



NEW JERSEY REGISTER

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JANUARY 17, 1989

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT FEBRUARY 21, 1989

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0100330
EDUCATION, DEPARTMENT OF
DIV LIBRARY, ARCHIVES, & HISTORY
CN 520
TRENTON NJ 08625
INTER-OFFICE

INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **April 19, 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

BANKING

(a)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

Insurance Premium Finance Company Act Rules Proposed Readoption with Amendment: N.J.A.C. 3:22

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

Authority: N.J.S.A. 17:16D-8.

Proposal Number: PRN 1989-146.

Submit written comments by April 19, 1989 to:

Robert M. Jaworski, Deputy Commissioner
Department of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Banking proposes to readopt the rule, N.J.A.C. 3:22-1.1, governing premium finance agreements, which will expire on May 21, 1989 pursuant to Executive Order No. 66(1978). This rule requires prior disclosure of the terms of the agreement, prohibits continuous payment agreements and requires separately signed agreements for each policy, renewal, addition or change. The Department has reviewed this rule and determined it to be necessary, reasonable and proper for the purpose for which it was originally promulgated. The amendment proposed is technical, and does not alter the substantive requirements of the rule.

Social Impact

The rule proposed for readoption applies to all licensed insurance premium finance companies. It imposes reasonable requirements on these licensees to ensure that consumers are informed of all key elements in an agreement and of any changes in the agreement.

Economic Impact

The rule proposed for readoption merely requires disclosure and periodic review of premium finance agreements, so no economic impact is anticipated.

Regulatory Flexibility Statement

The proposed readoption places compliance requirements on insurance premium finance companies, many of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As these compliance requirements are designed to protect consumers, this protection would be diminished if compliance was differentiated on the basis of business size. No such differentiation is, therefore, provided.

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

CHAPTER 22

INSURANCE PREMIUM FINANCE COMPANY ACT

SUBCHAPTER 1. PREMIUM FINANCE AGREEMENT

3:22-1.1 Premium finance agreement

(a) There must be disclosure in the premium financing agreement of the key elements prior to the signature of the insured in accordance with the requirements set forth in N.J.S.A. 17:16D-9.

(b) [As] A continuous payment agreement which authorizes renewable or continuing arrangements is prohibited.

(c) Separately signed premium finance agreements are required for each policy, renewal, [or additional] **addition** or change, in order to disclose current conditions and provisions applicable to each loan.

(d) This rule shall apply to [Insurance Premium Finance Companies] **insurance premium finance companies** doing business or authorized to do business in the State of New Jersey.

HEALTH

(b)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Current Cost Base

Proposed Amendment: N.J.A.C. 8:31B-3.16

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

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5B and 26:2H-18d.

Proposal Number: PRN 1989-133.

Submit written comments by April 19, 1989 to:

Alan N. Rosenberg, Director
Hospital Reimbursement, Room 601
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

In 1988, the Hospital Rate Setting Commission approved a four percent increase to labor reimbursement which simulated the effect of rebasing to 1986. Some hospitals contend that they did not experience the full four percent inflation above the labor proxy by the end of the 1986 rate year. Extraordinary inflation of labor costs did not impact some hospitals until 1987 and therefore may not be reflected in their 1986 data base. This amendment will allow a data base adjustment for actual 1987 labor cost inflation up to four percent above the 1982-87 labor proxy.

Social Impact

This proposed amendment will allow hospitals which did not incur the full four percent increase in labor cost until 1987 to receive this adjustment. These hospitals will be able to remain competitive with other hospitals in attracting labor.

Economic Impact

This proposed amendment will allow the Department to recognize labor cost inflation up to four percent above the labor proxy if this occurred by the end of the 1987 rate year. In the modeling of rebasing, it was assumed that all hospitals recaptured the four percent increase in the new base year. The labor component of the 1986 current cost base will potentially increase as a result of this amendment.

Regulatory Flexibility Statement

The proposed amendment applies only to the hospitals that have rates established by the Hospital Rate Setting Commission. All of these hospitals employ more than 100 full-time employees and therefore do not fall into the category of small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows (additions indicated in boldface **thus**).

HEALTH

PROPOSALS

8:31B-3.16 Current cost base

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

(e) The 1986 labor component of the cost data base may be altered for one time only upon the identification by a hospital that 1986 labor costs did not exceed the labor proxy by four percent between 1982 and 1986. In this case, the hospital's 1987 actual cost report must demonstrate that 1987 labor costs exceeded 1982 labor costs by up to four percent over the 1982-87 labor proxy. The hospital's actual cost up to four percent above the 1982-87 labor proxy will be added to the data base.

(a)

DRUG UTILIZATION REVIEW COUNCIL**Interchangeable Drug Products****Proposed Amendments: N.J.A.C. 8:71**

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

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

Proposal Number: PRN 1989-138.

A public hearing concerning this proposal will be held on April 11, 1989 at 3:00 P.M. at the following address:

Board Room
Room 103, First Floor
Department of Health
Health-Agriculture Bldg.
Trenton, N.J. 08625-0360

Submit comments by April 19, 1989 to:

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

The agency proposal follows:

Summary

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

For example, the proposed gemfibrozil capsules could then be used as a less expensive substitute for Lipid, a branded prescription medicine. Similarly, the proposed erythromycin EC tablets could be substituted for the more costly branded product, E-Mycin.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency", any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of these amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by these amendments because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. This saving also cannot be estimated accurately.

Regulatory Flexibility Statement

The proposed amendments impact many small businesses: specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or record-keeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or record-keeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposal follows:

Albuterol tabs 2, 4 mg	Mutual, PharmBasics
Amantadine caps 100 mg	Chase
Amitriptyline/perphenazine 2/10, 2/25	Mylan
Amitriptyline/perphenazine 4/10, 4/25, 4/50	Mylan
Amoxapine tabs 25, 50, 100, 150 mg	Cord
Amoxicillin caps 250, 500 mg	Clonmel
Amoxicillin for susp 125/5, 250/5	Clonmel
Ampicillin caps 250, 500 mg	Clonmel
Ampicillin for susp 125/5, 250/5	Clonmel
Atenolol tabs 50, 100 mg	Par
Atenolol/HCTZ tabs 50/25, 100/25	Par
Atropine sulfate ophth soln 1%	Ocumed
Baclofen tabs 10, 20 mg	Danbury
Benzotropine mesylate tabs 0.5, 1, 2 mg	Sidmak
Carisoprodol tabs 350 mg	Pioneer
Cefadroxil caps 500 mg	Biocraft
Chlordiazepoxide caps 10, 25 mg	Pioneer
Chlorpheniramine/PPA ER caps 12/75	Cord
Chlorthalidone tabs 50 mg	Pioneer
Chlorzoxazone tabs 250, 500 mg	Pioneer
Chlorzoxazone tabs 500 mg	Danbury
Clonidine tabs 0.1, 0.2, 0.3 mg	Chelsea
Colchicine/probenecid tabs 0.5/500	Danbury
Cyclobenzaprine tabs 10 mg	Cord
Diazepam tabs 2, 5, 10 mg	Pioneer
Dicyclomine caps 10 mg	Pioneer
Disulfiram tabs 250, 500 mg	Danbury
Doxepin caps 100, 150 mg	Quantum
Doxepin oral solution 10 mg/ml	PharmBasics
Erythromycin base EC caps 250 mg	Barr
Erythromycin ethylsucc. susp 200 & 400/5	Barr
Fenoprofen tabs 600 mg	Mutual
Fluocinonide sol, gel, and cream (0.05%)	Lemmon
Fluphenazine tabs 1, 2.5, 5, 10 mg	Chelsea
Flurazepam caps 15, 30 mg	Chelsea
Gemfibrozil caps 300 mg	Purepac
Haloperidol oral solution 2 mg/ml	Copley
Hydrocodone/APAP tabs 5/500	Watson
Hydroxyzine pamoate caps 25, 50, 100 mg	Cord
Hyoscyamine tabs 0.125 mg	Ferndale
Ibuprofen tabs 400, 600 mg	Danbury
Ibuprofen tabs 400, 600 mg	Lederle
Imipramine tabs 10 mg	Vitarine
Imipramine tabs 10, 25, 50 mg	Mutual
Isometheptene, dichloralphenazone, and	
Acetaminophen caps	Ferndale
Isosorbide dinitrate tabs 20, 30 mg	Barr
Lactulose syrup 10 g/15 ml	Inalco SPA, PharmBasics
Lorazepam tabs 0.5, 1, 2 mg	Mutual
Metaproterenol 0.4%, 0.6% soln (UDose)	Paco

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

Metaproterenol inhalation soln 5%	PharmBasics
Metaproterenol syrup 10 mg/5 ml	PharmBasics
Methyldopa/HCTZ tabs 250/15, 250/25	Watson
Methyldopa/HCTZ tabs 500/30, 500/50	Watson
Methylprednisolone tabs 4, 16 mg	Chelsea
Metoclopramide syrup 5 mg/5 ml	Barre, Charter
Metoclopramide tabs 5 mg	Chelsea
Minocycline caps 50, 100 mg	Chelsea
Minocycline tabs 50, 100 mg	Chelsea
Minoxidil tabs 2.5, 10 mg	Par
Nifedipine caps 10 mg	Cord, Purepac
Oxazepam caps 10, 15, 30 mg	Barr
Oxybutynin tabs 5 mg	Quantum, Sidmak
Penicillin VK for soln 125/5, 250/5	Clonmel
Penicillin VK tabs 250, 500 mg	Clonmel
Perphenazine tabs 2, 4, 16 mg	Chelsea
Phenobarbital, ergotamine tartrate, and belladonna alkaloids tabs	Ferndale
Phenylephrine, chlorpheniramine, pyrilamine (as tannates) tabs, ped. susp	Ferndale
Potassium Cl ER caps 10 mEq	KV
Prazosin caps 1, 2, 5 mg	Purepac
Propranolol tabs 60, 90 mg	Watson
Quinidine sulfate tabs 100, 200, 300 mg	Mutual
Sulindac tabs 150, 200 mg	Cord
Sulindac tabs 150, 200 mg	Purepac
Tetracycline caps 250, 500 mg	Lab A
Tetracycline caps 500 mg	Vitarine
Theophylline ER tabs 100, 200, 300 mg	Sidmak
Theophylline elixir 80 mg/15 ml	Thames
Thiothixene conc. 5 mg/ml	Charter
Timolol maleate tabs 5, 10, 20 mg	Bolar, PharmBasics
Tolazamide tabs 100, 250, 500 mg	Barr
Triamcinolone acet./nystatin cream	Naska
Triamterene/HCTZ tabs 75/50	Watson
Valproic acid caps 250 mg	Chelsea
Verapamil tabs 40 mg	Chelsea
Verapamil tabs 80, 120 mg	Sidmak

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual

Child Support Program: Incentive Payment Methodology

Proposed Repeal and New Rule: N.J.A.C. 10:81-11.6

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 303.52(d) and 305.46.

