additional fee to cover the costs of further examinations which may include a credit report to be prepared by a credit agency acceptable to the Commissioner.

(c) If an application for renewal is approved and the Commissioner receives notification from the Association that the certificate holder has paid any applicable policy constant or RMEC pursuant to N.J.S.A. 17:29A-37.1 and 17:30E-1 et seq., respectively, the Commissioner shall issue a new certificate of self-insurance.

## 11:3-30.7 Surety bond requirement

(a) The Commissioner may require the furnishing of a surety bond and/or evidence of excess insurance.

(b) If the applicant or certificate holder is required to furnish a surety bond, the surety bond shall be in an amount of not less than \$300,000, with an additional \$10,000 for each vehicle registered or leased in the applicant's or certificate holder's name over the minimum required to qualify as self-insurer under this subchapter, up to a maximum amount of \$1,000,000.

## 11:3-30.8 Audits and examinations

(a) The Commissioner may make or cause to be made audits or examinations as may be necessary to determine the ability of the applicant or the certificate holder to discharge its financial obligations as a self-insurer.

(b) The applicant or certificate holder shall pay the reasonable expenses of the audit or examination.

## 11:3-30.9 Public entities

(a) This subchapter does not apply to any motor vehicle owned by the United States, this State, any political subdivision of this State or any municipality therein; nor to any motor vehicle which is subject to the requirements of law requiring insurance or other security on certain types of vehicles, other than the requirements of N.J.S.A. 39:6A-1 et seq. or N.J.S.A. 39:6B-1 et seq.

(b) Notwithstanding the provisions in (a) to the contrary, any public entity that currently has or will establish in the future a self-insurance program or plans to discontinue a self-insurance program currently in effect, shall notify the Commissioner in writing that it currently has, will establish or discontinue such a program.

## 11:3-30.10 Cancellation of certificate of self-insurance

After a hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, upon not less than five days' notice, the Commissioner may cancel a certificate of self-insurance upon reasonable grounds including, but not limited to, failure to pay any judgment within 30 days after such judgment has become final.

**(a)**

**DIVISION OF ADMINISTRATION**

**Group Self-Insurance**

**Readoption with Amendments: N.J.A.C. 11:15**

Proposed: July 3, 1989 at 21 N.J.R. 1817(a).  
 Adopted: October 26, 1989 by Kenneth D. Merin, Commissioner,  
 Department of Insurance.  
 Filed: October 26, 1989 as R.1989 d.585, with technical changes  
 not requiring additional public notice and comment (see  
 N.J.A.C. 1:20-4.3).  
 Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 34:15-77 et seq., and  
 40A:10-36 et seq.  
 Effective Date: October 26, 1989, Readoption; November 20,  
 1989, Amendments.  
 Expiration Date: October 26, 1994.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

The Department has clarified upon adoption the chapter heading and  
 the heading of subchapter 1. In addition, an erroneous citation in  
 N.J.A.C. 11:15-1.16(d) is corrected.

Full text of the readoption may be found in the New Jersey Admin-  
 istrative Code at N.J.A.C. 11:15.

Full text of the changes between proposal and adoption follows  
 (additions to proposal indicated in boldface with asterisks \*thus\*;  
 deletions from proposal indicated in brackets with asterisks \*[thus]\*):

CHAPTER 15  
 \*[HOSPITAL WORKERS' COMPENSATION]\*  
 GROUP\*[ED]\* SELF-INSURANCE \*[REGULATIONS]\*  
 SUBCHAPTER 1. \*[GENERAL PROVISIONS]\* \*HOSPITAL  
 WORKERS' COMPENSATION GROUP  
 SELF-INSURANCE\*

11:15-1.16 Deficits

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

(d) If the group fails to make the required assessment of its mem-  
 bers within 30 days after the Commissioner orders it to do so, or  
 if the deficiency is not fully made up within 60 days after the date  
 on which such assessment is made, or within such longer period of  
 time as may be specified by the Commissioner, the group shall be  
 deemed to fall within the condition in N.J.S.A. 34:15-77.\*[8]\*\*1\*c.

**(b)**

**DIVISION OF ENFORCEMENT AND CONSUMER  
 PROTECTION**

**Motor Vehicle Insurance**

**Insurance Fraud: National Automobile Theft Bureau**

**Adopted New Rules: N.J.A.C. 11:16-2**

Proposed: September 18, 1989 at 21 N.J.R. 2901(a).  
 Adopted: October 26, 1989 by Kenneth D. Merin, Commissioner  
 of Insurance.  
 Filed: October 26, 1989 as R.1989 d.583, 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. 17:1C-6(e); 17:33A-1 et seq.; 17:23-8 et seq.;  
 and P.L. 1989, c.65.  
 Effective Date: November 20, 1989.  
 Expiration Date: February 3, 1991.

**Summary of Public Comments and Agency Responses:**

COMMENT: The National Automobile Theft Bureau (NATB) of-  
 fered two comments. First, they suggest that proposed N.J.A.C. 11:16-2.5  
 be deleted. This provision requires that the NATB provide physical  
 damage insurers with information it receives from law enforcement agen-

cies and police concerning located stolen or abandoned vehicles. The  
 NATB notes that it has no means of identifying the proper insurer in  
 such cases and that such an activity is therefore not performable. Second,  
 the NATB suggests that proposed N.J.A.C. 11:16-2.8(a)3 be amended to  
 reflect the fact that it can at present provide insurers with more claims  
 information concerning the vehicle than just information concerning  
 previous "similar" claims.

RESPONSE: The Department agrees with both comments for the  
 reasons offered by NATB and has made the necessary changes upon  
 adoption.

COMMENT: Scottish and York International Insurance Group ques-  
 tions whether the new rules apply to excess and surplus lines carriers.

RESPONSE: Pursuant to the underlying statute, P.L. 1989, c.65, the  
 rules apply to all insurers "transacting automobile insurance in this  
 State." See also proposed N.J.A.C. 11:16-2.1. Accordingly, the rules  
 apply to excess and surplus lines carriers if they transact automobile  
 insurance in New Jersey. Proposed N.J.A.C. 11:16-2.2 is amended to  
 clarify that "insurer" refers to all such persons or entities.

COMMENT: MCA Insurance Companies (MCA) comments that  
 proposed N.J.A.C. 11:16-2.4(a)2, which requires insurers to report to the  
 NATB all losses involving motor vehicle salvage, should be amended to  
 require reporting of salvage only for the current model year and for four  
 years prior. MCA says that this is consistent with current NATB  
 procedures, with which MCA suggests conformity.

RESPONSE: The NATB is currently reviewing the procedure noted  
 above. At present it has the capability to handle reporting for all salvage  
 and has indicated no reluctance to do so. The rule as proposed is more  
 consistent with the underlying legislation and should not be altered to  
 conform to a procedure which may well be modified.

COMMENT: MCA also comments that the word "immediately" in  
 proposed N.J.A.C. 11:16-2.5, concerning insurer notice to an insured of  
 the location of a located stolen or abandoned motor vehicle, is am-  
 biguous. MCA suggests that this word and sentence be deleted and  
 replaced with: "Promptly upon the receipt of such information from the  
 NATB, the insurer shall notify the insured of the location where the  
 motor vehicle has been stored."

RESPONSE: As noted above in a prior response, this entire section  
 has been deleted.

COMMENT: Allstate Insurance Company (Allstate) suggests that the  
 five-day notice requirement for reporting to the NATB losses involving  
 salvage in proposed N.J.A.C. 11:16-2.4(a)2 should be changed to 10 days.  
 This is considered necessary to accommodate Allstate's current  
 procedures.

RESPONSE: The five-day requirement is currently employed by sev-  
 eral other states which have adopted similar rules, including Connecticut,  
 New York and Massachusetts. Since Allstate is undoubtedly already  
 complying with the pre-existing requirements of these states, it can also  
 comply with the New Jersey requirement. In any case, this requirement  
 is considered to be reasonable and necessary.

COMMENT: Allstate states that the five-day settlement deferment  
 requirement in proposed N.J.A.C. 11:16-2.8(a)2 is inconsistent with or  
 renders more difficult compliance with the 30-day claim settlement re-  
 quirement for settling total losses (see N.J.A.C. 11:3-10.5). Allstate re-  
 quests elimination of the five-day deferment.

RESPONSE: These two provisions should not conflict in most cases.  
 The insurer is merely asked to defer payment for five days rather than  
 to completely abandon work on adjusting the claim during this period.  
 This provision is considered to be necessary to maximize the benefits of  
 the entire legislative and regulatory scheme. Further, if the insurer must  
 report to the NATB within two working days and the NATB must  
 acknowledge within 10 working days, then a five-day deferment can in  
 theory total no more than 23 calendar days. Thus, the current 30 calendar  
 day payment requirement should generally not be a problem. Moreover,  
 in cases where the NATB finds something, then that may be "clear  
 justification" to exceed the 30 calendar days required for payment within  
 the purview of N.J.A.C. 11:3-10.5(a). The Department also notes that  
 New York already has a similar requirement in operation which,  
 presumably, Allstate satisfies.

**Agency Initiated Changes:**

The Department has deleted the word "same" before "vehicle" in  
 N.J.A.C. 11:16-2.8(a)3 since the word is unnecessary.

A date definite, December 20, 1989, has been inserted at N.J.A.C.  
 11:16-2.3(a).

## ADOPTIONS

## INSURANCE

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## SUBCHAPTER 2. REPORTS TO THE NATIONAL AUTOMOBILE THEFT BUREAU

### 11:16-2.1 Purpose and scope

This subchapter governs the reporting of motor vehicle theft or salvage and related transactions between insurers and the National Automobile Theft Bureau (NATB), in implementation of P.L. 1989, c.65. This subchapter applies to all insurers transacting motor vehicle insurance in New Jersey.

### 11:16-2.2 Definitions

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

"Insurer" means any corporation, company, partnership, association, society, order, individual or combination of individuals \*[authorized to write and writing motor vehicle insurance]\* **\*transacting automobile insurance\*** in New Jersey.

"Major component part" means the engine, transmission, front end assembly, hood, doors, trunk lid, rear clip or any other part of a motor vehicle on which a unique vehicle identifying number has been placed.

"Motor vehicle" means all vehicles propelled other than by muscular power, excepting such vehicles as are run only upon rails or tracks.

### 11:16-2.3 NATB membership or service company requirement

(a) \*[Within 30 days after the effective date of this subchapter]\* **\*By December 20, 1989\***, every insurer transacting motor vehicle insurance in New Jersey that is not already a member or a service company of the NATB, shall make application to become either a member or a service company of the NATB. An insurer shall pay all assessments for membership or service company status as may be required by the NATB in the manner prescribed by the NATB.

(b) An insurer shall become and remain either a member or a service company of the NATB as a condition of maintaining its authorization to conduct the business of motor vehicle insurance in New Jersey.

(c) Applications for membership and service company status and related information can be secured from:

NATB  
10330 South Roberts Road—3A  
Palos Hills, Illinois 60465-1998

### 11:16-2.4 Insurer reporting requirements

(a) Insurers shall report to the NATB all motor vehicles involved in losses as follows:

1. All thefts of a motor vehicle, or any of its major component parts, shall be reported within two working days from the receipt of sufficient information from the insured. The NATB shall acknowledge the receipt of each theft report received from an insurer within 10 working days. If the insurer has not received any acknowledgement or communication from the NATB within 10 working days following its submission to the NATB of the report, the insurer shall immediately communicate with the NATB to determine the status of its report.

2. All losses involving motor vehicle salvage, however sustained, including salvage retained by either an insured or a third party claimant, shall be reported to the NATB within five working days after the sale of salvage; or, if the insured is permitted to retain salvage, within five working days after the date of loss payment.

3. All insurers required to submit reports to the NATB in compliance with this subchapter shall be bound by all of the reporting requirements of the NATB.

### \*[11:16-2.5 NATB recording and reporting recovery of stolen or abandoned vehicles

The NATB shall be responsible for receiving and recording reports received from police and other law enforcement agencies of located stolen or abandoned motor vehicles. The NATB shall promptly

transmit such information to the insurer providing physical damage coverage, if any, on the located motor vehicle. The insurer shall immediately notify the insured of the location where the motor vehicle has been stored.]\*

### 11:16-[2.6]\*\*2.5\* Insurer cooperation with NATB

Insurers shall cooperate with the NATB and shall release information in their possession to the NATB upon its reasonable request.

### 11:16-[2.7]\*\*2.6\* NATB cooperation with insurers

The NATB shall cooperate with insurers in the resolution of errors and the investigation of claims suspected to be fraudulent.

### 11:16-[2.8]\*\*2.7\* Deferred claim processing and payment

(a) Notwithstanding any provision of Title 11 of the New Jersey Administrative Code to the contrary, an insurer shall defer the processing and payment of a claim filed under comprehensive or other coverage in accordance with the following:

1. No insurer shall pay a claim filed by an insured under comprehensive or other coverage for the theft of a motor vehicle or its major component parts unless said claim has first been reported to and acknowledged by the NATB.

2. An insurer shall defer the payment of a claim for five calendar days following receipt of the acknowledgement from the NATB of the insurer's report. If no further communication is received from the NATB during this five-day period indicating unresolved questionable circumstances, the insurer shall continue with the processing of the claim in accordance with the provisions of this section and other provisions of Title 11 of the New Jersey Administrative Code.

3. If the NATB indicates in its response to the insurer that coverage is in effect by more than one insurer for the same motor vehicle or that the motor vehicle has been previously reported as stolen and unrecovered, or that previous \*[similar]\* claims on the \*[same]\* vehicle have been reported, the insurer shall promptly investigate and resolve such discrepancy.

4. If the NATB discovers an erroneous vehicle identification number (VIN) and the NATB is unable to clear up such discrepancy internally, the NATB shall send a questionnaire to the insurer. This questionnaire shall be returned within five working days of receipt by the insurer. If the NATB and insurer are unsuccessful, after due diligence, in resolving the VIN error after a 30-day period from the date of the receipt by the insurer of sufficient information from the insured, the insurer shall proceed with the processing of the loss claim.

5. If the NATB indicates in its response to the insurer or the insurer finds that it has reasonable cause to believe that the loss may have been caused by the criminal or fraudulent act of any person, the insurer shall suspend the processing of the claim and promptly begin an investigation. The insurer shall promptly provide such information to the NATB and shall cooperate fully with the NATB in its investigation of criminal or fraudulent acts.

### 11:16-[2.9]\*\*2.8\* NATB record retention

Such reports as may be required to be filed with the NATB by an insurer pursuant to P.L. 1989, c.65, this subchapter and the operating procedures of the NATB, shall be maintained by the NATB for at least a period of five years from the date of entry into the NATB system, except that in the case of motor vehicle salvage, such reports shall be maintained for a period of at least two years from such entry.

### 11:16-[2.10]\*\*2.9\* Penalties

Failure of an insurer to abide by the requirements of this subchapter may lead to the imposition of sanctions or penalties as provided by law.

**LAW AND PUBLIC SAFETY**

**(a)**

**STATE BOARD OF DENTISTRY**

**Application Fees**

**Adopted Repeal: N.J.A.C. 13:30-2.18**

**Adopted Amendments: N.J.A.C. 13:30-1.2, 1.12, 1.15 and 8.1**

Proposed: August 21, 1989 at 21 N.J.R. 2466(a).

Adopted: September 22, 1989 by the State Board of Dentistry, Samuel Furman, D.D.S., President.

Filed: October 24, 1989 as R.1989 d.581, **with technical changes** to N.J.A.C. 13:30-1.12 and 1.5 not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:6-3, 4, 52 and 57; 45:1-3.2.

Effective Date: November 20, 1989.

Expiration Date: April 15, 1990.

The State Board of Dentistry afforded all interested parties an opportunity to comment on the proposed repeal and amendments relating to fees charged by the Board. The official comment period ended on September 20, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on August 21, 1989 at 21 N.J.R. 2466(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Camden Courier Post, the Asbury Park Press, the New Jersey Dental Hygienists Association, the New Jersey Dental Association, dental practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Dentistry, Room 321, 1100 Raymond Boulevard, Newark, New Jersey 07102.

**Summary of Public Comments and Agency Responses:**

One comment supporting the proposed amendments was received from the New Jersey Dental Association, which stated that the proposed increase in the biennial registration fee is reasonable and would not represent an undue financial burden to its licensee members.

**Summary of Changes Upon Adoption:**

N.J.A.C. 13:30-1.2 and 8.1 are adopted as proposed, as is the repeal of N.J.A.C. 13:30-2.18. However, due to the adopted fees for dentist's license application at N.J.A.C. 13:30-8.1(a)1 and the increased dentist's license fee at N.J.A.C. 13:30-8.1(b)1i, the fee recitations in N.J.A.C. 13:30-1.12(d)3 and 1.15(d) are changed upon adoption.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

13:30-1.2 Application procedure  
(a)-(c) (No change.)

13:30-1.12 Licensure of candidates  
(a)-(c) (No change.)  
(d) The New Jersey State Board of Dentistry requires:  
1.-2. (No change.)

3. **\*[State licensing and examination fee which is \$50.00 (the latter pertains only to those electing to take the simultaneous examination).]\*** License fee to practice dentistry in New Jersey through the N.E.R.B. examination is **\*[\$50.00]\*** **\*\$100.00\*** payable to the State of New Jersey. Those electing to take the Northeast Regional Board examination pay the examination fee directly to the N.E.R.B.  
(e)-(g) (No change.)

13:30-1.15 Intern and resident permits  
(a)-(c) (No change.)  
(d) There is no fee for the intern or resident permit for the candidate who has already paid the license application fee of **\*[\$50.00]\*** **\*\$75.00\***.  
(e) (No change.)

13:30-2.18 (Reserved)

13:30-8.1 Fee schedules

(a) The application fees charged by the Board of Dentistry shall be the following:

- 1. Dentists ..... \$75.00
- 2. Dental Hygienists ..... \$50.00
- 3. Dental Hygienists—expanded duties supplement ..... \$10.00
- 4. Registered Dental Assistants ..... \$15.00

(b) The Biennial Registration fees charged by the Board of Dentistry shall be the following:

- 1. Dentists:
  - i. Active registration ..... \$100.00
  - ii. Inactive registration ..... \$40.00
  - iii. Branch office ..... \$20.00
- 2. Dental Hygienists:
  - i. Active registration ..... \$30.00
  - ii. Inactive registration ..... \$10.00
  - iii. Branch office ..... \$10.00
- 3. Registered Dental Assistants
  - i. Active registration ..... \$30.00

(c) Registrations submitted after due dates shall have the following late fees assessed:

- 1. Dentists:
  - i. Active registration ..... \$35.00
  - ii. Inactive registration ..... \$35.00
- 2. Dental Hygienists:
  - i. Active registration ..... \$35.00
  - ii. Inactive registration ..... \$35.00
- 3. Registered Dental Assistants:
  - i. Active registration ..... \$35.00

(d) (No change in text.)

**(b)**

**AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY ADVISORY COMMITTEE**

**Examination Requirement**

**Adopted Amendment: N.J.A.C. 13:44C-3.2**

Proposed: September 5, 1989 at 21 N.J.R. 2702(a).

Adopted: October 12, 1989 by Judith S. Bailey, Deputy Director, Division of Consumer Affairs.

Filed: October 23, 1989 as R.1989 d.579, **without change, but with the proposed amendment to N.J.A.C. 13:44C-7.2 not adopted at this time.**

Authority: N.J.S.A. 45:3B-24.

Effective Date: November 20, 1989.

Expiration Date: July 18, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

The Division is not adopting the proposed amendment to N.J.A.C. 13:44C-7.2, Exemptions, at this time pending further consideration.

**Full text** of the N.J.A.C. 13:44C-3.2 adoption follows:

13:44C-3.2 Requirements for licensure

(a) An applicant for licensure shall submit the following to the Advisory Committee:

- 1.-3. (No change.)
- 4. Satisfactory proof of having achieved a score of 600 on the National Teachers' Examinations in audiology or speech-language pathology, as appropriate, administered and set by Educational Testing Service in Princeton, New Jersey. An applicant may substitute a current and valid license to practice audiology or speech-language pathology, as is appropriate; issued by another state with substantially equivalent requirements for licensure, as satisfactory proof of having passed the examination.

## ADOPTIONS

## TRANSPORTATION

## TRANSPORTATION

## (a)

## DIVISION OF RIGHT OF WAY

## Acquisitions

## Adopted Repeals and New Rules: N.J.A.C. 16:5

Proposed: September 5, 1989 at 21 N.J.R. 2713(a).

Adopted: October 11, 1989 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Filed: October 19, 1989 as R.1989 d.576, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 7-22, 7-44.6, 20:1-1 through 1-33.

Effective Date: November 20, 1989.

Expiration Date: November 20, 1994.

## Summary of Public Comments and Agency Responses:

## No comments were received.

The proposed rules were reviewed by the Staff of the Bureau of Acquisitions which recommended a change not requiring additional public notice and comment in order to comply with Federal Law. N.J.A.C. 16:5-2.1(k) which reads, "If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant as defined at N.J.A.C. 16:5-1.1, the Agency shall have the right to acquire the uneconomic remnant along with the portion of the property needed for the project." The words "have the right" are changed to "offer" to more properly express the Department's intent.

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 5  
ACQUISITIONS

## SUBCHAPTER 1. GENERAL PROVISIONS

## 16:5-1.1 Purpose

The rules in this chapter govern the acquisition of private property for a public purpose by the Department of Transportation.

## 16:5-1.2 Definitions

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

"Agency" means the State of New Jersey, Department of Transportation, which is condemning private property for a public purpose under the power of eminent domain.

"Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

"Award" means the award of compensation made by the three commissioners appointed by the Court to determine the just compensation.

"Compensation" means the just compensation which the Agency is required to pay and the owner is entitled to receive, according to law, as the result of the condemnation of property.

"Condemnation" means the taking of private property for a public purpose under the power of eminent domain.

"Condemnee" means the owner of an interest in the private property being condemned for a public purpose under the power of eminent domain.