Proposal Number: PRN 1989-127.

Submit comments by April 19, 1989 to:

Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Child Support Enforcement Amendments of 1984 (45 CFR 303.52(d) and 305.46) provide for a change in the method of determining the amount of incentive payments a state is entitled to receive for child support enforcement. Currently, states and political subdivisions, such as counties, are entitled to receive an incentive of 12 percent of collections made on behalf of Aid to Families with Dependent Children (AFDC) families. States deduct the incentive payment from the Federal share of

collections before reimbursing the Federal government for its contribution toward the AFDC assistance payment. The incentive payment is thus set as a fixed rate of the support collection.

Federal regulations (see Authority) mandate that, effective October 1, 1985, incentive payments are to be computed in recognition of non-AFDC collections, as well as AFDC collections. Incentives will be determined separately for each segment, based on a percentage of collections. The percentages will be based on the ratio of the State's AFDC collection to the State's total administrative costs and the State's non-AFDC collection to the State's total administrative costs. The portion of the incentive payment paid to states for a fiscal year in recognition of its non-AFDC payment will be limited to the percentage of the portion of the incentive payment paid for the fiscal year in recognition of its AFDC collections. The proposed rule implements these requirements.

Social Impact

In accordance with 45 CFR 305.46, this rule is intended to insure that each county is paid an appropriate share of any incentive payment made to the State by the Federal government, as determined by the cost benefit ratio of the child support enforcement program in that county.

It is expected that the counties will improve their cost benefit ratios as a result of this plan by increasing the rate and the amount of child support collected in both AFDC and non-AFDC cases. Regular child support payments lead to improved economic and social well-being for the client family. Lack of regular child support payments has been determined to be a contributing factor in welfare dependency.

Counties which maintain a low cost benefit ratio will receive less than 12 percent of collections as an incentive; counties which maintain a high cost benefit ratio will receive more than 12 percent of collections as an incentive, in accordance with the provisions of this rule.

Economic Impact

This rule is intended to improve the child support enforcement program of each county in New Jersey by providing that the incentive payments the counties receive as the result of their child support collections are appropriate, as measured by their cost benefit ratios. Through the encouragement of an effective child support enforcement program, the Department expects that the incentives will lead to an increase in AFDC collections, which will result in closure of some AFDC cases and increased revenue to offset AFDC benefits expended for AFDC cases which remain active, thus reducing the financial burden on the taxpayer. Increased non-AFDC collections will prevent some families from becoming dependent on the welfare system.

Regulatory Flexibility Statement

This rule does not impose reporting, recordkeeping or other compliance requirements on small businesses, as they are defined in N.J.S.A. 52:14B-16 et seq.; therefore, a regulatory flexibility analysis is not required. The rule requires political subdivisions (counties, in this case) to keep records and to report the costs and collections which result from their child support enforcement programs, in order to determine a cost benefit ratio. These requirements do not add to the recordkeeping currently required for other purposes.

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

10:81-11.6 Incentive payment

[(a) Twelve percent incentive: An amount equal to 12 percent of all support collections shall be retained by the CWA with the exception of those collections made on behalf of or in conjunction with other jurisdictions (intrastate or interstate).

1. Support collection defined for the purpose of calculating the 12 percent incentive shall include court ordered child support, court ordered alimony or spousal support collected in conjunction with child support and voluntary support payments.

2. Incentive payments for collections on behalf of other jurisdictions will be forwarded by that jurisdiction to the appropriate agency. Accordingly, CWAs are to pay 12 percent incentives to other CWAs within the State and calculate incentive owed to appropriate out-of-state jurisdictions for child support collections received from those jurisdictions, for payment via the State IV-D Agency.

3. Incentive payments will be divided evenly between jurisdictions when more than one jurisdiction within the State is involved in the enforcement or collection of any child support obligations. Incentives on collections processed through the State CSP Unit will be divided evenly between the State and local jurisdiction.

(b) Deduction of the incentive payments: The CWA will be responsible for the calculation of incentive payments. Any such payment shall be deducted from the Federal share of the amount of support collected. All incentive monies retained by the CWA will be deposited in the administration account.]

(a) CWAs shall receive an appropriate share of any incentive payments made to the State, based on the efficiency and effectiveness of the CWA's activities in carrying out the requirements of the Title IV-D State Plan. A portion of the incentive payments shall be computed as a percentage of the State's AFDC collections and a portion shall be computed as a percentage of non-AFDC collections. The percentages shall be computed separately for each segment, based on the ratio of the State's AFDC collections to the State's total IV-D administrative costs. The portion of the incentive payments in recognition of non-AFDC collections shall be limited by the percentage of the portion of the incentive payments paid for a specific year in recognition of its AFDC collections.

1. AFDC collections means support collections satisfying an assignment support obligation, including support collected by one state on behalf of individuals receiving IV-D services and parents residing in another state, which shall be treated as having been collected in full by each state.

2. Non-AFDC collections means support collections on behalf of individuals receiving Title IV-D services, satisfying a support obligation which has not been assigned via Form PA-IJ, including collections made by one state on behalf of individuals receiving IV-D services and parents residing in another state. Such interstate collections shall be treated as having been collected in full by each state.

3. Total IV-D administrative costs means total IV-D expenditures claimed by a state in a specified fiscal year, excluding fees paid by individuals, recovered costs and program income, such as interest earned on collections. Another exclusion from administrative costs shall be laboratory fees incurred in determining paternity.

4. In calculating the amount of incentive payments, only those AFDC and non-AFDC collections distributed and expenditures claimed by the State in the fiscal year shall be used to determine the incentive payment payable for a year. The methodology to be employed in the calculation of incentive payments will be the same for both program segments (AFDC and non-AFDC); however, the incentive payment for non-AFDC, as noted above, cannot exceed the amount earned for AFDC collections. Each county will receive its share of the State's incentive payments, based on the benefit/cost ratio truncated at the first decimal place. This methodology requires the determination of the average benefit/cost ratio among the counties. The standard deviation from the average is then determined. A scale is established and a value of six percent is assigned to the State average. For each movement of a full + 1/2 standard deviation by a county's benefit/cost ratio, that county will be entitled to one percent more of incentive payment. Any resultant surplus will be distributed according to the counties' proportionate share of the total qualified caseload.

(b) The Federal Office of Child Support Enforcement (OCSE) will estimate the total incentive to be received by a state for the upcoming fiscal year. In the quarterly collection report, the State will estimate the total payment, thus reducing the amount to be paid to the Federal government to reimburse its share of assistance payments, IV-A and Foster Care maintenance payments. At the end of a fiscal year, the OCSE will determine if the estimated incentive payments were correct and, if not, adjustments will be made accordingly.

1. Collections made in one jurisdiction for another jurisdiction shall be forwarded to the originating jurisdiction no later than 10 days after collection was received.

i. States and other jurisdictions must have a identifying code for interchange procedures.

CORRECTIONS

(a)

THE COMMISSIONER

Classification Process

Exceptions; Time in Custody; Failure to Work

Proposed Amendments: N.J.A.C. 10A:9-1.3 and 5.2

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

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

Proposal Number: PRN 1989-129.

Submit comments by April 19, 1989 to:

Elaine W. Ballai, Esq.

Special Assistant for Legal Affairs

Department of Corrections

CN 863

Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 10A:9-5.2 is proposed for amendment in accordance with the Appellate Division decision *Karatz v. Scheidemantel*, Dkt. No. A-2153-87T1 (App. Div. 1988), to prohibit the use of work, commutation or gap time credits to reduce an inmate's sentence to a period of incarceration that is less than the judicial or statutory mandatory minimum term imposed by the court. N.J.A.C. 10A:9-1.3 is proposed for amendment to add a definition for "gap time credit", which is consistent with a definition given in the Supreme Court decision of *Richardson v. Nickolopoulos*, 110 N.J. 241 (1988).

Social Impact

The proposed amendments will prohibit the use of work, commutation or gap time credits to reduce an inmate's maximum sentence to a period of incarceration that is less than the judicial or statutory mandatory minimum term imposed by the court.

Economic Impact

The proposed amendments will have no significant economic impact because additional funding is not necessary to implement or maintain the amendment.

Regulatory Flexibility Statement

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

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

10A:9-1.3 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise.

...
 "Gap time credit" means the credit awarded by the sentencing court for the period of time between dates of sentence when a defendant, who has previously been sentenced to imprisonment, is subsequently sentenced to another term for an offense committed prior to the former sentence, other than an offense committed while in custody.
 ...

10A:9-5.2 Exceptions; time in custody; failure to work

(a) (No change.)

(b) In all cases where the sentence includes a mandatory minimum term of imprisonment, commutation [and] time, work [credits] time, gap time and minimum credits may not be applied to the mandatory minimum term, but may only reduce the maximum term.

(c) In no case may commutation time, work time, gap time and minimum credits be used to reduce a maximum sentence to a period of incarceration that is less than the judicial or statutory mandatory minimum term.

Recodify existing (c) through (d) as (d) through (e) (No change in text.)

(a)

THE COMMISSIONER

Social Services

Recreation and Leisure Time Activities

Proposed New Rules: N.J.A.C. 10A:17-8

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

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

Proposal Number: PRN 1989-124.

Submit comments by April 19, 1989 to:

Elaine W. Ballai, Esq.

Special Assistant for Legal Affairs

Department of Corrections

CN 863

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules provide guidelines for teaching inmates to use leisure time constructively by making available to them facilities and opportunities for participation in athletics, arts and crafts, hobbies, reading, writing and other leisure time activities.

Social Impact

The proposed new rules will have no new or additional social impact since they are simply a codification of an existing standard into rules. The social impact of the standard's operation has been positive, providing a framework for the conduct of inmate leisure time activities.

Economic Impact

The proposed new rules will have no new or additional economic impact because correctional facilities are already adhering to the existing standard and no additional costs are necessary to implement or maintain these proposed new rules.

Regulatory Flexibility Statement

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

Full text of the proposal follows.

SUBCHAPTER 8. RECREATION AND LEISURE TIME ACTIVITIES

10A:17-8.1 Staff assigned to Recreation and Leisure Time Activities Program

(a) The Superintendent shall designate a staff person who shall be responsible for the direction and supervision of the Recreation and Leisure Time Activities Program of the institution, and this staff person must meet the following requirements:

1. Be a graduate of an accredited college with a bachelor's degree in the field of physical education, recreation therapy, or related sports/recreation fields; and
2. Have at least one year of experience in an institutional, public school or community recreation program.

(b) Volunteers may be used to assist the recreation staff in designated Recreation and Leisure Time Program activities (see N.J.A.C. 10A:17-2, Volunteer Service Program).

10A:17-8.2 Inmate recreation aides or paraprofessionals

(a) Inmates may be assigned to the Recreation and Leisure Time Activities Program to serve as inmate recreation aides or paraprofessionals.

(b) Inmate recreation aides or paraprofessionals may be utilized as:

1. Scorekeepers;
2. Demonstrators;
3. Projectionists;
4. Referees;
5. Officials;
6. Equipment managers;
7. Clerks;

8. Arts and craft aides; and/or

9. Aides in other recreational related tasks.

(c) Inmate recreation aides or paraprofessionals shall be trained by the recreation staff and receive close supervision from a staff member.

(d) Inmate paraprofessionals under the jurisdiction of the Division of Adult Institutions who are assigned to work in a juvenile correctional facility may accompany athletic teams to athletic activities held at high schools or other correctional facilities if approved by the Deputy Commissioner. Inmate paraprofessionals shall not be permitted to participate in any other type of community based trip (see N.J.A.C. 10A:17-8.15).

(e) In instances when inmate participation in the Recreation and Leisure Time Activities Program constitutes a regular work assignment, the inmate recreation aide or paraprofessional shall be paid in accordance with N.J.A.C. 10A:13, Inmate Work Programs.

10A:17-8.3 Physical facilities utilized by the Recreation and Leisure Time Activities Program

(a) Each institution shall provide the following for the inmate general population:

1. An auditorium or a large area for the assemblage of inmates; and

2. A gymnasium of sufficient size to accommodate athletic activities.

(b) The gymnasium shall contain standard facilities and equipment for a wide variety of activities which may include:

1. Ping-pong;
2. Basketball;
3. Racquetball;
4. Volleyball;
5. Tumbling;
6. Weight lifting;
7. Gymnastics;
8. Rubber horseshoes and quoits;
9. Handball;
10. Boxing; and
11. Dance.

(c) The auditorium should contain a stage, screen and enough seats to accommodate, at one time, at least one half of the inmate population eligible to attend activities scheduled in this area. The stage facilities shall include:

1. A sound system;
2. Curtains;
3. A lighting system; and
4. Other equipment necessary for multipurpose use.

(d) The outdoor recreation area shall contain standard facilities and equipment for a wide variety of activities which may include:

1. Baseball;
2. Football;
3. Softball;
4. Soccer;
5. Basketball;
6. Volleyball;
7. Handball;
8. Weight lifting;
9. Horseshoes; and
10. Track and field events.

(e) Each institution shall provide sufficient indoor and outdoor recreation areas for inmates in Administrative Segregation and other specialized housing units, in accordance with N.J.A.C. 10A:5, Close Custody Units.

(f) Each institution shall establish policies and procedures for the provision of recreation and leisure time activities to inmates assigned to the satellite unit(s) under the jurisdiction of the institution.

10A:17-8.4 Recreational equipment

(a) Regulation recreational equipment shall be used for all athletic activities when improvised equipment would prove hazardous.

(b) Inmates shall be instructed in the proper use and care of recreational equipment.

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(c) Each institution, except the New Jersey State Prison, shall provide adequate facilities for television viewing, by each inmate, a minimum of twice per week. Television viewing at the New Jersey State Prison shall be provided equitably to inmates a minimum of once per week on a rotational basis.

(d) Except at the New Jersey State Prison and the East Jersey State Prison, each housing unit shall be supplied with a television set and sufficient quiet games. At the New Jersey State Prison and the East Jersey State Prison, one or more indoor areas shall be equipped with television sets for the use of inmates.

(e) Inmates shall be permitted to have personal electronic devices, such as record players, records, radios and television sets, subject to restrictions established by the correctional facility based upon the following factors:

1. The maintenance of security;
2. The suppression of unnecessary noise;
3. The availability of space;
4. The capability of the electrical system; or
5. Other factors related to the orderly operation of the institution.

(f) Each institution and its satellite unit(s) shall utilize sound movie projectors or VHF recorders of appropriate size to accommodate classroom or general inmate entertainment use.

10A:17-8.5 Recreation and leisure time needs assessment

As a part of the orientation process, each institution shall complete an assessment of the recreation and leisure interests and skills of newly admitted inmates, and provide the inmates with information related to the recreation and leisure time activities that are available at the institution.

10A:17-8.6 Scheduling active and quiet recreation

(a) Planned recreation program activities shall be scheduled year round, and athletic activities shall be scheduled according to the season.

(b) Active recreation shall include all phases of organized or unorganized athletics, dance, aerobics or other recreational activities.

(c) Inmates shall be given the opportunity to participate in a minimum of one hour of active recreation per day.

(d) Inmates shall also be given the opportunity to participate in a minimum of one hour of quiet recreation per day. Inmates may watch television, read, play quiet games, participate in some organized club, or work in arts and crafts.

(e) When weather permits, appropriate quiet activities may be moved to an outdoor area.

(f) When all scheduled activities and other assignments are completed, inmates shall be permitted to do hobby work in their cells, dormitories, cottages or other locations in the institution unless such activity interferes with the maintenance of security or the orderly operation of the institution.

(g) Recreation for inmates in Close Custody Units shall be provided in accordance with N.J.A.C. 10A:5, Close Custody Units.

10A:17-8.7 Instruction in athletic and other recreation skills

In order to encourage inmates to participate in a variety of recreational activities, instruction in the rules and skills required for participation shall be provided, when appropriate.

10A:17-8.8 Showers

The opportunity to shower shall be available to inmates after participating in an active recreation program, unless such activity interferes with the maintenance of security or the orderly operation of the institution.

10A:17-8.9 Arts and crafts program

(a) An organized arts and crafts program may be provided, when available, under the direction of an assigned instructor on a regular basis.

(b) Inmates may participate in arts and crafts activities in classrooms, cells, dormitories, cottages or other locations in the institution, unless such activity interferes with the maintenance of security or the orderly operation of the institution.

(c) Hobby kits and materials for arts and crafts, that have been approved by the Superintendent, may be purchased at the canteen.

(d) Inmates shall not engage in stamp collecting as a hobby.

10A:17-8.10 Music

(a) The music program, when available, shall be directed by a qualified music instructor who shall adapt the music program to the needs of the inmates.

(b) A separate practice area, with sufficient storage space is desirable for the music program, so long as sufficient room is available.

(c) Inmate vocal groups, instrumental groups and soloists may perform for the inmate general population and for groups who visit the institution.

(d) Appearances of guest artists may be arranged, when appropriate.

10A:17-8.11 Publications

(a) Appropriate institutional publications, such as newsletters and pamphlets, written by inmates shall be encouraged.

(b) A staff member shall be assigned to supervise the content and production of publications.

(c) Articles and materials that are written by inmates shall be reviewed for content by the Superintendent or his or her designee and approved or disapproved prior to publication.

10A:17-8.12 Motion pictures

Full length sound motion pictures or VCR cassettes for general entertainment shall be available to inmates in the general population a minimum of once per week, except when such general entertainment interferes with the maintenance of security or the orderly operation of the institution.

10A:17-8.13 Clubs and special interest groups

(a) Clubs shall be formed for inmates interested in specific games such as chess and bridge.

(b) Groups shall be formed for inmates who are interested in current events, book discussions and other interests.

(c) All clubs and groups shall be supervised by staff members.

10A:17-8.14 Inside entertainment

(a) Entertainment, such as variety shows and choral groups, may be brought into the institution from the outside community on a regular basis, at the discretion of the Superintendent.

(b) Inmates may be permitted to utilize their talents by participating in dramatic skits, variety shows and other similar activities.

10A:17-8.15 Community entertainment

(a) Inmates assigned to institutions within the Division of Adult Institutions shall not be permitted to participate in any community based trip.

(b) Inmate paraprofessionals under the jurisdiction of the Division of Adult Institutions, who are assigned to work in a juvenile correctional facility, shall not be permitted to participate in any community based trip, except the paraprofessionals that have been approved by the Deputy Commissioner to accompany athletic teams to athletic activities held by high schools or other correctional facilities.

(c) Juvenile inmates may be permitted to participate in recreation and leisure time activities in the community if their custody status and Department of Corrections policies and procedures permit the juveniles to leave the institution.

10A:17-8.16 Staff reference area on recreation

(a) Each institution shall subscribe to several recreation and physical education journals and newsletters.

(b) Each institution shall provide a reference area where current books on recreation and physical education shall be available for use by recreation staff members.

10A:17-8.17 Budget requests

The staff person responsible for the Recreation and Leisure Time Activities Program shall submit an annual budget request to the Superintendent or his or her designee which specifies the resources necessary to purchase materials, equipment and supplies to conduct the Recreation and Leisure Time Activities Program.

10A:17-8.18 Report of major recreation and leisure time activities

At the end of each month, the staff person responsible for the Recreation and Leisure Time Activities Program shall submit a report to the Superintendent or his or her designee which indicates all

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major recreation and leisure time activities conducted that month and the number of inmates who participated in each activity.

(a)

THE COMMISSIONER

Manual of Standards For Juvenile Detention Commitment Programs

Proposed Readoption with Amendments: N.J.A.C. 10A:33

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

Authority: N.J.S.A. 2A:4A-1 et seq., specifically 2A:4A-43c(1) and (2), and 30:1B-10.

Proposal Number: PRN 1989-130.

Submit comments by April 19, 1989 to:

Elaine W. Ballai, Esq.

Special Assistant for Legal Affairs

Department of Corrections

CN 863

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the revised New Jersey Juvenile Code, N.J.S.A. 2A:4A-1 et seq., juveniles who have been adjudicated delinquent may be committed to county operated juvenile detention facilities approved by the New Jersey Department of Corrections. N.J.A.C. 10A:33, Manual of Standards for Juvenile Detention Commitment Programs, was adopted effective on July 16, 1984, in order to establish the minimum standards which must be met by county operated juvenile detention facilities receiving adjudicated delinquents. Pursuant to Executive Order No. 66(1978), this chapter expires on July 16, 1989. Prior to the adoption of N.J.A.C. 10A:33, county juvenile detention facilities provided care and custody only for juveniles accused of, but not yet adjudicated as delinquents. The Department of Corrections proposes the readoption of N.J.A.C. 10A:33 with amendments. The amendments to N.J.A.C. 10A:33 permit counties which do not have an approved Juvenile Detention Commitment Program located within their jurisdiction to participate in the Program by contracting with another county in which an approved Juvenile Detention Commitment Program is located.