"Court" means the Superior Court of New Jersey.

"Initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property or such lesser interest as may be required.

"Judgement" means the adjudication by the court of any issue of fact or law, or both, arising under N.J.S.A. 20:3-1 et seq.

"Property" means land, or any interest in land and any building, structure or other improvement imbedded or affixed to land, and any article so affixed or attached to such building, structure or improvement as to be an essential and integral part thereof; any article affixed or attached to such property in such manner that it cannot be removed without material injury to itself or to the property; and any article so designed, constructed, or specially adapted to the purpose for which such property is used that it is an essential accessory or part of such property; it is not capable of use elsewhere; and would lose substantially all its value if removed from such property.

"Salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

"Tenant" means a person who has the temporary use and occupancy of real property owned by another.

"Uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Agency has determined it has little or no value or utility to the owner.

## SUBCHAPTER 2. BASIC ACQUISITION POLICIES

## 16:5-2.1 Basic acquisition policies

(a) The Agency shall make every reasonable effort to acquire real property expeditiously by negotiation.

(b) As soon as practicable, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the Agency's obligation to secure an appraisal and to provide it to the owner.

(c) Before the initiation of negotiations, the real property to be acquired shall be appraised, except as provided in (c)1 below, and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

1. An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data.

(d) Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property or such lesser rights to be acquired. The amount shall not be less than the approved appraisal of the fair market value of the property being taken, taking into account the value of allowable damages or benefits to any remaining property. The Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. A copy of the approved appraisal shall be tendered to the property owner concurrent with the written offer.

1. The initial written purchase offer of just compensation shall include:

i. A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated;

ii. A description and location identification of the real property and the interest in the real property to be acquired; and

iii. An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, for example, a tenant owned improvement, and indicate that such interest is not covered by the offer.

(e) The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation, and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with N.J.A.C. 16:5-2.5.

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1. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(f) Owners of improved properties where agreement is reached shall, upon acceptance and approval of the amount by the Commissioner, be eligible for an advance down payment up to 25 per cent of the purchase price, provided the amount of down payment does not exceed 75 per cent of their equity in the property.

(g) If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing. The updated appraisal should accompany the new fair market value offer.

(h) The Agency shall not advance the time of condemnation or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest.

(j) Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right of entry for construction purposes before making payment available to an owner.

(k) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant as defined at N.J.A.C. 16:5-1.1, the Agency shall ~~\*[have the right]\*~~ **\*offer\*** to acquire the uneconomic remnant along with the portion of the property needed for the project.

(l) If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

(n) If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value, as defined at N.J.A.C. 16:5-1.1, of the retained improvement.

#### 16:5-2.2 Criteria for appraisals

(a) The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the ap-

praiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

1. The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal;

2. An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition; an adequate description of the remaining property); a statement of the known and observed encumbrances, if any; title information; location; zoning; present use; an analysis of highest and best use; and at least a five year sales history of the property;

3. All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value;

4. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction;

5. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate; and

6. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(d) No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition when the value of the acquisition is \$2,500 or less.

#### 16:5-2.3 Review of appraisals

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may prepare a fully documented appraisal to support an approved or recommended value.

(c) The reviewing appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

#### 16:5-2.4 Acquisition of tenant-owned improvements

(a) When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the

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right or obligation to remove the improvement at the expiration of the lease term.

(b) Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property.

(c) Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater.

(d) No payment shall be made to a tenant-owner for any real property improvement unless:

1. The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency, all of the tenant-owner's right, title, and interest in the improvement;

2. The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

3. The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) Nothing in this section shall be construed to deprive the tenant-owner of any right to reject payment under this section and to obtain payment for such property interests in accordance with other applicable law.

**16:5-2.5 Expenses incidental to transfer of title to the Agency**

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for the following:

1. Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property;

2. Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

3. The pro rata portion of any prepaid real property taxes which are allocatable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

**16:5-2.6 Certain litigation expenses**

(a) The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

1. The final judgment of the Court is that the Agency cannot acquire the real property by condemnation;

2. The condemnation proceeding is abandoned by the Agency other than under an agreed upon settlement; or

3. The Court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

**16:5-2.7 Donations**

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in N.J.A.C. 16:5-2.1(c)1.

**16:5-2.8 Condemnation**

Where title is unmarketable, price agreement cannot be reached, or the owners cannot be located, the Agency will initiate condemnation proceedings in accordance with N.J.S.A. 20:3-1 et seq.

**TRANSPORTATION****SUBCHAPTER 3. AGRICULTURAL OR HORTICULTURAL LAND****16:5-3.1 Authority**

All provisions of this subchapter were adopted by the Commissioner of Transportation, pursuant to authority delegated at N.J.S.A. 20:3-29.1, which became effective July 17, 1986.

**16:5-3.2 General provisions**

The Agency, in condemning agricultural or horticultural land which is eligible for valuation, assessment and taxation under the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., shall compensate the condemnee for any loss of income resulting from the interference of the condemnation with the harvesting of any standing crops or other agricultural commodities, in an amount determined according to their appropriate time of harvest, and for the remainder of their average productive life, separate and apart from compensation for the fair market value of the land.

**16:5-3.3 Eligibility requirements**

To be considered eligible for compensation, a property must be eligible for valuation, assessment and taxation under the Farmland Assessment Act of 1964. The property must contain at least five acres, have been actively used for revenue producing agricultural or horticultural purposes over the past three years and have provided an income of at least five hundred dollars (\$500.00) in the aggregate and fifty dollars (\$50.00) per acre per year. Additionally, the property must be currently planted in crops and the condemnation proceedings must interfere with the harvesting of the crop. In the case of annual crops, it is the Agency's policy to allow the harvesting of the current crop, consistent with the requirement of the State's construction, as determined by the Agency.

**16:5-3.4 Valuation of standing crop income**

The anticipated annual acreage income from the standing crop over its remaining average productive life will be developed for the Agency by a qualified agricultural expert, as determined by the Agency. The specialist will estimate the average remaining productive life of the crop, the average anticipated gross income from the impacted crop and the anticipated expenses related to harvest and sale of the produce. The net anticipated income from the crop over the average remaining productive life of the crop will then be capitalized by the Agency into a present value.

**16:5-3.5 Negotiations**

The appraised valuation of the crop will be tendered to the condemnee concurrent with, but separate and apart from, the fair market value real estate offer. Where prolonged negotiations have allowed one or more harvest seasons to pass, where the condemnee has had the opportunity to reap the crops, or upon the Agency taking possession of the property pursuant to a condemnation action, the valuation of the standing crop will be updated to reflect the reduction in the average remaining productive life and also to eliminate crop income realized by the condemnee for harvesting the taken property.

**16:5-3.6 Condemnation**

Offers of compensation tendered under this subchapter will not be considered a part of the valuation of the real property for the purpose of acquisition of the real property.

**16:5-3.7 Appeals**

The condemnee may appeal the Agency's determination as to amount of, or eligibility for, payments under this subchapter, in accordance with N.J.A.C. 16:6-3.3.

**SUBCHAPTER 4. ORGANIZATION AND PROCEDURES****16:5-4.1 Exercise of powers**

The Department of Transportation may exercise, on behalf of any county, municipality, or other entity, as the case may be, the powers granted to these agencies under N.J.S.A. 20:3-1 et seq.

**16:5-4.2 Delegation of powers**

Ordinarily, the Bureau of Acquisition and Appraisals, within the Division of Right of Way, will be responsible for administering these

**TRANSPORTATION**

rules and the attendant Federal and State laws, on behalf of the Commissioner of Transportation.

**16:5-4.3 Federal law**

The administration of acquisition procedures shall be provided consistent with applicable Federal laws and regulations.

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**New Jersey Bridge Rehabilitation and Improvement Fund: State Aid to Counties and Municipalities**

**Adopted New Rules: N.J.A.C. 16:21A**

Proposed: September 5, 1989 at 21 N.J.R. 2716(a).

Adopted: October 6, 1989 by Robert A. Innocenzi, Acting

Commissioner, Department of Transportation.

Filed: October 19, 1989 as R.1989 d.577, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 7-47 and the New Jersey Bridge Rehabilitation and Improvement Bond Act of 1983, P.L. 1983 c.363.

Effective Date: November 20, 1989.

Expiration Date: November 20, 1994.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adopted new rules may be found in the New Jersey Administrative Code at N.J.A.C. 16:21A, except for the text of N.J.A.C. 16:21A-1.3, which follows:

**16:21A-1.3 Standards**

(a) The proposed bridge improvement projects shall conform to the design criteria of the appropriate American Association of State Highway and Transportation Officials publication or New Jersey Department of Transportation Standards listed below. Any exceptions to these design criteria must be justified by the local engineer to be in the public interest.

1. New Jersey Department of Transportation for Resurfacing, Restoration and Rehabilitation of Highways and Streets;
2. A Policy on Geometric Design of Highways and Streets;
3. Standard Specifications for Highway Bridges.

(b) Construction and materials shall conform with the current New Jersey State Department of Transportation Standard Specifications for Road and Bridge Construction.

**TREASURY-GENERAL**

**(b)**

**COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT**

**Division of Purchase and Property, Purchase Bureau**

**Division of Building and Construction**

**Division of Development for Small Business, and Women and Minority Business**

**Notice of Administrative Correction**

**Time for Application to Register as a Minority Business or Female Business**

**N.J.A.C. 17:14-1.6 and 12A:10-2.6**

**Take notice** that an error in the text of N.J.A.C. 17:14-1.6 and 12A:10-2.6 as adopted in the November 6, 1989 New Jersey Register contains an erroneous statutory reference. In subsection (c) of both rules, the citation to N.J.S.A. 32-2.3(b)(2) should be to N.J.S.A. 52:32-2.3(b)(2). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

**ADOPTIONS**

**Full text** of the corrected rule follows (additions indicated in boldface **thus**):

17:14-1.6 (12A:10-2.6) Time for application to register as a minority business or female business

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

(c) If a business is to be considered as a minority business or female business subcontractor on a contract funded by the "Correctional Facilities Construction Bond Act of 1987" for purposes of these regulations, it must meet the pre-qualification requirements of N.J.S.A. 52:32-2.3(b)(2) in addition to having applied to the Department of Commerce for purposes of registration no later than one day prior to the deadline for bids being received and opened by the Division of Building and Construction.

**TREASURY-TAXATION**

**(c)**

**DIVISION OF TAXATION**

**Notice of Administrative Correction**

**Local Property Tax**

**Petitions of Appeal; Cross-Petitions of Appeal**

**N.J.A.C. 18:12A-1.6**

**Take notice** that the Office of Administrative Law has discovered errors in the text of N.J.A.C. 18:12A-1.6(j) now appearing in the New Jersey Administrative Code.