Social Impact

The proposed readoption of N.J.A.C. 10A:33 with amendments is expected to continue to have a positive social impact on juvenile detention facilities, the juveniles in residence and the general community. The minimum standards of care and services established within these rules will continue to ensure that only county juvenile facilities which provide acceptable programs and adequate space will be permitted to participate in the Juvenile Detention Commitment Program.

Economic Impact

The proposed readoption of N.J.A.C. 10A:33 with amendments is expected to have a minimal economic impact. The proposed readoption of N.J.A.C. 10A:33 with amendments does not require counties to develop Juvenile Detention Commitment Programs or provide such services in their juvenile detention facilities. The quality of care and services provided in most of the facilities which are eligible to develop a Juvenile Detention Commitment Program exceeds the minimum standards required by N.J.A.C. 10A:33. The proposed amendments to N.J.A.C. 10A:33 will have a minor economic impact on counties which were not eligible to participate in the Juvenile Detention Commitment Program because an approved facility was not located within their boundaries. The amendments to N.J.A.C. 10A:33 permit these counties to contract with other counties in which an approved Juvenile Detention Commitment Program is located. The statistical data related to Juvenile Detention Commitment Programs during the last five years, and the projected use of the Program by counties expected to enter into such contracts, indicate the costs of implementing the amendments to N.J.A.C. 10A:33 to be minimal.

Regulatory Flexibility Statement

A Regulatory Flexibility Analysis is not required because this proposed readoption of N.J.A.C. 10A:33 with amendments does not impose report-

ing, recordkeeping or other compliance requirements on small businesses. The proposed readoption of N.J.A.C. 10A:33 with amendments impact only on the New Jersey Department of Corrections, county courts, county juvenile detention facilities and juvenile offenders.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10A:33.

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

10A:33-2.2 Legal authority of [department] **Department**

(a) N.J.S.A. 2A:4A-43c(1) provides that, "[if] If the [juvenile detention facility in the] county in which the juvenile has been adjudicated delinquent has a juvenile detention facility meeting the physical and program standards established pursuant to this subsection by the Department of Corrections, the court may, in addition to any of the dispositions **not involving placement out of the home** enumerated in this [subsection] **section**, incarcerate the juvenile in [a] the youth detention facility in that county for a term not to exceed 60 consecutive days. **Counties which do not operate their own juvenile detention facilities may contract for the use of approved commitment programs with counties with which they have established agreements for the use of pre-disposition juvenile detention facilities.** The Department of Corrections shall promulgate such rules and regulations from time to time as deemed necessary to establish minimum physical facility and program standards for the use of juvenile detention facilities pursuant to this subsection."

(b) N.J.S.A. 2A:4A-43c(2) provides that, "[no] No juvenile may be incarcerated in any county detention facility unless the county has entered into an agreement with the Department of Corrections concerning the use of the facility for sentenced juveniles. Upon agreement with the county, the Department of Corrections shall certify detention facilities which may receive juveniles sentenced pursuant to this subsection and shall specify the capacity of the facility that may be made available to receive such juveniles; provided, however, that in no event shall the number of juveniles incarcerated pursuant to this subsection exceed 50% of the maximum capacity of the facility."

10A:33-3.1 [Statutory] **County eligibility**

[Pursuant to N.J.S.A. 2a:4a-43c(1) only] **Only those counties in which an approved juvenile detention facility is located and those counties that have a contract with another county that has an approved juvenile detention facility are eligible to participate in the [juvenile detention commitment program] Juvenile Detention Commitment Program.**

INSURANCE

(b)

DIVISION OF ACTUARIAL SERVICES

Reporting Financial Disclosure and Excess Profits

Proposed Repeals and New Rules: N.J.A.C. 11:3-20

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29A-5.6 through 17:29A-5.16.

Proposal Number: PRN 1989-139.

Submit comments by April 19, 1989 to:

Verice M. Mason

Assistant Commissioner

Legislative and Regulatory Affairs

Department of Insurance

CN 325

Trenton, New Jersey 08625

The agency proposal follows:

Summary

In 1983, N.J.S.A. 17:29A-5.2 to 5.5 were enacted which require insurers transacting private passenger automobile insurance business in New Jersey to submit financial disclosure statements and reports for the de-

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termination of excess profits. Rules were adopted to implement the statute and became effective on April 7, 1986.

P.L. 1988, c. 118 (N.J.S.A. 17:29A-5.6 through 17:29A-5.16) was enacted on September 8, 1988 and repealed the existing profits law, N.J.S.A. 17:29A-5.2 to 5.5. The purpose of the new law is to eliminate deficiencies in the previous excess profits law as well as to establish more complete and detailed reporting requirements, thus lessening confusion as to the appropriate data to be filed.

The new law makes a number of procedural and substantive changes to the previous excess profits law. Procedural changes include requiring one report each year instead of several; establishing procedures to account for the transfer of funds to and from insurers by the New Jersey Automobile Insurance Risk Exchange (AIRE) and the Unsatisfied Claim and Judgment Fund for medical expense benefits; and combining reporting data of similar lines of coverage to reduce the reporting categories from six to four.

Substantive changes include requiring that the actual investment income of the insurer from automobile policyholder supplied funds be used in the excess profits calculation. This was not a requirement under the previous statute. Also, an insurer must add the difference (positive or negative) between its actual investment income results and anticipated investment income to underwriting income in determining whether excess profits have been received by the insurer. The new law also requires insurers to return unanticipated profits which exceed 2.5 percent of premium (as compared to five percent under the old law). The new law also exempts insurers which have less than 150 car years of exposure in New Jersey during the three calendar years immediately preceding the date of the profits report from filing an excess profits report. Prior law utilized a market share standard. Finally, since losses and loss adjustment expenses are subject to being overestimated or underestimated, the new law provides for the adjustment of the losses and loss adjustment expenses during the seven years preceding the profits report. The previous statute only provided for this adjustment during the three years preceding the profits report.

The new law also addresses the treatment of insurance holding company systems. The computation of excess profits for an insurance holding company is based on the combined profits reports of these insurers; however, each insurer in an insurance holding company system must file a separate profits report.

In order to implement the new statute with the changes mentioned above, it is necessary to repeal the existing rules governing financial disclosure and excess profits and to propose these new rules. Proposed N.J.A.C. 11:3-20.1 and 11:3-20.2 set forth the purpose and scope of the proposed new rules. Proposed N.J.A.C. 11:3-20.3 sets forth the definitions of technical terms used in the subchapter. Proposed N.J.A.C. 11:3-20.4 establishes the general reporting requirements. Proposed N.J.A.C. 11:3-20.5 describes the contents of the profits report. Proposed N.J.A.C. 11:3-20.6 sets forth the reporting requirements for insurance holding company systems. Proposed N.J.A.C. 11:3-20.7 describes the formula for the determination of excess profits. Proposed N.J.A.C. 11:3-20.8 sets forth the requirements for a refund or credit of excess profits. Proposed N.J.A.C. 11:3-20.9 establishes standards concerning cases where a returned excess profit may be carried forward. Proposed N.J.A.C. 11:3-20.10 provides that the Commissioner may issue an order requiring further information. Proposed N.J.A.C. 11:3-20.11 sets forth the due dates for the filing of profits reports. Proposed N.J.A.C. 11:3-20.12 sets forth penalties for violation of the proposed new rules.

Social Impact

The new rules implement the intent of the Legislature as expressed in N.J.S.A. 17:29A-5.6 through 17:29A-5.16. The impact of the proposed rules is minimal in that these rules merely reflect the statutory language. The primary social impact is imposed not by these implementing rules but by the statute itself.

The main impact of the proposed new rules derives from the exhibits which form part of the proposed new rules. There will be an additional burden on insurers in that they will have to file a greater number of forms than was previously required. However, this will also benefit insurers in that the reporting requirements are now more clearly set forth. Insurers will also benefit because the greater number of forms assures that similarly situated companies will be assessed a similar amount of excess profit.

The Department will benefit because insurers will have a clear understanding of the reporting requirements. This will lead to less confusion and to the submission of more complete and accurate reports. The public will benefit since insurance companies will be held more accountable for

excess profits earned and must refund or credit such excess profits pursuant to N.J.A.C. 11:3-20.8.

Economic Impact

As with the social impact, the primary economic impact concerning excess profits is imposed not by these rules but by the underlying statutory charges. The economic impact of the new rules, as with their social impact, is limited to the impact of the form filing requirements in implementation of the statute.

The economic impact of the proposed new rules on insurers is that they will have to complete a greater number of forms. Previously, insurers were required to file excess reports. The exhibits appended to the new rules, however, require insurers to file a greater number of forms which contain more data than was previously required. An additional burden will, therefore, be imposed on insurers to the extent that they did not perform the calculations required by the new rules and exhibits. This forms requirement will, however, result in similarly situated companies being assessed a similar amount of excess profit. The public will benefit due to the refunding or crediting of excess profits by insurance companies pursuant to N.J.A.C. 11:3-20.8.

Regulatory Flexibility Analysis

The proposed new rules will apply to few, if any, "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 be businesses engaged in private passenger automobile insurance. The reporting, recordkeeping or other compliance requirements are clearly and fully set forth in the proposed new rules. The types of professional services needed to comply would be similar to those required to comply with the previous rules. These would include the services of accountants and actuaries. The initial capital cost for compliance would be those costs associated with compiling the increased amount of data required under the new rules, and in filing the greater number of forms than was previously required. To a large extent, these costs will be the same as those previously incurred, since most insurers compiled the same data required on these forms even though they were not previously required to do so. The annual compliance cost will be similar to the initial cost. To the extent that the new rules apply to "small businesses", they will impose a greater economic burden on "small businesses" in that they might have to devote proportionately more time and more staff to the compiling and filing of the new forms than would larger businesses. These costs, however, are not quantifiable.

The proposed new rules provide a mechanism to minimize their impact on "small businesses". The new rules provide that those insurers which had less than 150 car years of exposure in New Jersey during the three calendar accident years immediately preceding the date of the profits report are exempt from filing an excess profits report. This is a safeguard to ensure that those companies with little or no exposure in New Jersey are exempt from filing an excess profits report.

An exemption or different compliance requirements cannot, however, be granted specifically to "small businesses". These rules are designed to implement a statute. The statutory mandate must be maintained. There is nothing in the statute that provides for different compliance standards for "small businesses". Also, these rules protect the public. An insured expects one insurance company to be subject to the same standards as any other insurance company. Similar standards and, therefore, similar compliance requirements must be maintained. Therefore, except for the exemption previously mentioned, which is provided in the statute, there are no different compliance requirements for "small businesses" as that term is defined in the Regulatory Flexibility Act.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-20.