By an amendment adopted effective June 7, 1982, the Division of Taxation added the words "assessor and" before the word "Clerk" in the first sentence of subsection (j) (then subsection (i)), and deleted the word "assessor" in the second sentence (see 14 N.J.R. 231(a) and 580(f)). In the course of printing the May 21, 1984 update to Title 18, the phrase, "in which event, a copy of the petition must also be served on the taxpayer" in subsection (j) (then (i)) was erroneously made a separate sentence. The printing of the August 20, 1984 update to this title resulted in another error at this subsection, the deletion of the words, "must also be served on the taxpayer. Where petitioner files a petition" which should be between the words "petition" and "with" in what now appears as the last sentence in the subsection. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

18:12A-1.6 Petitions of appeal; cross-petitions of appeal

(a)-(i) (No change.)

(j) A petitioner must file a copy of each petition with the **assessor and Clerk** personally or by regular mail. The Clerk shall forthwith notify the [assessor,] collector and such other municipal officials as the governing body shall direct. In case of appeal by the taxing district, a copy of the petition must be served on the record owner of the subject property and on the assessor, unless the tax collector has received written notice that the taxpayer is a person, partnership or corporation other than the record owner[. In] , **in** which event a copy of the petition **must also be served on the taxpayer. Where petitioner files a petition** with respect to another owner's property, he shall furnish a copy of the petition to such owner in addition to all other parties.

(k)-(l) (No change.)

## OTHER AGENCIES

### (a)

#### NEW JERSEY TURNPIKE AUTHORITY

##### Petitions for Rules

##### Adopted New Rules: N.J.A.C. 19:9-6

Proposed: August 21, 1989 at 21 N.J.R. 2440(a).

Adopted: October 17, 1989 by the New Jersey Turnpike

Authority, Frank B. Holman, Executive Director.

Filed: October 24, 1989 as R.1989 d.580, **without change.**

Authority: N.J.S.A. 27:23-1 et seq., specifically 28:23-29, and N.J.S.A. 52:14B-4(f).

Effective Date: November 20, 1989.

Expiration Date: October 17, 1993.

##### Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows:

#### SUBCHAPTER 6. PETITIONS FOR RULES

##### 19:9-6.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the New Jersey Turnpike Authority, pursuant to N.J.S.A. 52:14B-4(f) and N.J.S.A. 27:23-29.

##### 19:9-6.2 Procedure for petitioner

(a) Any person who wishes to petition the Authority to promulgate, amend or repeal a rule must submit to the Executive Director, in writing, the following information:

1. The name of the petitioner;
2. The substance or nature of the rulemaking which is requested, together with the citation of affected rule, if applicable;
3. The reasons for the request and the petitioner's interest in the request; and
4. References to the authority of the Authority to take the requested action.

(b) Petitions shall be addressed to:

Frank B. Holman, Executive Director  
New Jersey Turnpike Authority  
P.O. Box 1121  
New Brunswick, New Jersey 08903

(c) Any document submitted to the Authority which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule requiring further Authority action pursuant to N.J.S.A. 52:14B-4(f) and N.J.S.A. 27:23-29.

##### 19:9-6.3 Procedure of the Authority

(a) Upon receipt of a petition in compliance with this subchapter, the Authority will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The notice will 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.

(b) Within 30 days of receiving the petition, the Authority will 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 will 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 New Jersey Register;
3. Certification by the Executive Director that the petition was duly considered pursuant to law;
4. The nature or substance of the Authority's action upon the petition; and
5. A brief statement of reasons for the Authority's actions.

(c) Authority 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 deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.

# PUBLIC NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF WATER RESOURCES

#### Notice of Public Hearing

#### 1989-90 Annual Fee Report and Fee Schedule

Take notice that the Department of Environmental Protection will hold a public hearing to present the 1989-90 NJPDES Annual Fee Report and Fee Schedule. The Department has also proposed to use a new fee assessment methodology for discharges to the surface and ground waters of the State by proposing amendments to N.J.A.C. 7:14A-1.8. The proposed amendments appear in this issue of the New Jersey Register. The fee assessments presented in the 1989-90 NJPDES Annual Fee Report and Fee Schedule are calculated using the proposed fee assessment methodology. The Department plans to adopt amendments to N.J.A.C. 7:14A-1.8 before assessing the 1989-90 NJPDES permit fees.

The public hearing on the 1989-90 NJPDES Annual Fee Report and Fee Schedule will be held on:

December 20, 1989  
Labor Education Center Auditorium  
Cook College  
Ryders Lane  
Rutgers University  
New Brunswick, New Jersey

The hearing on the proposed amendments to N.J.A.C. 7:14A-1.8 will commence at 10:00 A.M. The hearing on the 1989-90 NJPDES Annual Report and Fee Schedule will commence after all testimony on the proposed amendments to N.J.A.C. 7:14A-1.8 have been received. Written comments for both hearings will be accepted until December 29, 1989.

Copies of the 1989-90 NJPDES Annual Fee Report and Fee Schedule will be mailed to NJPDES permittees on or about November 20, 1989. Interested parties may request free copies from:

New Jersey Dept. of Environmental Protection  
Division of Water Resources  
NJPDES Fee Management Section  
CN029  
Trenton, New Jersey 08625

Additional documentation concerning the proposed NJPDES budgets for 1989-90 and expenditures for 1987-88 is available for review at the Department of Environmental Protection, Division of Water Resources, 401 East State Street, Trenton, New Jersey. Contact the NJPDES Fee Management Section to schedule an appointment to review the additional documentation or for further information at (609) 984-4428.

## LAW AND PUBLIC SAFETY

(b)

### STATE BOARD OF MEDICAL EXAMINERS

#### Notice of Petition for Rulemaking Practice of Medicine and Surgery

#### N.J.A.C. 13:35

Petitioner: New Jersey Optometric Association.

Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:9-2.

Take notice that on October 10, 1989, petitioner filed the following petition with the State Board of Medical Examiners:

Petitioner, the New Jersey Optometric Association, a not-for-profit New Jersey Corporation having its principal place of business at 88 Lakedale Drive, Trenton, New Jersey, by way of Petition for Rulemaking, says:

1. Petitioner is a not-for-profit New Jersey Corporation composed of New Jersey licensed optometrists.

2. Respondent is the administrative agency charged by law with the regulation of the practice of medicine and surgery in general pursuant to N.J.S.A. 45:9-1 et seq.

3. Pursuant to N.J.S.A. 45:9-2, respondent "shall make and adopt all necessary rules, regulations and bylaws . . . to perform the duties and to

transact the business required" under the provisions of N.J.S.A. 45:9-1 et seq.

4. Pursuant to N.J.S.A. 45:9-5.1 "the practice of medicine or surgery" and the "practice of medicine and surgery" have been defined to include "any method of treatment of human ailment, disease, pain, injury, deformity, mental or physical condition" and the term "physician and surgeon" or "physician or surgeon" has been defined to include "practitioners in any branch of medicine and/or surgery or method of treatment of human ailment, disease, pain, injury, deformity, mental or physical condition."

5. According to N.J.S.A. 45:9-18, any person shall be regarded as practicing medicine and surgery who "holds himself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition, or who shall either offer or undertake by any means or methods to diagnose, treat, operate, or prescribe for any human disease, pain, injury, deformity or physical condition."

6. "The practice of optometry by any legally qualified and registered optometrist" is expressly excluded from the prohibitory provisions of N.J.S.A. 45:9-1 et seq. N.J.S.A. 45:9-21(g).

7. On or about July 12, 1989, respondent issued a policy statement indicating that "management of post-surgical care is the practice of medicine and the responsibility of the operating ophthalmologist . . ." and "should not be delegated to a non-ophthalmologist."

8. Petitioner commences this action to require the New Jersey State Board of Medical Examiners to address and determine that the management of post-operative care is not the practice of medicine or surgery and not within the confines of N.J.S.A. 45:9-1 et seq.

9. Petitioner prays that the New Jersey State Board of Medical Examiners determine and declare:

Invasive surgical care is tertiary care and is the responsibility of the operating surgeon. The management of post-operative care is primary care and can be managed effectively by the patient's primary health care provider. The judgment on delivery of post-operative care shall be made in consultation with the patient, the operating surgeon, and the patient's primary health care provider. The post-operative care and patient co-management shall be rendered by the operating surgeon and the patient's primary health care provider.

After due notice, this petition will be considered by the State Board of Medical Examiners in accordance with the provisions of N.J.S.A. 52:14B-(f).

(c)

### DIVISION OF MOTOR VEHICLE SERVICES

#### Notice of Contract Carrier Applicant

Take notice that Glenn R. 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)  
J. Rowe & Son Trucking Inc.  
9 South Haywards Road  
Sparta, NJ 07871

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicle Services, 25 South Montgomery St., Trenton, New Jersey 08666, within 20 days (December 10, 1989) following the publication of an application.

**OTHER AGENCIES**

**(a)**

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**Notice of Agency Action  
Petition for Rulemaking  
Interest Arbitration**

**N.J.A.C. 19:16-5.7**

Petitioner: Gerald L. Dorf, Esq., an attorney representing the Township of Wayne.

Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 19:10-6.1.

**Take notice** that, after due consideration pursuant to law, the petition for revising N.J.A.C. 19:16-5.7 to make interest arbitration proceedings public upon the request of either the public employer or the majority representative has been referred for further deliberations. Notice of the petition was published in the November 6, 1989 New Jersey Register. These deliberations will consist of the Commission's consideration of the submissions and the transcript of the oral argument and will be concluded by December 22, 1989. The results of these deliberations will be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.

**(b)**

**CASINO CONTROL COMMISSION**

**Notice of Petition for Rulemaking  
Redemption of Checks and Counterchecks by  
Agents**

**N.J.A.C. 19:45-1.26A**

Petitioner: Trump Plaza Associates.

Authority: N.J.S.A. 5:12-69(c) and 52:14B-4(f).

**Take notice** that on October 16, 1989, Trump Plaza Associates ("Plaza") filed a rulemaking petition with the Casino Control Commission proposing a new rule, N.J.A.C. 19:45-1.26A, which would permit a casino licensee to engage in a redemption transaction with a duly authorized agent of the drawer of a check or countercheck.

The petition was filed by Plaza pursuant to the terms of a Commission Order entered on August 24, 1989. This Order approved in concept the use of agents by patrons to redeem checks and counterchecks, but directed that such transactions would only be permitted in accordance with the terms of an implementing rule adopted by the Commission. The new rule proposed by Plaza to satisfy this condition would require the agent of the drawer of the check or countercheck to produce an original document, signed by the drawer, establishing the authority of the agent to make payments on behalf of the drawer. The casino licensee would be required to retain a copy of the document creating the agency in its files. Upon payment, the agent of the drawer would be provided with a receipt by the casino licensee for any funds received; the original redeemed check or countercheck would have to be returned directly to the drawer by the casino licensee.

**After due notice**, this petition will be considered by the Casino Control Commission in accordance with the requirements of N.J.S.A. 52:14B-4.