Full text of the proposed new rules follows:

SUBCHAPTER 20. REPORTING FINANCIAL DISCLOSURE AND EXCESS PROFITS**11:3-20.1 Purpose**

This subchapter sets forth the financial disclosure and excess profits reporting requirements pursuant to P.L. 1988, c.118 (N.J.S.A. 17:29A-5.6 to 17:29A-5.16).

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Interested Persons see Inside Front Cover

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11:3-20.2 Scope

The provisions of this subchapter apply to all insurers authorized to transact private passenger automobile insurance business in this State.

11:3-20.3 Definitions

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

"Actual investment income" means that portion of income generated by investment of policyholder-supplied funds.

"Actuarial gain" means the remainder obtained by subtracting the allowance for profit and contingencies from underwriting income which remainder may be positive or negative.

"AIRE charges" and "AIRE compensation" mean, respectively, amounts paid to or received from the New Jersey Automobile Insurance Risk Exchange pursuant to N.J.S.A. 39:6A-22.

"Anticipated investment income" means the amount obtained by multiplying earned premium by the percentage of premium representing investment income used in the insurer's approved rate filings or filings made pursuant to N.J.S.A. 17:29A-42, during the period of the three calendar-accident years being calculated, to calculate the allowance for profit and contingencies.

"Calendar-accident year" means the period from January 1 to December 31, during which, in the appropriate context:

1. Premium or investment income was earned;
2. Expenses were incurred; or
3. Accidents occurred which resulted in losses, loss adjustment expenses or AIRE compensation.

"Car year" means the unit of exposure equivalent to the insuring of one automobile for 12 months, two automobiles for six months each, three automobiles for four months each, and so on.

"Commission" means the Commissioner of Insurance.

"Development adjustment", for a given calendar-accident year, means the difference obtained by subtracting:

1. The sum of:
 - i. Loss and loss adjustment expenses for that calendar-accident year, developed to an ultimate basis and evaluated as of March 31 of the year preceding the year in which the profits report required by N.J.A.C. 11:3-20.5 is due; plus
 - ii. AIRE compensation for that calendar-accident year, developed to an ultimate basis and evaluated as of March 31 of the year in which the profits report is due; from
2. The sum of:
 - i. Losses and loss adjustment expenses for that calendar-accident year, developed to an ultimate basis and evaluated as of March 31 of the year in which the profits report is due; plus
 - ii. AIRE compensation for that calendar-accident year, developed to an ultimate basis and evaluated as of March 31 of the year preceding the year in which the profits report is due.

"Excess investment income" means the remainder obtained by subtracting the anticipated investment income from the actual investment income earned by the insurer, which remainder may be positive or negative.

"Insurer" means an entity authorized or admitted to transact private passenger automobile insurance business in New Jersey. Where an insurer is part of an insurance holding company system, insurer means each individual insurer within that insurance holding company system. Insurer does not include the New Jersey Automobile Full Insurance Underwriting Association created pursuant to N.J.S.A. 17:30E-1 et seq., for the purposes of this subchapter.

"Private passenger automobile insurance business" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2, excluding personal excess liability insurance and insurance on commercial vehicles.

"Total actuarial gain" means the sum of actuarial gains for the three calendar-accident years immediately preceding the due date of the profits report required by N.J.A.C. 11:3-20.5 less the development adjustments for the calendar-accident years beginning with the seventh calendar-accident year immediately preceding the due date of the profits report and ending with the fourth calendar-accident year immediately preceding the due date of the profits report.

"Underwriting income" means the remainder obtained by subtracting the sum of losses developed to an ultimate basis, loss adjustment expenses developed to an ultimate basis, and other expenses exclusive of UCJF assessments, from the sum of premiums earned and AIRE compensation developed to an ultimate basis, which remainder may be positive or negative.

"UCJF assessments" means amounts paid by insurers to the Unsatisfied Claim and Judgement Fund pursuant to N.J.S.A. 39:6-63.

"UCJF reimbursements" means amounts received by an insurer from the Unsatisfied Claim and Judgement Fund as a result of excess medical expense benefit payments by the insurer pursuant to N.J.S.A. 39:6-73.1.

11:3-20.4 General reporting requirements

(a) The data in the reports required by this subchapter shall be for New Jersey voluntary private passenger automobile insurance only.

(b) Each private passenger automobile insurer, except as provided in (e) below, shall annually file with the Commissioner the data and information required by this subchapter on or before July 1 of each year. Filings shall be sent:

New Jersey Department of Insurance
Division of Property and Liability
20 West State Street
CN 325
Trenton, New Jersey 08625
Attention: Excess Profits

(c) The data required by this subchapter shall be submitted on an MS-DOS formatted disk(s), and in written copy using the forms and record layouts contained in the Appendix to this subchapter. The disk(s) may be either 5.25 inch double sided, double density, or 3.5 inch high density. The information shall be presented in a Lotus 1-2-3 or compatible spread sheet. The written copy shall include in the left and top margins the row and column location respectively of all the data in the worksheets. Each page shall also display in the bottom right corner the name of the computer file and disk on which it is contained. All calculated values shall be given as a formula in the spreadsheet.

(d) The information shall be provided with respect to the insurer's New Jersey private passenger automobile insurance business separately for each of the following coverages and for all these coverages combined:

1. Personal injury protection, including all options;
2. Bodily injury liability, reported at total limits;
3. Other liability, consisting of property damage liability and uninsured and underinsured motorist coverages, all reported at total limits; and
4. Physical damage, consisting of comprehensive and collision coverages, including all deductibles.

(e) Any insurer having fewer than 150 earned car years of exposure in New Jersey during the three calendar-accident years immediately preceding the date the profits report is due shall file a certification to that effect, in lieu of all other requirements of this subchapter.

11:3-20.5 Profits report

(a) Each insurer shall submit a complete and accurate profits report in format of the exhibits appended to this subchapter, which exhibits are hereby incorporated by reference as part of these rules.

(b) The profits report shall contain the following information for each of the seven most recent calendar-accident years, with an evaluation date as of March 31 of the year in which the profits report is due:

1. Losses paid;
2. Losses developed to an ultimate basis;
3. Loss adjustment expenses paid;
4. Loss adjustment expenses developed to an ultimate basis;
5. AIRE compensation received; and
6. AIRE compensation developed to an ultimate basis.

(c) In addition to the requirements in (b) above, each insurer shall file in the format of the exhibits appended to this subchapter, the following information for the calendar-accident year ending December 31 immediately preceding the date the profits report is due:

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1. Premiums written;
2. Premiums earned;
3. Other expenses, itemized separately as follows:
 - i. Commissions and brokerage fees;
 - ii. Taxes, licenses and fees;
 - iii. AIRE charges;
 - iv. UCJF assessments;
 - v. Other acquisition costs and general expenses;
 - vi. Policyholder dividends including any excess profits refunded or credited to policyholders;
4. Allowance for profit and contingencies, (obtained by multiplying premiums earned by the profit and contingency factors authorized for use with the insurer's approved rate filings);
5. Anticipated investment income;
6. Actual investment income; and
7. UCJF reimbursements received.

(d) The profits report shall include a calculation of each of the following items in the format of the exhibits appended to this subchapter:

1. Underwriting income for each of the three calendar-accident years immediately preceding the date of the profits report;
2. Actuarial gain for each of the three calendar-accident years immediately preceding the date of the profits report;
3. Excess investment income for each of the three calendar-accident years immediately preceding the date of the profits report;
4. Development adjustment for the calendar-accident years beginning with the seventh calendar-accident year immediately preceding the due date of the profits report and ending with the fourth calendar-accident year immediately preceding the due date of the profits report;
5. Total actuarial gain; and
6. Excess profits.

(e) An officer of the insurer shall certify on the profits report forms that the report complies with all statutory and regulatory requirements to the best of his or her information, knowledge and belief. The officer shall sign his or her name and provide title and date, and phone number.

11:3-20.6 Reporting requirements for insurance holding companies

(a) A separate profits report shall be filed for each insurer and each insurer in an insurance holding company system.

(b) For each insurance holding company system, a separate combined profits report for all insurers in its system shall be filed with the Commissioner. The excess profits computation for an insurance holding company system shall be performed on its combined profits report, except the Commissioner may order an adjustment in the combined profits report if in his or her judgement, upon examining each insurer's profits report in the insurance holding company system, one or more of the insurers in that system is excessively subsidizing other insurers in that system.

11:3-20.7 Determination of excess profits

(a) Excess profits shall exist if for the three calendar-accident years immediately preceding the date the profits report is due, the sum of an insurer's total actuarial gain and excess investment income for all private passenger automobile coverages combined exceeds 2.5 percent of earned premiums.

(b) The effect of negative excess investment income shall be limited in the computation of excess profits, at the discretion of the Commissioner. This discretion shall be exercised pursuant to a standard on the investment of policyholder supplied funds pursuant to rules promulgated by the Commissioner not later than April 1 of the year in which excess profits reports are filed.

11:3-20.8 Refund or credit of excess profits

(a) If the Commissioner determines that an insurer has made excess profits, the Commissioner shall issue written notice to the insurer of his or her determination.

(b) The insurer shall submit to the Commissioner a fair, practicable and nondiscriminatory plan to refund or credit to policyholder the excess profits within 30 days after the written notice in (a) above has been given to the insurer by the Commissioner.

1. The refund or credit plan shall be subject to approval by the Commissioner.

2. If the refund or credit plan is disapproved, the Commissioner shall issue a written notice to the insurer containing the reasons for disapproval, and specifications for corrections of the plan.

(c) Upon approval of the insurer's refund or credit plan, the Commissioner shall issue an order requiring the insurer to distribute all excess profits according to the approved plan.

(d) Within 15 days after the excess profits have been refunded or credited to policyholders, the insurer's corporate official shall certify that such refund or credit has occurred.

(e) Any refund or credit shall be deemed a policyholder dividend applicable to the year in which it is incurred for reporting in subsequent excess profits reports.

11:3-20.9 Excess profits carry forward

(a) In the event an excess profit is returned by an insurer in accordance with this subchapter and subsequent development demonstrates that an excess profit did not exist or was overstated, an excess profit carry forward in the amount of the excess profit refunded or the amount overstated, whichever is less, shall be established.

(b) This excess profit carry forward shall be applied by such insurer as a credit against future determinations of excess profits until such credit is exhausted or the end of a 15 year period from the date the excess profits carry forward was established, whichever occurs first.

11:3-20.10 Order for further information

(a) If, after examination of the insurer's excess profits report, the Commissioner finds that any information or calculation contained in such report contains, results in or is based upon aberrant, unusual or irregular data, the Commissioner shall issue, in writing, an order to such insurer, directing that the information or calculation be altered in a manner necessary to eliminate the effect of the aberrant, unusual or irregular data.

(b) Such insurer shall submit the revised information to the Commissioner within 15 days after receiving an order pursuant to (a) above.

11:3-20.11 Compliance dates

(a) The due date for the first profits report required by this subchapter is July 1, 1989.

(b) For the first report required by this subchapter:

1. The seven most recent calendar-accident years referred to in N.J.A.C. 11:3-20.5(b) are 1982 through 1988, inclusive.

2. The three calendar-accident years immediately preceding the due date referred to in N.J.A.C. 11:3-20.4(d), 20.5(d) and 20.7 are 1986, 1987 and 1988.

3. The seventh calendar-accident year immediately preceding the due date referred to in N.J.A.C. 11:3-20.5(d) is 1982.

4. The fourth calendar-accident year immediately preceding the date the profits report is due referred to in N.J.A.C. 11:3-20.5(d)4 is 1985.

5. The calendar-accident year immediately preceding the date the profits report is due referred to in N.J.A.C. 11:3-20.5(c) is 1988.

11:3-20.12 Penalties

Failure to file a complete and accurate excess profits report so that it is received by the Commissioner on or before July 1 shall constitute a violation of this subchapter, and may result in the imposition of penalties as provided by statute.

APPENDIX

EXCESS PROFIT EXHIBITS—INSTRUCTIONS

In all Exhibits, dollars are stated as whole numbers, Ratios and fractions are expressed as decimals and rounded to the third decimal place. Where a three year sum is expressed as a ratio, the ratio required is the ratio of three years' dollar figures and not the sum of three ratios.

The Exhibits attached are 1988 exhibits. Where exhibits for prior years or later years must be reported, the filer is required to submit Exhibits which are substantially similar to the attached Exhibits to

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report the prior years' or later years' data, and which contain all information, including dates, adjusted accordingly.

Exhibit One**General Instructions**

Exhibit One is to be completed using data for calendar year 1988. Exhibits substantially similar to Exhibit One are to be completed for each of the years 1981 through 1987.

The filer is completing and submitting five Exhibits One (i.e. one for each of four coverages and a total of all four coverages) for each of eight calendar years (i.e. 1981 through 1988, inclusive) for a total of forty Exhibits One.

Item 1 is the premium and loss data as shown on Page 14 for New Jersey of the statutory annual statement for the various calendar years. For the various private passenger auto coverages, for 1988, use the data shown on Page 14 of the 1988 annual statement as follows:

BI Liability, included in	Page 14 Line 19.2
PD Liability and Uninsured and Underinsured Motorist Coverages, include in	Page 14 Line 19.2
No Fault	Page 14 Line 19.1
Physical Damage	Page 14 Line 21.1

For years prior to 1988, use corresponding Page 14 data for those years.

In Item 1, fill in the Page 14 line which is the source of the data.

Item 1A is the UCJF premium offset, as developed in Exhibit Twelve.

Items 2 through 10 are deductions from Item 1 for loss and dividend data (see Col (3), Col (4), Col (5), or Col (7)) or Item 1B for premium data (see Col (1), Col (2), or Col (6)), as described below. Items 2 through 10A are to be completed **ONLY IF PREMIUM, LOSS OR DIVIDEND DATA FOR ITEMS 2 THROUGH 10A ARE INCLUDED IN ITEM 1.**

In listing the exclusions in Items 2 through 10, note that where a premium, loss, or dividend amount is contained in an Item, it is not to be contained in another Item.

For example, all excess medical benefits are to be contained in Item 2 (see below), and not contained in any of the other Items 2 through 10. Therefore, any excess medical benefits paid on a motorcycle policy are to be included in Item 2, and not in Item 3. Item 3 is to contain motorcycle premiums, losses, and dividends not included in Item 2.

As another example, premiums, losses, and dividends contained in Item 7, Excess and Umbrella Policies are premiums, losses and dividends on Excess/Umbrella policies that are not contained in Items 2 through 6.

Individual Items

Item 2 is the dollars of losses included in Item 1 which are excess medical benefits, and for which the insurer will be reimbursed by the UCJF, per NJSA 39:6-61 et seq.

With regard to Items 5 and 6, please note that the New Jersey Automobile Full Insurance Availability Act (NJSA 17:30E-1 et seq), which established the "JUA", was effective 01 January 1984.

Premiums, losses, and dividends for private passenger type commercial vehicles are to be listed in Item 8 as a "write in", but only if they are contained in Item 1, for loss data or dividend data, or Item 1B, for premium data, and then only the dollars of premiums, losses, and dividends not contained in Items 2 through 7.

Provision is made for other "write in" exclusions in Items 8, 9 and 10. A filer may modify the form to add more lines for exclusions if three lines are not sufficient.

Where any "write in" exclusion is used, a written explanation as to what is listed as an exclusion, and why it is appropriate to list the exclusion, is to be provided on a piece of paper attached to Exhibit One.

Premiums, losses, and dividends for private passenger motor homes are NOT to be listed as exclusions.

Item 12 states the premiums, losses, and dividends which are to be used for the excess profits calculation. For premium data, Item

12 is Item 1B minus Item 11. For loss and dividend data, Item 12 is Item 1 minus Item 11.

Item 13, Col (3), states the claim settlement costs paid during 1988 that are directly assignable to specific claims for which loss data is included in Item 12. Item 13, Col (4), states the claim settlement costs incurred during 1988 that are directly assignable to specific claims for which loss data is included in Item 12.

Item 14, Col (3), states the costs associated with the claim settlement function that were paid during 1988, which are not directly assignable to specific claims, but which are assignable to claims for which loss data is included in Item 12. Item 14, Col (4) shows the costs associated with the claim settlement function that were incurred during 1988, which are not directly assignable to specific claims, but which are assignable to claims for which loss data is included in Item 12.

Item 15 states unpaid claim settlement costs as of 31 December 1988, which are assignable to unpaid losses shown in Item 12, Col (7).

Exhibit Two

A corresponding Exhibit Two is to be completed for each calendar year and coverage for which an Exhibit One is to be completed. Therefore, the filer is completing and submitting forty Exhibits Two. The six parts of Exhibit Two show incurred and paid losses and expenses by calendar/accident year during each calendar year for which data is reported in an Exhibit One, and also during the first three months of 1989.

For example, for the Exhibit Two that corresponds to Exhibit One for 1988, Exhibit Two—Part one shows:

(a) payments for losses that occurred during calendar/accident year 1988, and were paid during 1988, and during the first three months of 1989.

(b) payments for losses that occurred during calendar/accident year 1987, and were paid during 1988, and during the first three months of 1989.

(c) etc.

Note that Col (3) is to show payments for the first three months of 1989 regardless of the calendar year for which Exhibit One is completed.

A description of each part of Exhibit Two follows.

Exhibit Two—Part One states the calendar year losses paid, as stated in Exhibit One, Item 12, Col (3), according to calendar/accident year. Col (2) shows losses paid during 1988, and Col (3) shows further losses paid during the first three months of 1989.

Exhibit Two—Part Two states the calendar year losses incurred in Exhibit One, Item 12, Col (4), according to calendar/accident year. Col (2) states losses incurred during 1988, and Col (3) shows further losses incurred during the first three months of 1989.

Exhibit Two—Part Three states the calendar year allocated loss adjustment expenses paid in Exhibit One, Item 13, Col (3), according to calendar/accident year. Col (2) states the allocated loss adjustment expenses paid during 1988, and Col (3) shows further allocated loss adjustment expenses paid during the first three months of 1989.

Exhibit Two—Part Four states the calendar year allocated loss adjustment expenses incurred in Exhibit One, Item 13, Col (4), according to calendar/accident year. Col (2) states incurred allocated loss adjustment expenses incurred during 1988, and Col (3) shows further allocated loss adjustment expenses incurred during the first three months of 1989.

Exhibit Two—Part Five states the calendar year unallocated loss adjustment expenses paid in Exhibit One, Item 14, Col (3), according to calendar/accident year. Col (2) states unallocated loss adjustment expenses paid during 1988, and Col (3) shows further unallocated loss adjustment expenses paid during the first three months of 1989.

Exhibit Two—Part Six states calendar year unallocated loss adjustment expenses incurred in Exhibit One, Item 14, Col (4), according to calendar/accident year. Col (2) shows unallocated loss adjustment expense incurred during 1988, and Col (3) shows further unallocated loss adjustment expenses incurred during the first three months of 1989.

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Exhibit Three states the "development triangles" of incurred losses for BI Liability and for PIP.

Exhibit Three—Part One states the losses incurred for the various calendar/accident years during various intervals (the first 15 months, the next 12 months, etc).

Exhibit Three—Part Two states the accumulated losses for each calendar/accident year as of the various stages of development (15 months, 27 months, etc.)

Exhibit Three—Part Three states the historical development factors based on the accumulated losses shown in Exhibit Three—Part Two.

In Exhibit Three—Part Three the "selected factor" stated in Col (5A) is determined as follows. Of the various historical factors for each development interval (15-27 months, 27-39 months, etc.) a simple mean is determined with the high and low values omitted. Where there are fewer than three factors, the low and high values are not to be omitted from the calculation. The "projection factor" stated in Col (6A) is the group of factors from Col (5A) accumulated to project losses at each stage of development to ultimate. The projection factor for 87 months to ultimate is the selected factor for development from 75 to 87 months.

In Exhibit Three—Part Three the "Ultimate Incurred" stated in Col (3) is determined by multiplying the calendar/accident year losses evaluated as of 31 March 1989 by the Projection Factor from Col (6A). Each "Projection Factor to Ultimate" in Col (2) of Exhibit Three—Part Three is identical to the "Projection Factor" stated in Col (6A).

Exhibit Four summarizes data from Exhibit Two to get the "development triangles" of paid losses, for Other Liability and Physical Damage. The various parts of Exhibit Four analyze paid losses in the same way that Exhibit Three analyzes incurred losses. The only difference is that, for Physical Damage and Other Liability, ultimate paid is deemed to be reached at 51 months of development.

Exhibits Five and Six analyze the sum of losses and loss adjustment expenses in the same way that Exhibits Three and Four analyze losses.

Note that Exhibit Five, Parts Four, Five and Six are to be completed with data through calendar/accident year 1987. The projections based on data through calendar/accident year 1987 are used to produce the "Development Adjustment" in Exhibit Five—Part Seven.