# 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 October 2, 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.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT SEPTEMBER 18, 1989**

**NEXT UPDATE: SUPPLEMENT OCTOBER 16, 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. 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	21 N.J.R. 1599 and 1762	June 19, 1989
20 N.J.R. 3047 and 3182	December 19, 1988	21 N.J.R. 1763 and 1934	July 3, 1989
21 N.J.R. 1 and 88	January 3, 1989	21 N.J.R. 1935 and 2148	July 17, 1989
21 N.J.R. 89 and 224	January 17, 1989	21 N.J.R. 2149 and 2426	August 7, 1989
21 N.J.R. 225 and 364	February 6, 1989	21 N.J.R. 2427 and 2690	August 21, 1989
21 N.J.R. 365 and 588	February 21, 1989	21 N.J.R. 2691 and 2842	September 5, 1989
21 N.J.R. 589 and 658	March 6, 1989	21 N.J.R. 2843 and 3042	September 18, 1989
21 N.J.R. 659 and 810	March 20, 1989	21 N.J.R. 3043 and 3204	October 2, 1989
21 N.J.R. 811 and 954	April 3, 1989	21 N.J.R. 3205 and 3330	October 16, 1989
21 N.J.R. 955 and 1036	April 17, 1989	21 N.J.R. 3331 and 3584	November 6, 1989
21 N.J.R. 1037 and 1178	May 1, 1989	21 N.J.R. 3585 and 3688	November 20, 1989
21 N.J.R. 1179 and 1474	May 15, 1989		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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## ADMINISTRATIVE LAW—TITLE 1

1:1-3.3	Return of transmitted cases	21 N.J.R. 3207(a)		
1:1-5.4	Nonlawyer representation	21 N.J.R. 2693(a)		
1:1-14.11	Transcripts of OAL proceedings: pre-proposal	21 N.J.R. 1181(b)		
1:6A	Special education hearings	21 N.J.R. 2693(a)		
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)		

**Most recent update to Title 1: TRANSMITTAL 1989-5 (supplement August 21, 1989)**

## AGRICULTURE—TITLE 2

2:2-3.3	Tuberculin testing of cattle	21 N.J.R. 3333(a)		
2:24	Registration and transportation of bees	21 N.J.R. 3045(b)		
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)		
2:34-2	Equine Advisory Board rules	21 N.J.R. 2151(a)		
2:76-6.16	Farmland Preservation Program: easement purchase evaluation criteria	21 N.J.R. 2152(a)	R.1989 d.537	21 N.J.R. 3294(a)

**Most recent update to Title 2: TRANSMITTAL 1989-7 (supplement August 21, 1989)**

## BANKING—TITLE 3

3:1-6.1, 6.2, 7.1, 7.2, 7.4, 7.5, 9.6	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510	21 N.J.R. 3082(a)
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)		
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)		
3:13-3.2	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510	21 N.J.R. 3082(a)
3:17-2.1, 2.2, 3.9, 6.1, 6.2, 6.6, 6.10, 7.1	Consumer Loan Act rules	21 N.J.R. 2399(a)	R.1989 d.511	21 N.J.R. 3083(a)
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:18-10.1	License fees	21 N.J.R. 2401(a)	R.1989 d.509	21 N.J.R. 3083(a)
3:19-1.7	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510	21 N.J.R. 3082(a)
3:23-2.1	License fees	21 N.J.R. 2401(a)	R.1989 d.509	21 N.J.R. 3083(a)
3:24-1.2	Check cashing business standards: administrative correction concerning corporate applications			21 N.J.R. 3448(a)
3:28	Bookkeeping and accounting by savings and loan associations	21 N.J.R. 3336(a)		
3:38-1.1, 1.2	License fees	21 N.J.R. 2401(a)	R.1989 d.509	21 N.J.R. 3083(b)
3:38-1.8	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510	21 N.J.R. 3082(a)

**Most recent update to Title 3: TRANSMITTAL 1989-5 (supplement September 18, 1989)**

## CIVIL SERVICE—TITLE 4

4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)		
4:1-16.6, 16.15, 25.1	Repeal rules	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(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)	21 N.J.R. 3340(a)		
4:2-16.6, 16.8	Repeal rules	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
4:3-16.1, 16.2	Repeal (see 4A:8)	21 N.J.R. 3340(a)		

**Most recent update to Title 4: TRANSMITTAL 1988-4 (supplement July 17, 1989)**

## PERSONNEL—TITLE 4A

4A:1-4.1	Delegation approval in local service	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
4A:2-1.2, 1.4, 2.5, 2.7, 3.1, 3.7	Appeals and discipline	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:3-2.2	Designation of SES positions: administrative correction			21 N.J.R. 3295(a)
4A:3-4.11	State service: downward title reevaluation pay adjustments	21 N.J.R. 1184(a)		
4A:3-4.17, 4.21	Compensation: State service	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:3-38	Intermittent employees in State service: leave entitlements	21 N.J.R. 3337(a)		
4A:4-1.11	Vacancy Review Board: State service	21 N.J.R. 3337(a)		
4A:4-2.1, 2.15, 3.4, 5.5	Promotional examinations; eligible lists	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:4-2.3, 2.9, 2.15, 5.2, 6.3-6.6, 7.3	Selection and appointment	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)
4A:6-1.2, 1.3, 1.9, 2.4	Intermittent employees in State service: leaves and holiday pay	21 N.J.R. 3337(a)		
4A:6-1.5	Sick leave: State service	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:8	Layoffs	21 N.J.R. 3340(a)		
4A:10-1.1	Information requested of appointing authority	21 N.J.R. 2429(a)	R.1989 d.570	21 N.J.R. 3451(a)
4A:10-2.2	Vacated position and permanent appointment	21 N.J.R. 1766(a)	R.1989 d.569	21 N.J.R. 3448(b)

**Most recent update to Title 4A: TRANSMITTAL 1989-2 (supplement July 17, 1989)**

**COMMUNITY AFFAIRS—TITLE 5**

5:2-1.1	Department organization	Exempt	R.1989 d.578	21 N.J.R. 3658(a)
5:12	Homelessness Prevention Program	21 N.J.R. 2845(a)		
5:14-4	Neighborhood Preservation Balanced Housing Program: affordability controls	21 N.J.R. 2153(a)		
5:18	Uniform Fire Code	21 N.J.R. 3344(a)		
5:18-1.4, 1.5, 2.4A, 2.5, 2.7, 2.8, 4.1, 4.7, 4.9, 4.11, 4.13	Uniform Fire Code inspection, safety and enforcement provisions	21 N.J.R. 2431(a)	R.1989 d.556	21 N.J.R. 3453(a)
5:18-2.6, 2.7, 2.11, 2.18, 3.2, 4.9, 4.18	Uniform Fire Code: administrative corrections			21 N.J.R. 3085(a)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18-2.8	Uniform Fire Code: life hazard use registration fees and permit fees	21 N.J.R. 2126(a)	R.1989 d.513	21 N.J.R. 3084(a)
5:18-3.2	Uniform Fire Code: casino hotel fire safety plan	21 N.J.R. 2845(b)		
5:18A	Fire Code Enforcement	21 N.J.R. 3344(a)		
5:18A-2.6	Fire Code Enforcement: fee collection remittance	21 N.J.R. 2126(a)	R.1989 d.513	21 N.J.R. 3084(a)
5:18A-3.3	Duties of fire officials	21 N.J.R. 2431(a)	R.1989 d.556	21 N.J.R. 3453(a)
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)		
5:18A-4.9	Fire Code Enforcement: administrative correction			21 N.J.R. 3085(a)
5:18B	High Level Alarms	21 N.J.R. 3344(a)		
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)		
5:22	Exemptions from local property taxation	21 N.J.R. 3345(a)		
5:23-1.4	Uniform Construction Code: underground storage tank compliance	21 N.J.R. 3345(b)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)	R.1989 d.550	21 N.J.R. 3458(a)
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-3.5	Uniform Construction Code: educational facility use group	21 N.J.R. 2783(a)	R.1989 d.555	21 N.J.R. 3460(a)
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-3.15	UCC: plumbing subcode	21 N.J.R. 3346(a)		
5:23-4.3	UCC: assumption of local enforcement powers	21 N.J.R. 2436(a)	R.1989 d.551	21 N.J.R. 3460(b)
5:23-4.5, 4.19, 4.20	UCC enforcing agencies: standardized forms; remittance of training fees	21 N.J.R. 3346(b)		
5:23-4.17	Dedication of fee revenue for UCC enforcement	21 N.J.R. 3348(a)		
5:23-4.17, 4.18, 4.19, 4.20	Uniform Construction Code: municipal and departmental fees	21 N.J.R. 2127(a)	R.1989 d.512	21 N.J.R. 3086(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2-7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55-7.57, 7.61, 7.67, 7.68, 7.71-7.73, 7.75, 7.76, 7.80-7.82, 7.87, 7.94-7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:26-2.3, 2.4	Planned real estate development full disclosure: registration and exemption fees	21 N.J.R. 2127(a)	R.1989 d.512	21 N.J.R. 3086(a)
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)	R.1989 d.526	21 N.J.R. 3295(b)
5:29-1, 2.2	Landlord registration form for one and two-unit rental dwellings	21 N.J.R. 3349(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:31	Local authorities	21 N.J.R. 3046(a)		
5:33	Urbanaid program	21 N.J.R. 3046(b)		
5:35	State aid for planning local effectiveness program	21 N.J.R. 3046(b)		
5:52-1	Volunteer coaches' safety orientation and training skills programs: minimum standards	21 N.J.R. 2159(a)		
5:80-6.1, 6.5, 6.6	Housing and Mortgage Finance Agency: sale of project by nonprofit sponsor to for-profit sponsor; use of DCE/CDE accounts	21 N.J.R. 1509(b)	R.1989 d.524	21 N.J.R. 3090(a)
5:80-9.13	Housing and Mortgage Finance Agency: notice of rent increases	21 N.J.R. 2160(a)		
5:80-18.1, 18.2, 18.3, 18.8	Housing and Mortgage Finance Agency: debarment from agency contracting	21 N.J.R. 3350(a)		
5:80-28.1	Housing and Mortgage Finance Agency: nonpublic records	21 N.J.R. 3351(a)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-8.4	Council on Affordable Housing: developer agreements	21 N.J.R. 1185(c)	R.1989 d.534	21 N.J.R. 3295(c)
5:92-12 App.	Uniform deed restrictions and liens: controls on affordability	21 N.J.R. 1988(a)	R.1989 d.527	21 N.J.R. 3091(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 institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		
5:100	Ombudsman practice and procedure: extension of comment period	21 N.J.R. 1995(a)		

Most recent update to Title 5: TRANSMITTAL 1989-8 (supplement August 21, 1989)

**MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A**

Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

**EDUCATION—TITLE 6**

6:3-1.18	Certification of school business administrators	21 N.J.R. 2915(a)		
6:7	Evaluation of building principals in State-operated districts	21 N.J.R. 3352(a)		
6:8-9	Elementary and secondary school summer sessions	21 N.J.R. 2441(c)		
6:11-4.3, 8.2, 8.4, 8.5	Certification of bilingual and ESL teachers	21 N.J.R. 2721(a)		
6:11-5.1-5.7, 7.2	Provisional certification of first-year teachers	21 N.J.R. 2717(a)		
6:11-6.1, 6.2	Certification of nursery teachers	21 N.J.R. 3209(a)		
6:11-10.4, 10.10, 10.11, 10.14	Certification of school business administrators	21 N.J.R. 2915(a)		
6:20-2	Local district bookkeeping and accounting	21 N.J.R. 2919(a)		
6:20-2A	Double entry bookkeeping and GAAP accounting	21 N.J.R. 2919(a)		
6:21	Pupil transportation	21 N.J.R. 2724(a)		
6:22-1.1, 1.3, 1.4, 1.7, 1.8, 2.5	Private school and State facilities for handicapped pupils	21 N.J.R. 3210(a)		
6:24-5.4	Tenure charges against persons within Human Services, Corrections and Education	21 N.J.R. 1939(b)	R.1989 d.553	21 N.J.R. 3461(a)
6:26	Repeal (see 6:8-9)	21 N.J.R. 2441(c)		
6:27	Repeal (see 6:8-9)	21 N.J.R. 2441(c)		
6:31	Bilingual education	21 N.J.R. 2443(a)		
6:70	Library network services	21 N.J.R. 1940(a)	R.1989 d.572	21 N.J.R. 3462(a)

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**ENVIRONMENTAL PROTECTION—TITLE 7**

7:1G	Worker and Community Right to Know	21 N.J.R. 1944(a)	R.1989 d.544	21 N.J.R. 3478(a)
7:1G-3.2	Worker and Community Right to Know: administrative correction concerning environmental survey	_____	_____	21 N.J.R. 3482(a)
7:2-11.12	Natural Areas System: West Pine Plains	21 N.J.R. 1480(b)	R.1989 d.566	21 N.J.R. 3482(b)
7:2-11.12	Designation of West Pine Plains to Natural Areas System: extension of comment period	21 N.J.R. 2240(b)		
7:3-3	Advertising by tree experts	21 N.J.R. 3212(a)		
7:5C	Endangered Plant Species Program	21 N.J.R. 2847(a)		
7:7A-2.7(d)1, 2	Preliminary municipal approvals exemption: notice of rule invalidation	_____	_____	21 N.J.R. 3482(c)
7:7A-2.7(f)	Transition area exemption: notice of rule invalidation	_____	_____	21 N.J.R. 3482(d)
7:10	Safe Drinking Water Act	21 N.J.R. 1945(a)	R.1989 d.514	21 N.J.R. 3098(a)
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1-2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4-12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)	R.1989 d.517	21 N.J.R. 3099(a)
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:22A-1, 2, 3, 6	Sewage Infrastructure Improvement Act grants	21 N.J.R. 1948(a)		
7:25-2.20	Higbee Beach Wildlife Management Area	21 N.J.R. 2849(a)		
7:25-6	1990-1991 Fish Code	21 N.J.R. 1775(b)	R.1989 d.567	21 N.J.R. 3483(a)
7:25-12	Surf clam management	21 N.J.R. 3214(a)		
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)		
7:26-1.13, 8.15	Hazardous waste management: exclusion or exemption from rules; discarded commercial chemicals	21 N.J.R. 3219(a)		
7:26-5	Hazardous and solid waste management: civil administrative penalties and adjudicatory hearings	21 N.J.R. 2734(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-8.2, 12.3	Radioactive mixed wastes	21 N.J.R. 1053(a)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(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)		
7:26-16.5, 16.13	Solid and hazardous waste operations: licensing of individuals	21 N.J.R. 2275(a)	R.1989 d.586	21 N.J.R. 3658(b)
7:27-16.3	Vapor control during marine transfer operations	21 N.J.R. 1960(a)		
7:27-23.2, 23.3, 23.4, 23.5	Volatile organic substances in consumer products	21 N.J.R. 1055(a)	R.1989 d.568	21 N.J.R. 3488(a)
7:27-23.2-23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)		
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
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)		
7:50-2.11, 4.2, 4.3, 4.5, 4.53, 4.62, 4.66, 5.2, 5.13, 5.23, 5.24, 5.28, 5.43, 5.44, 5.47, 6.65, 6.154, 6.156	Pinelands Comprehensive Management Plan	21 N.J.R. 3381(a)		

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**HEALTH—TITLE 8**

8:18	Catastrophic Illness in Children Relief Fund Program	21 N.J.R. 1781(a)	R.1989 d.557	21 N.J.R. 3501(a)
8:23	Veterinary public health	21 N.J.R. 3274(a)		
8:31-30	Health care facility construction: plan review fee (recodify as 8:31-1)	21 N.J.R. 2447(a)		
8:31A-9.1	SHARE hospital reimbursement: labor proxies	21 N.J.R. 2922(a)		
8:31B-3.22	Hospital reimbursement: standard costs per case	21 N.J.R. 3275(a)		
8:31B-3.23	Hospital reimbursement: emergency room patients	21 N.J.R. 3275(b)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-3.27	Hospital reimbursement: capital facilities formula allowance	21 N.J.R. 3278(a)		
8:31B-3.51	Hospital reimbursement: Schedule of Rates notification appeal and review	21 N.J.R. 3278(b)		
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on	21 N.J.R. 2448(a)		
8:31B-4.37, 7.3	Reinsurance Program and charity care; Statewide uncompensated care add-on: extension of comment period	21 N.J.R. 3279(a)		
8:31B-4.38-4.40	Hospital reimbursement: uncompensated care	21 N.J.R. 2449(a)		
8:31B-4.62	Hospital reimbursement: MICU services	21 N.J.R. 2453(a)		
8:31B-5.3	Diagnosis Related Groups: administrative correction			21 N.J.R. 3297(a)
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups classification	21 N.J.R. 3279(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:31B-7.10	Uncompensated Care Trust Fund: debt recovery through tax rebate and refund set-off	21 N.J.R. 2923(a)		
8:31C-1.2, 1.3, 1.4, 1.6, 1.12, 1.17	Residential alcoholism treatment facilities: rate setting and reimbursement	21 N.J.R. 2454(a)	R.1989 d.558	21 N.J.R. 3505(a)
8:33F	End-Stage Renal Disease (ESRD) services: certification of need	21 N.J.R. 2923(b)		
8:33L-1.2, 2.1, 2.2, 2.4, 2.6, 2.7	Home health agency services	21 N.J.R. 2455(a)	R.1989 d.559	21 N.J.R. 3506(a)
8:39-7.4, 17.4, 25.2, 39.3	Long-term care facilities: enforcement of staffing requirements	_____	_____	21 N.J.R. 3663(a)
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)		
8:39-44	Respite care services	21 N.J.R. 2924(a)		
8:42A-13.3	Alcoholism treatment facilities: administrative corrections	_____	_____	21 N.J.R. 3172(a)
8:43B-1-17	Hospital licensing standards (repeal)	21 N.J.R. 2925(a)		
8:43B-18	Anesthesia (recodify to 8:43G-6)	21 N.J.R. 2925(a)		
8:43E-3	Adult closed acute psychiatric beds: certification of need	21 N.J.R. 1785(a)	R.1989 d.560	21 N.J.R. 3509(a)
8:43E-4.5	Child and adolescent acute psychiatric beds: need formula	21 N.J.R. 2459(a)	R.1989 d.561	21 N.J.R. 3514(a)
8:43F	Adult day health care facilities: standards for licensure	21 N.J.R. 3385(a)		
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)		
8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31, 35	Hospital licensure: administration, obstetrics, oncology, pediatrics, plant safety, psychiatry, physical and occupational therapy, renal dialysis, respiratory care, postanesthesia care	21 N.J.R. 2926(a)		
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(a)		
8:43G-4	Hospital licensure: patient rights	21 N.J.R. 2160(a)		
8:43G-6	Anesthesia	21 N.J.R. 2925(a)		
8:43G-7	Hospital licensure: cardiac services	21 N.J.R. 2162(a)		
8:43G-8	Hospital licensure: central supply	21 N.J.R. 1609(a)		
8:43G-9	Hospital licensure: critical and intermediate care	21 N.J.R. 2167(a)		
8:43G-10	Hospital licensure: dietary standard	21 N.J.R. 1611(a)		
8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)		
8:43G-12	Hospital licensure: emergency department	21 N.J.R. 1613(a)		
8:43G-13	Hospital licensure: housekeeping and laundry	21 N.J.R. 1616(a)		
8:43G-14	Hospital licensure: infection control and sanitation	21 N.J.R. 1618(a)		
8:43G-15	Hospital licensure: medical records	21 N.J.R. 2171(a)		
8:43G-16	Hospital licensure: medical staff standard	21 N.J.R. 1621(a)		
8:43G-17	Hospital licensure: nurse staffing	21 N.J.R. 1623(a)		
8:43G-18	Hospital licensure: nursing care	21 N.J.R. 1624(a)		
8:43G-20	Hospital licensure: employee health	21 N.J.R. 2173(a)		
8:43G-23	Hospital licensure: pharmacy	21 N.J.R. 1626(a)		
8:43G-25	Hospital licensure: post mortem standard	21 N.J.R. 1628(a)		
8:43G-27	Hospital licensure: quality assurance	21 N.J.R. 1630(a)		
8:43G-28	Hospital licensure: radiology	21 N.J.R. 2174(a)		
8:43G-30.13-30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)		
8:43G-32, 34	Hospital licensure: same-day stay; surgery	21 N.J.R. 2177(a)		
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)		
8:52-4.6	Local boards of health: basic educational program concerning HIV infection	21 N.J.R. 2696(a)	R.1989 d.574	21 N.J.R. 3663(b)
8:52-6.3, 6.4	Local boards of health: cardiovascular disease services; health services for older adults	21 N.J.R. 3282(a)		
8:59	Worker and Community Right to Know Act rules	21 N.J.R. 1253(a)	R.1989 d.543	21 N.J.R. 3516(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)		
8:65-10.1	Controlled Dangerous Substances: addition to Schedule I	_____	_____	21 N.J.R. 3297(b)
8:66	Intoxicated Driving Program/Intoxicated Driver Resource Center	21 N.J.R. 3283(a)		
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)	Expired	
8:71	Interchangeable drug products (see 21 N.J.R. 755(b), 1429(b))	20 N.J.R. 3078(a)	R.1989 d.379	21 N.J.R. 2108(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a))	21 N.J.R. 662(a)	R.1989 d.575	21 N.J.R. 3665(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2997(a))	21 N.J.R. 1790(a)	R.1989 d.573	21 N.J.R. 3664(a)
8:71	Interchangeable drug products	21 N.J.R. 3292(a)		

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**HIGHER EDUCATION—TITLE 9**

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)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
9:7-4.2	Garden State Scholarships: academic requirements	21 N.J.R. 3408(a)		
9:9-11.1	Guaranteed Student Loan Program: institution compliance	21 N.J.R. 1962(a)	R.1989 d.519	21 N.J.R. 3173(a)
9:11-1.8	Educational Opportunity Fund: duration of student eligibility	21 N.J.R. 1963(a)		