Note that Exhibit Six, Parts Four, Five, and Six are to be completed with data through calendar/accident year 1987. The projections based on data through calendar/accident year 1987 are used to produce the "Development Adjustment" in Exhibit Six—Part Seven.

Exhibit Seven, Part One, states countrywide premiums and expenses from the statutory Insurance Expense Exhibit. An Exhibit Seven, Part One, is to be completed for each of the years 1988, 1987, and 1986. Other Acquisition and General Expenses are to be stated, in Col (2) and Col (3A) as ratios to Net Earned Premium. Commission and Brokerage and Taxes, Licenses, and fees are to be stated, in Col (2) and Col (3A) as ratios to Net Written Premium. Loss Adjustment Expenses Incurred are to be stated in Col (2) and Col (3A) as ratios to Losses Incurred.

Exhibit Seven—Part Two

Exhibit Seven, Part Two, states New Jersey expenses for each coverage, with ratios, in Col (2), to earned premium, written premium, and losses as described for Exhibit Seven—Part One, above.

Exhibit Seven, Parts Three—A, Three—B, and Three—C develop the Commission and Brokerage expenses to be stated in Exhibit Seven, Part Two. Exhibits substantially similar to Parts Three—A, Three—B, and Three—C are to be completed to develop the Taxes, Licenses, and Fees expenses to be stated in Exhibit Seven, Part Two.

Exhibit Seven—Parts Four—A, Four—B, and Four—C develop the General Expense expenses to be stated in Exhibit Seven, Part Two. Exhibits substantially similar to Parts Four—A, Four—B, and Four—C are to be completed to develop the Other Acquisition ex-

penses stated in Exhibit Seven, Part Two and to develop the Loss Adjustment expenses stated in Exhibit Seven, Part Two.

Exhibit Seven, Part Two, Prepaid Expenses, Item 9, Col (1) = $(\frac{1}{2} \times (\text{Item 2, Col (1)} + \text{Item 3, Col (1)}) + \text{Item 5} + \text{Item 6})$

Exhibit Seven, Part Two, Item 9, Col (2) = $(\text{Item 9, Col (1)})/(\text{Item 4, Col (1)})$

Exhibit Seven, Parts Two, Three, and Four are to be completed for each of the calendar years 1988, 1987 and 1986.

Exhibit Eight—Part One shows investment income attributable to New Jersey private passenger auto for the purpose of completing excess profits reports.

Item 1 is countrywide data from the 1988 statutory annual statement, page 2, column 1, the sum of lines 9.1, 9.2, 9.3, 10, and 11.

Item 2 is countrywide data from the statutory annual statement, page 3, column 1, line 9.

NOTE: Limit Item 3 to a maximum of 1.000.

Item 4 is Exhibit Seven—Part Two, Col (1), Item 9.

Item 5, is Exhibit One, Col (1), Item 12.

NOTE: Limit Item 6 to a maximum of 1.000.

Item 7 is Exhibit One, Col (6), Item 12, for 1988

Item 8 is Exhibit One, Col (6), Item 12, for 1987

Item 9A = $\text{Item 9} \times (1 - \text{Item 3} - \text{Item 6})$. Limit Item 9A to a minimum of zero.

Item 10 is Exhibit One, Col (7), Item 12, for 1988.

Item 11 is Exhibit One, Col (7), Item 12, for 1987.

Item 13 is Exhibit One, Col (7), Item 15, for 1988.

Item 14 is Exhibit One, Col (7), Item 15, for 1987.

Item 18 is Exhibit Eight Part One—A, Item 7, for 1988.

Item 19 is Actual Investment Income for 1988.

Exhibit Eight—Part Two shows Anticipated Investment Income and Excess Investment Income.

Item 1 is Exhibit One, Col (2), Item 12.

Item 2 shows the filed and approved investment income offset, expressed as a ratio to premiums, for the filer's approved filings over the interval 1985 through 1988. The investment income offset is the percent used in the company's rate filing to reduce the "Clifford" target 3.5% rate of return to premiums for the effect of investment income. A copy of the portion of the filing showing this calculation is to be attached to Exhibit Eight—Part Two. If the filer submits no documentation of the investment income offset that has been approved by the Department, then Item 2 is the number zero.

Item 3 is Item 1 multiplied by Item 2.

Item 4 is Exhibit Eight—Part One, Item 19.

Item 5 = $\text{Item 4} - \text{Item 3}$.

Exhibit Nine shows the estimate of the ultimate amount the filer reasonably expects to receive, as "AIRE Compensation", provided by NJSA 39:6A-22 et seq. In estimating the ultimate value of the compensation, keep in mind that there are few data points of actual experience. The estimate involves projecting to ultimate paid reimbursement for liability claims. For these reasons, the Department believes significant development beyond payments already received may be reasonable.

Exhibit Ten uses the data developed in Exhibits One through Nine to calculate excess profits.

The sources of data for Exhibit Ten follow.

Item 1: Direct Calendar Year Written Premium, Exhibit One, Item 12.

Item 2: Direct Calendar Year Earned Premium, Exhibit One, Item 12.

Item 2A: Exhibit Nine—Part Three, Col (3).

Item 2B: AIRE Charges are the amounts the filer is assessed, according to NJSA 39:6A-22. The calendar/accident year in which an AIRE charge is assigned is the calendar year in which the filer is informed of the AIRE charge and not the calendar year in which the filer pays the AIRE charge, if different.

Item 3: For BI Liability and PIP, "Ultimate Incurred", per Exhibit Three—Part Three, Col (3). For Other Liability and Physical Damage, "Ultimate Incurred", per Exhibit Four—Part Three, Col (3).

Item 5: Exhibit Seven—Part Two

Item 7: Exhibit Seven—Part Two

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Item 9: Exhibit Seven—Part Two
 Item 11: Exhibit Seven—Part Two
 Item 13: Exhibit One, Item 12B.
 Item 14: Exhibit One, Item 12A.
 Item 18: Insurer's filed and approved allowance for profits and contingencies in the filer's approved rate filing, expressed as a ratio, and multiplied by the earned premium stated in Item 2.
 Item 19 = Item 17 - Item 18
 Item 20: Exhibit Five—Part Seven, Total, Col (3), for BI Liability and PIP; Exhibit Six—Part Seven, Col (3), for Other Liability and Physical Damage.
 Item 21 = Item 19 - Item 20
 Item 22: Exhibit Eight—Part Two, Item 5.
 Item 24 = Item 21 + Item 22 - Item 23.
 Item 25 is 250 for a filer that is a member of a holding company system, and 0 for all other filers.

Item 26 is Item 24 minus Item 25.

Exhibit Eleven must be completed for calendar years 1986, 1987, and 1988.

Item 1 states what PIP losses would have been without the portion that is assumed by the UCJF.

Items 2, 3, 4, and 5 are self explanatory.

Exhibit Twelve states the portion of premiums that are attributable to the UCJF.

Item 1 is self explanatory.

Item 2 is two times the dollar amount that the insurer was assessed by the UCJF during 1987.

Item 3 is two times the dollar amount that the insurer was assessed by the UCJF during 1988.

Item 4 = Item 1 - Item 2 + Item 3

**Excess Profits Reports for New Jersey
 Private Passenger Auto**

**THESE EXHIBITS MUST BE SENT SO THAT THEY ARE RECEIVED BY THE DEPARTMENT OF INSURANCE
 BY 01 JULY 1989.**

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE ACCOMPANYING INSTRUCTIONS.

**NEW JERSEY
 Private Passenger Auto Data**

Exhibit One

Check one:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Calendar Year 1988

(This exhibit is also to be completed for each of the years 1981 through 1987)

	Col (1)	Col (2)	Col (3)	Col (4)	Col (5)	Col (6)	Col (7)
	Direct Premiums Written	Direct Premiums Earned	Direct Losses Paid	Direct Losses Incurred	Dividends on Direct Business	Direct Unearned Premium Reserves	Direct Losses Unpaid
Item 1 Source: line _____ of Page 14	_____	_____	_____	_____	_____	_____	_____
Item 1A UCJF Assessments	_____	_____	X	X	X	_____	X
Item 1B Item 1 minus Item 1A	_____	_____	X	X	X	_____	X

NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM ONE.

Exclusions:

Item 2 Excess Medical Benefits	X	X	_____	_____	X	X	_____
Item 3 Motorcycles	_____	_____	_____	_____	_____	_____	_____
Item 4 "Off Road" Vehicles	_____	_____	_____	_____	_____	_____	_____
Item 5 Assigned Risk Business	_____	_____	_____	_____	_____	_____	_____
Item 6 JUA Business	_____	_____	_____	_____	_____	_____	_____

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Item 7	Excess/Umbrella Policies	_____	_____	_____	_____	_____	_____	_____
	Other Exclusions (list):	_____	_____	_____	_____	_____	_____	_____
Item 8	_____	_____	_____	_____	_____	_____	_____	_____
Item 9	_____	_____	_____	_____	_____	_____	_____	_____
Item 10	_____	_____	_____	_____	_____	_____	_____	_____
Item 10A	Finance and Service Charges	_____	_____	X	X	X	_____	X
Item 11	Subtotal (Sum Items 2 through 10A)	_____	_____	_____	_____	_____	_____	_____
Item 12	Excess Profits Data	_____	_____	_____	_____	_____	_____	_____
Item 12A	Refund of Excess Profits Included in Item 12, Col (5)	X	X	X	X	_____	X	X
Item 12B	All Other Dividends Included in Item 12, Col (5)	X	X	X	X	_____	X	X
				(Col 3)	(Col 4)			
Item 13	Allocated loss adjustment expenses corresponding to Item 12, Cols. (3) and (4), respectively	X	X	Paid Allocated LAE	Incurred Allocated LAE	_____	_____	_____
Item 13A	Ratio Item 13, Col (3), to Item 12, Col (3)	X	X	_____	X	_____	_____	_____
Item 13B	Ratio Item 13, Col (4), to Item 12, Col (4)	X	X	X	_____	_____	_____	_____
				Col (3)	Col (4)			
Item 14	Unallocated loss adjustment expenses corresponding to Item 12, Cols. (3) and (4), respectively	X	X	Paid Unallocated LAE	Incurred Unallocated LAE	_____	_____	_____
Item 14A	Ratio Item 14, Col (3), to Item 12, Col (3)	X	X	_____	X	_____	_____	_____
Item 14B	Ratio Item 14, Col (4), to Item 12, Col (4)	X	X	X	_____	_____	_____	_____
Item 15	Unpaid loss adjustment expenses (allocated plus unallocated) corresponding to unpaid losses shown in Item 12, Col (7)	X	X	X	X	X	X	_____