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**HUMAN SERVICES—TITLE 10**

10:11-1	Instructional staff tenure	21 N.J.R. 2849(b)		
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)		
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)		
10:39	Community residences for mentally ill: licensure standards	21 N.J.R. 1995(b)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:52-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:53-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63	Long Term Care Services Manual	21 N.J.R. 2752(a)		
10:63-1.13, 1.16	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:69A-1.2, 6.2	Pharmaceutical Assistance to Aged and Disabled: income standards	21 N.J.R. 3047(a)		
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)		
10:85	General Assistance Manual	21 N.J.R. 3221(b)		
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:87-12.1, 12.2, 12.3, 12.4, and 12.7	Food Stamp Program: Tables I, II, III, IV, and VII	Emergency (expires 11-21-89)	R.1989 d.533	21 N.J.R. 3316(a)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)		
10:121	Adoption of children	21 N.J.R. 3048(b)		
10:123-1	Financial eligibility for Social Services Program	21 N.J.R. 2438(a)		
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		

**Most recent update to Title 10: TRANSMITTAL 1989-9 (supplement September 18, 1989)**

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10A:2-7	Inmate restitution for damaged or destroyed property	21 N.J.R. 3408(b)		
10A:4-6, 6.3, 6.4	Inmate discipline: chronic violator procedure	21 N.J.R. 3240(a)		
10A:5-3.1, 3.2	Administrative segregation	21 N.J.R. 3409(a)		
10A:9-4	Reduced custody consideration	21 N.J.R. 3050(a)		
10A:16-2.9	Infirmiry care	21 N.J.R. 969(a)		
10A:16-5.2, 5.6	Medical and health services: guardianship of an adult inmate	21 N.J.R. 2851(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:18-6.4	Employee visits with incarcerated relatives	21 N.J.R. 3410(a)		
10A:22-2.6	Release of confidential inmate or parolee records	21 N.J.R. 3411(a)		
10A:22-4	Expungement or sealing of inmate records	21 N.J.R. 2852(a)	R.1989 d.582	21 N.J.R. 3665(a)
10A:31	Adult county correctional facilities	21 N.J.R. 2853(a)		
10A:31	Adult county correctional facilities: public hearing	21 N.J.R. 3411(b)		
10A:71	Parole Board rules	21 N.J.R. 3411(c)		

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11:1-3, 7, 8, 13	Repeal (see 11:17A, 17B, 17C, 17D)	21 N.J.R. 1317(a)		
11:1-5.2	Cancellation and nonrenewal of fire and casualty coverage	21 N.J.R. 3240(b)		
11:1-10.7	Foreign and alien property and casualty insurers: appeals regarding admission denials	21 N.J.R. 3418(a)		
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-26	Insurer profitability information: annual publication	21 N.J.R. 2181(a)	R.1989 d.538	21 N.J.R. 3297(a)
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:2-3.1, 3.12	Credit life and credit accident and health insurance premium rates	21 N.J.R. 3052(a)		
11:2-17.10	Property/liability claims settlements: administrative correction	_____	_____	21 N.J.R. 3666(a)
11:2-24	High-risk investments by domestic insurers	21 N.J.R. 3245(a)		
11:2-25	Insurer tie-ins	21 N.J.R. 3053(a)		
11:2-26	Insurers' annual audited financial reports	21 N.J.R. 3054(a)		
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
11:3-8.2, 8.4	Nonrenewal of automobile policies	21 N.J.R. 1306(a)		
11:3-10.4	Adjustment of losses: administrative correction	_____	_____	21 N.J.R. 3173(b)
11:3-15.3, 15.5, 15.7-15.10	Automobile insurance: Coverage Selection Form	21 N.J.R. 3244(a)		
11:3-16	Private passenger automobile rate filings	21 N.J.R. 2182(a)		
11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 3422(a)		
11:3-25.4	Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period	21 N.J.R. 2208(a)		
11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
11:3-30	Motor vehicle self-insurance	21 N.J.R. 2876(a)	R.1989 d.584	21 N.J.R. 3666(a)
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:4-16.6, 16.8, App.; 23, App.	Sixty five-and-older health insurance coverage	21 N.J.R. 2877(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-32	Health service corporations: notice of increased rates	21 N.J.R. 973(b)	R.1989 d.522	21 N.J.R. 3173(c)
11:4-33	Life insurers: excess interest reserve adjustment	21 N.J.R. 1308(a)	R.1989 d.523	21 N.J.R. 3175(a)
11:4-34	Long-term care insurance	21 N.J.R. 1964(a)	R.1989 d.571	21 N.J.R. 3465(a)
11:5-1.16	Real estate contracts: "agreement to honor" provision	21 N.J.R. 2438(b)	R.1989 d.539	21 N.J.R. 3299(a)
11:5-1.28	Approval real estate schools: pre-proposal	21 N.J.R. 1641(a)		
11:13-1.2, 1.3	Farm-owners insurance	21 N.J.R. 1641(b)		
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)		
11:13-7	Commercial lines policy forms: extension of comment period	21 N.J.R. 3422(a)		
11:15	Hospital workers' compensation: group self-insurance	21 N.J.R. 1817(a)	R.1989 d.585	21 N.J.R. 3668(a)
11:16-2	Reports to National Automobile Theft Bureau	21 N.J.R. 2901(a)	R.1989 d.583	21 N.J.R. 3668(b)
11:17A, 17B, 17C, 17D	Insurance producer conduct: marketing; commissions and fees; funds management; administrative penalties	21 N.J.R. 1317(a)		
11:18-1	Medical Malpractice Reinsurance Recovery Fund surcharge	21 N.J.R. 2698(a)		

Most recent update to Title 11: TRANSMITTAL 1989-9 (supplement September 18, 1989)

**LABOR—TITLE 12**

12:15-1.3-1.7	Unemployment Compensation and State Plan Temporary Disability: 1990 rates	21 N.J.R. 2700(a)	R.1989 d.565	21 N.J.R. 3535(a)
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:45-3	Vocational rehabilitation services: vehicle modification requirements	21 N.J.R. 2213(b)	R.1989 d.564	21 N.J.R. 3535(b)
12:46-12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:90	Boilers, pressure vessels and refrigeration	21 N.J.R. 3247(a)		
12:100	Safety and health standards for public employees	21 N.J.R. 2224(a)	R.1989 d.536	21 N.J.R. 3299(b)
12:100-4.2, 10, 17	Safety standards for firefighters	21 N.J.R. 1090(a)		
12:100-4.2, 10, 17	Safety standards for firefighters: public hearing	21 N.J.R. 1500(a)		
12:102-1	Field sanitation for seasonal farm workers	21 N.J.R. 2224(b)		
12:235-1.6	Workers' Compensation: 1990 maximum rates	21 N.J.R. 2701(a)	R.1989 d.563	21 N.J.R. 3545(a)

Most recent update to Title 12: TRANSMITTAL 1989-7 (supplement September 18, 1989)

**COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A**

12A:10-1, 2 (17:13, 17:14)	Small businesses, urban development enterprises; minority and female subcontractor participation	21 N.J.R. 2810(a)	R.1989 d.554	21 N.J.R. 3545(b)
12A:10-2.6	Registration as minority or female business: administrative correction	_____	_____	21 N.J.R. 3674(b)
12A:55	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)		
12A:55	Solar energy systems criteria for sales and use tax exemptions: extension of comment period	21 N.J.R. 1969(a)		
12A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)		

Most recent update to Title 12A: TRANSMITTAL 1989-6 (supplement September 18, 1989)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>LAW AND PUBLIC SAFETY—TITLE 13</b>				
13:18-2, 10	Motor Vehicles: Unsatisfied Claim and Judgment Fund rules (repeal)	21 N.J.R. 3432(a)		
13:20-1	Division of Motor Vehicles: enforcement officer rules	21 N.J.R. 1500(b)	R.1989 d.518	21 N.J.R. 3176(a)
13:20-3	Repeal (see 13:24)	21 N.J.R. 2460(a)	R.1989 d.542	21 N.J.R. 3299(c)
13:24	Emergency vehicle equipment	21 N.J.R. 2460(a)	R.1989 d.542	21 N.J.R. 3299(c)
13:30-1.2, 2.18, 8.1	Board of Dentistry licensure and registration fees	21 N.J.R. 2466(a)	R.1989 d.581	21 N.J.R. 3670(a)
13:30-8.2, 8.11	Parenteral conscious sedation in dental practice	21 N.J.R. 3060(a)		
13:30-8.3	Use of general anesthesia in dental practice	21 N.J.R. 3062(a)		
13:30-8.12	Board of Dentistry: accuracy of dental insurance forms	21 N.J.R. 2226(a)		
13:35	Board of Medical Examiners rules	21 N.J.R. 2226(b)	R.1989 d.532	21 N.J.R. 3307(a)
13:35-6.2	Pronouncement and certification of death	21 N.J.R. 1969(b)		
13:35-6.5	Standards for patient records in medical practice	21 N.J.R. 3253(a)		
13:35-8.18	Hearing aid dispensers: continuing education	21 N.J.R. 1648(a)	R.1989 d.548	21 N.J.R. 3474(a)
13:36	State Board of mortuary science	21 N.J.R. 1971(a)	R.1989 d.540	21 N.J.R. 3474(b)
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)		
13:37-2.3, 3.5, 4.4	Nursing practice: temporary permit holders	21 N.J.R. 1648(b)		
13:38-1.2	Practice of optometry: unlawful advertising	21 N.J.R. 2467(a)	R.1989 d.552	21 N.J.R. 3475(a)
13:44C-3.2	Audiology and speech language pathology: licensure	21 N.J.R. 2702(a)	R.1989 d.579	21 N.J.R. 3670(b)
13:44C-4	Provisional licensure as audiologist or speech-language pathologist (repeal)	21 N.J.R. 3433(a)		
13:44C-7.2	Audiology and speech language pathology: practice exemptions	21 N.J.R. 2702(a)		
13:45A-16.2	Home improvement contracts: written requirement	21 N.J.R. 3433(b)		
13:45B-4	Temporary help service firms	20 N.J.R. 2684(a)	Expired	
13:47-14.3	Rental or use of premises for bingo games	21 N.J.R. 2233(a)	R.1989 d.562	21 N.J.R. 3475(b)
13:47A-10	Registration of securities	21 N.J.R. 2903(a)		
13:61	State Police: boat safety course	21 N.J.R. 3434(a)		
13:70-3.40	Horse racing: admittance of children to race track	21 N.J.R. 1972(a)	R.1989 d.547	21 N.J.R. 3475(c)
13:70-29.19	Thoroughbred racing: elimination from place and show wagering	21 N.J.R. 3254(a)		
13:71-5.18	Harness racing: admittance of children to race track	21 N.J.R. 1972(b)	R.1989 d.546	21 N.J.R. 3476(a)
13:71-27.18	Harness racing: elimination from place and show wagering	21 N.J.R. 3255(a)		
13:75-1.6	Violent crimes compensation	21 N.J.R. 2910(a)		
13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)		

Most recent update to Title 13: TRANSMITTAL 1989-9 (supplement September 18, 1989)

**PUBLIC UTILITIES—TITLE 14**

14:0	Telecommunications for deaf: pre-proposal concerning Statewide 24-hour dual party relay center	21 N.J.R. 1653(a)		
14:3-3.2	Customer's proof of identity	21 N.J.R. 2004(a)		
14:3-3.6	Utility service discontinuance	21 N.J.R. 1650(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	21 N.J.R. 1650(b)		
14:3-4.7	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)		
14:3-7.5	Return of customer deposits	21 N.J.R. 1652(a)		
14:3-7.13	Late payment charges	21 N.J.R. 1652(b)		
14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	21 N.J.R. 2702(b)		
14:3-11	Earned return analysis of utility rates	21 N.J.R. 2003(a)		
14:3-11	Earned return analysis of utility rates: extension of comment period	21 N.J.R. 2704(a)		
14:9-3.3	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)		
14:11-7.2, 7.6-7.9	Solid waste uniform tariff	21 N.J.R. 2704(b)		

Most recent update to Title 14: TRANSMITTAL 1989-3 (supplement September 18, 1989)

**ENERGY—TITLE 14A**

14A:2	Energy emergencies (expired rules to be adopted as new at 12A:61)	21 N.J.R. 1272(a)		
14A:6-2	Business Energy Improvement Program	21 N.J.R. 2005(a)		
14A:8	Energy Facility Review Board	21 N.J.R. 2009(a)		
14A:11	Reporting by energy industries of energy information	21 N.J.R. 2009(b)		
14A:22	Commercial and Apartment Conservation Service Program	21 N.J.R. 2010(a)		

Most recent update to Title 14A: TRANSMITTAL 1989-2 (supplement July 17, 1989)

**STATE—TITLE 15**

Most recent update to Title 15: TRANSMITTAL 1989-1 (supplement February 21, 1989)

**PUBLIC ADVOCATE—TITLE 15A**

Most recent update to Title 15A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>TRANSPORTATION—TITLE 16</b>				
16:1A-1.3	Filing of rulemaking petitions	21 N.J.R. 2233(b)	R.1989 d.525	21 N.J.R. 3312(a)
16:5	Right-of-way acquisitions	21 N.J.R. 2713(a)	R.1989 d.576	21 N.J.R. 3671(a)
16:21A	Bridge Rehabilitation and Improvement Bond Act rules	21 N.J.R. 2716(a)	R.1989 d.577	21 N.J.R. 3674(a)
16:23	Public hearings and route location approval	21 N.J.R. 2913(a)		
16:24-1	Public utility rearrangement agreements	21 N.J.R. 3435(a)		
16:25-1.1, 1.7, 2.2, 7A, 13	Installation of fiber optic cable along limited access highways	21 N.J.R. 2234(b)		
16:28A-1.7, 1.10, 1.21, 1.34, 1.41, 1.57, 1.61, 1.85, 1.93, 1.110	Restricted parking and stopping along U.S. 9, Route 20, U.S. 30, Routes 49 and 77, U.S. 206, U.S. 9W, Route 161, U.S. 322, and Route 91	21 N.J.R. 3256(a)		
16:30-3.6	Cars-only shoulder lanes along U.S. 1 in West Windsor	Emergency (expires 11-21-89)	R.1989 d.535	21 N.J.R. 3317(a)
16:30-10.10	Mid-block crosswalk on Route 15 in Lafayette Township	21 N.J.R. 3258(a)		
16:31-1.3	Left turns on U.S. 46 in Mount Olive	21 N.J.R. 3437(a)		
16:41-2.2, 2.3, 2.4, 7.1, 7.2, 7.3	Highway access driveways and intersections: permit and application fees	21 N.J.R. 3063(a)		
16:41A-1.1, 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 3.1, 3.2, 3.3, 3.15, 3.19, 3.20, 4.2, 4.4, 5.2, 5.4, 6.1, 6.4, 7.1	Outdoor Advertising Tax Act rules	21 N.J.R. 2237(a)	R.1989 d.531	21 N.J.R. 3312(b)
16:44-1.1	Contract administration: prequalification committee	21 N.J.R. 2240(a)	R.1989 d.530	21 N.J.R. 3314(a)
16:44-5.1	Construction services: receipt of bids	21 N.J.R. 3437(b)		
16:44-5.5	Contract administration: verification of bid calculations	21 N.J.R. 2239(a)	R.1989 d.529	21 N.J.R. 3314(b)
16:46-1, 2	Drawbridge operations; reimbursed highway safety lighting	21 N.J.R. 2468(a)	R.1989 d.549	21 N.J.R. 3476(b)
16:50	Railroad transportation hearings	21 N.J.R. 3258(b)		
16:52	Provision of transportation services to elderly and handicapped	21 N.J.R. 3258(b)		
16:53-3.40, 6.11	Autobus specifications: rear view video cameras	21 N.J.R. 3259(a)		
16:53D-1.1	Zone of rate freedom: 1990 percentage maximums	21 N.J.R. 2914(a)		
16:77-1	Use or occupancy of NJ TRANSIT-owned property	21 N.J.R. 3259(b)		

**Most recent update to Title 16: TRANSMITTAL 1989-9 (supplement September 18, 1989)**

<b>TREASURY-GENERAL—TITLE 17</b>				
17:2	Public Employees' Retirement System	21 N.J.R. 2429(a)		
17:2-5.13	Public Employees' Retirement System: lump-sum service purchases	21 N.J.R. 1820(b)	R.1989 d.516	21 N.J.R. 3176(b)
17:4-5.7	Police and Firemen's Retirement System: lump-sum service purchases	21 N.J.R. 1821(a)	R.1989 d.515	21 N.J.R. 3176(c)
17:9-2.18, 3.1	State Health Benefits Program: continuation of coverage for disabled children	21 N.J.R. 885(a)		
17:12	Purchase Bureau rules	21 N.J.R. 2810(a)	R.1989 d.554	21 N.J.R. 3545(b)
17:13 (12A:10-1)	Goods and services contracts for small businesses, urban development enterprises and micro businesses	21 N.J.R. 2810(a)	R.1989 d.554	21 N.J.R. 3545(b)
17:14 (12A:10-2)	Minority and female subcontractor participation in State construction contracts	21 N.J.R. 2810(a)	R.1989 d.554	21 N.J.R. 3545(b)
17:14-1.6	Registration as minority or female business: administrative correction	_____	_____	21 N.J.R. 3674(b)
17:16-17.3	Investment limitations: administrative correction	_____	_____	21 N.J.R. 3556(a)
17:16-46, 47, 48, 49	State Investment Council: Common Pension Fund D; international diversification; currency exchange contracts	21 N.J.R. 3262(a)		
17:16-46.1, 46.5	Common Pension Fund D: administrative correction and extension of comment period	21 N.J.R. 3438(a)		
17:19-1,2	Classification of bidders on State projects	21 N.J.R. 3265(a)		
17:19-3.2	Debarment from State public works contracting	21 N.J.R. 3272(a)		
17:19-3.2	Debarment from State public works contracting: extension of comment period	21 N.J.R. 3439(a)		
17:19-10	Consultant selection procedures for State project assignments	21 N.J.R. 3074(a)		
17:19-10	Consultant selection procedures for State project assignments: extension of comment period	21 N.J.R. 3438(b)		
17:27-2.1, 5.2, 7.3	Affirmative action in public contracts	21 N.J.R. 3439(b)		

**Most recent update to Title 17: TRANSMITTAL 1989-8 (supplement September 18, 1989)**

<b>TREASURY-TAXATION—TITLE 18</b>				
18:7-8.10	Corporation Business Tax: administrative correction concerning airline revenues	_____	_____	21 N.J.R. 3477(a)
18:7-11.3	Corporation Business Tax: effect of deficiency notice	21 N.J.R. 3079(a)		
18:7-11.8, 13.3, 13.8	Corporation Business Tax: refund procedures	21 N.J.R. 1503(b)	R.1989 d.508	21 N.J.R. 3177(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
18:12A-1.6	Local property tax appeals: administrative correction			
18:24-1.4, 12.5	Sales and Use Tax: receipts	21 N.J.R. 1107(a)		21 N.J.R. 3674(c)
18:26-2.12	Transfer Inheritance and Estate Tax: renunciation or disclaimer	21 N.J.R. 1822(a)		

**Most recent update to Title 18: TRANSMITTAL 1989-5 (supplement August 21, 1989)**

**TITLE 19—OTHER AGENCIES**

19:3-1.1-1.4, 1.6	Hackensack Meadowlands District: subdivision, zoning and permit fees	21 N.J.R. 2949(a)		
19:4-2.2, 4, 5.10, 6.16, 6.18	Hackensack Meadowlands District zoning	21 N.J.R. 3441(a)		
19:4-6.24, 6.25	Hackensack Meadowlands District: penalties, entry and inspection	21 N.J.R. 2949(a)		
19:4-6.28	Zoning change in North Arlington and Lyndhurst	21 N.J.R. 3445(a)		
19:9-1.9	Turnpike Authority: "out-of-service" signs on school buses	21 N.J.R. 3272(b)		
19:9-6	Turnpike Authority: petitions for rules	21 N.J.R. 2440(a)	R.1989 d.580	21 N.J.R. 3675(a)
19:20-2	Sports and Exposition Authority: use of facilities	21 N.J.R. 887(b)		
19:25-10.8	Reporting requirements of continuing political committees	21 N.J.R. 3273(a)		
19:25-15.28	Public financing of general election for Governor: administrative correction			21 N.J.R. 3179(a)
19:25-15.29	Coordinated expenditures in general election for Governor	21 N.J.R. 2673(a)	R.1989 d.545	21 N.J.R. 3477(b)
19:61-3.2	Executive Commission on Ethical Standards: subpoena for witnesses	21 N.J.R. 1507(b)	R.1989 d.521	21 N.J.R. 3179(b)
19:61-3.2, 5.5	Subpoena for witnesses; rulemaking petitions: extension of comment period	21 N.J.R. 2441(b)		
19:61-5.5	Rulemaking petitions	21 N.J.R. 1508(a)	R.1989 d.520	21 N.J.R. 3179(c)

**Most recent update to Title 19: TRANSMITTAL 1989-8 (supplement September 18, 1989)**

**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

19:41-7.2B	Reporting of proposed foreign gaming operations	21 N.J.R. 129(b)		
19:41-8.6	Withdrawal of application for licensure	21 N.J.R. 130(a)		
19:45-1.1, 1.9, 1.9A, 1.15	Transportation expense reimbursement to patrons	21 N.J.R. 2953(a)		
19:45-1.1, 1.25	Slot machine payoffs by casino check; special slot tokens	21 N.J.R. 2954(a)		
19:45-1.11	Casino organization	21 N.J.R. 3446(a)		
19:45-1.12	Gaming supervision	21 N.J.R. 3080(a)		
19:46-1.12	Minibaccarat table layout	21 N.J.R. 3446(b)		
19:47-2.6, 2.8	Blackjack surrender rule	21 N.J.R. 3447(a)		
19:47-2.6, 2.9	Insurance wagers in blackjack	21 N.J.R. 2441(a)		
19:49-3.1, 3.2, 3.3	Junket reporting requirements	20 N.J.R. 2648(b)	Expired	
19:52-1.3	Musical entertainment	20 N.J.R. 2649(a)	Expired	
19:53-1.5	Employment of minority and female workers	21 N.J.R. 1823(a)	R.1989 d.528	21 N.J.R. 3314(c)

**Most recent update to Title 19K: TRANSMITTAL 1989-8 (supplement September 18, 1989)**