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Exhibit Two

Calendar year 1988

(This Exhibit is also to be completed for each of the calendar years 1981 through 1987)

Check one:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Exhibit Two—Part One

	Col (2)	Col (3)
	Losses Paid During 1988	Losses Paid During 1Q 1989
Calendar/Accident Years:		
1988	_____	_____
1987	_____	_____
1986	_____	_____
1985	_____	_____
1984	_____	_____
1983	_____	_____
1982	_____	_____
prior	_____	_____
Total	_____	_____

Exhibit Two—Part Two

	Col (2)	Col (3)
	Losses Incurred During 1988	Losses Incurred During 1Q 1989
Calendar/Accident Years:		
1988	_____	_____
1987	_____	_____
1986	_____	_____
1985	_____	_____
1984	_____	_____
1983	_____	_____
1982	_____	_____
prior	_____	_____
Total	_____	_____

Exhibit Two—Part Three

	Col (2)	Col (3)
	ALAE Paid During 1988	ALAE Paid During 1Q 1989
Calendar/Accident Years:		
1988	_____	_____
1987	_____	_____
1986	_____	_____
1985	_____	_____
1984	_____	_____
1983	_____	_____
1982	_____	_____
prior	_____	_____
Total	_____	_____

Exhibit Two—Part Four

	Col (2)	Col (3)
	ALAE Incurred During 1988	ALAE Incurred During 1Q 1989
Calendar/Accident Years:		
1988	_____	_____
1987	_____	_____
1986	_____	_____
1985	_____	_____
1984	_____	_____
1983	_____	_____
1982	_____	_____
prior	_____	_____
Total	_____	_____

Exhibit Two—Part Five

	Col (2)	Col (3)
	ULAE Paid During 1988	ULAE Paid During 1Q 1989
Calendar/Accident Years:		
1988	_____	_____
1987	_____	_____
1986	_____	_____
1985	_____	_____
1984	_____	_____
1983	_____	_____
1982	_____	_____
prior	_____	_____
Total	_____	_____

Exhibit Two—Part Six

	Col (2)	Col (3)
	ULAE Incurred During 1988	ULAE Incurred During 1Q 1989
Calendar/Accident Years:		
1988	_____	_____
1987	_____	_____
1986	_____	_____
1985	_____	_____
1984	_____	_____
1983	_____	_____
1982	_____	_____
prior	_____	_____
Total	_____	_____

INSURANCE

PROPOSALS

Exhibit Three

Check one:

BI Liability _____

PIP _____

Exhibit Three—Part One
Development of Incurred Losses
Calendar/Accident Year

	82	83	84	85	86	87	88
Losses Incurred During							
0-15 months	_____	_____	_____	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____
51-63 months	_____	_____	_____	_____	_____	_____	_____
63-75 months	_____	_____	_____	_____	_____	_____	_____
75-87 months	_____	_____	_____	_____	_____	_____	_____

Exhibit Three—Part Two
Development of Incurred Losses
Calendar/Accident Year

	82	83	84	85	86	87	88
Losses Incurred As Of							
15 months	_____	_____	_____	_____	_____	_____	_____
27 months	_____	_____	_____	_____	_____	_____	_____
39 months	_____	_____	_____	_____	_____	_____	_____
51 months	_____	_____	_____	_____	_____	_____	_____
63 months	_____	_____	_____	_____	_____	_____	_____
75 months	_____	_____	_____	_____	_____	_____	_____
87 months	_____	_____	_____	_____	_____	_____	_____

Exhibit Three—Part Three
Incurred Loss Development Factors
Calendar/Accident Year

	82	83	84	85	86	87	88	Col (5A)	Col (6)	Col (6A)
Development Factors								Selected Factor	Incurred Losses As Of	Projection Factor
15-27 months	_____	_____	_____	_____	_____	_____	_____	_____	15 months	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____	_____	27 months	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____	_____	39 months	_____
51-63 months	_____	_____	_____	_____	_____	_____	_____	_____	51 months	_____
63-75 months	_____	_____	_____	_____	_____	_____	_____	_____	63 months	_____
75-87 months	_____	_____	_____	_____	_____	_____	_____	_____	75 months	_____
87 mos-ultimate	_____	_____	_____	_____	_____	_____	_____	_____	87 months	_____

	Col (1)	Col (2)	Col (3)
Calendar/Accident Year	Losses at 3/89	Projection Factor to Ultimate	Ultimate Incurred
88	_____	_____	_____
87	_____	_____	_____
86	_____	_____	_____
85	_____	_____	_____
84	_____	_____	_____
83	_____	_____	_____
82	_____	_____	_____

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

Exhibit Four

Check one:

Other Liability _____

Physical Damage _____

Exhibit Four—Part One

Development of Paid Losses

Calendar/Accident Year

	82	83	84	85	86	87	88
Losses Paid During							
0-15 months	_____	_____	_____	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____

Exhibit Four—Part Two

Development of Paid Losses

Calendar/Accident Year

	82	83	84	85	86	87	88
Losses Paid As Of							
15 months	_____	_____	_____	_____	_____	_____	_____
27 months	_____	_____	_____	_____	_____	_____	_____
39 months	_____	_____	_____	_____	_____	_____	_____
51 months	_____	_____	_____	_____	_____	_____	_____

Exhibit Four—Part Three

Paid Loss Development Factors

Calendar/Accident Year

	82	83	84	85	86	87	88	Col (5A)	Col (6)	Col (6A)
Development Factors								Selected Factor	Paid Losses As Of	Projection Factor
15-27 months	_____	_____	_____	_____	_____	_____	_____	_____	15 months	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____	_____	27 months	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____	_____	39 months	_____

	Col (1)	Col (2)	Col (3)
Calendar/Accident Year	Losses at 3/89	Projection Factor to Ultimate	Ultimate Incurred
88	_____	_____	_____
87	_____	_____	_____
86	_____	_____	_____

INSURANCE

PROPOSALS

Exhibit Five

Check one:

BI Liability _____

PIP _____

Exhibit Five—Part One
Development of Incurred Losses
and LAE

	Calendar/Accident Year						
	82	83	84	85	86	87	88
Losses and LAE Incurred During							
0-15 months	_____	_____	_____	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____
51-63 months	_____	_____	_____	_____	_____	_____	_____
63-75 months	_____	_____	_____	_____	_____	_____	_____
75-87 months	_____	_____	_____	_____	_____	_____	_____

Exhibit Five—Part Two
Development of Incurred Losses
and LAE

	Calendar/Accident Year						
	82	83	84	85	86	87	88
Losses and LAE Incurred As Of							
15 months	_____	_____	_____	_____	_____	_____	_____
27 months	_____	_____	_____	_____	_____	_____	_____
39 months	_____	_____	_____	_____	_____	_____	_____
51 months	_____	_____	_____	_____	_____	_____	_____
63 months	_____	_____	_____	_____	_____	_____	_____
75 months	_____	_____	_____	_____	_____	_____	_____
87 months	_____	_____	_____	_____	_____	_____	_____

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

Exhibit Five—Part Three
Incurred Loss and LAE Development Factors
Calendar/Accident Year

	82	83	84	85	86	87	88	Col (5A) Selected Factor	Col (6) Incurred Losses and LAE As Of	Col (6A) Pro- jection Factor
Develop- ment Factors										
15-27 months									15 months	
27-39 months									27 months	
39-51 months									39 months	
51-63 months									51 months	
63-75 months									63 months	
75-87 months									75 months	
87 mos-ultimate									87 months	

	Col (1) L + LAE at 3/89	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred
Calendar/ Accident Year			
88			
87			
86			
85			
84			
83			
82			

Exhibit Five—Part Four
Development of Incurred Losses
and LAE

	81	82	83	84	85	86	87
Losses and LAE Incurred During							
0-15 months							
15-27 months							
27-39 months							
39-51 months							
51-63 months							
63-75 months							
75-87 months							

Exhibit Five—Part Five
Development of Incurred Losses
and LAE

	81	82	83	84	85	86	87
Losses and LAE Incurred As Of							
15 months							
27 months							
39 months							
51 months							
63 months							
75 months							
87 months							

INSURANCE

PROPOSALS

Exhibit Five—Part Six
Incurred Loss and LAE Development Factors
Calendar/Accident Year

	81	82	83	84	85	86	87	Col (5A) Selected Factor	Col (6) Incurred Losses and LAE As Of	Col (6A) Pro- jection Factor
Develop- ment Factors										
15-27 months	_____	_____	_____	_____	_____	_____	_____	_____	15 months	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____	_____	27 months	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____	_____	39 months	_____
51-63 months	_____	_____	_____	_____	_____	_____	_____	_____	51 months	_____
63-75 months	_____	_____	_____	_____	_____	_____	_____	_____	63 months	_____
75-87 months	_____	_____	_____	_____	_____	_____	_____	_____	75 months	_____
87 mos-ultimate	_____	_____	_____	_____	_____	_____	_____	_____	87 months	_____
	Col (1)	Col (2)	Col (3)							
Calendar/ Accident Year	L + LAE at 3/88	Projection Factor to Ultimate	Ultimate Incurred							
87	_____	_____	_____							
86	_____	_____	_____							
85	_____	_____	_____							
84	_____	_____	_____							
83	_____	_____	_____							
82	_____	_____	_____							
81	_____	_____	_____							

Exhibit Five—Part Seven
Development Adjustment

Check one:

BI Liability _____

PIP _____

	Col. (1)	Col (2)	Col (3)
	Ultimate Incurred per Exhibit Five- Part Six Col (3)	Ultimate Incurred per Exhibit Five- Part Three Col (3)	Difference Col (2) minus Col (1)
Calendar/ Accident Year			
85	_____	_____	_____
84	_____	_____	_____
83	_____	_____	_____
82	_____	_____	_____
Total	X	X	_____

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

Exhibit Six

Check one:

Other Liability _____

Physical Damage _____

Exhibit Six—Part One

**Development of Paid Losses
and LAE**

Calendar/Accident Year

	82	83	84	85	86	87	88
Losses and LAE Paid During							
0-15 months	_____	_____	_____	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____

Exhibit Six—Part Two

**Development of Paid Losses
and LAE**

Calendar/Accident Year

	82	83	84	85	86	87	88
Losses and LAE Paid As Of							
15 months	_____	_____	_____	_____	_____	_____	_____
27 months	_____	_____	_____	_____	_____	_____	_____
39 months	_____	_____	_____	_____	_____	_____	_____
51 months	_____	_____	_____	_____	_____	_____	_____

Exhibit Six—Part Three

Paid Loss and LAE Development Factors

Calendar/Accident Year

	82	83	84	85	86	87	88	Col (5A) Selected Factor	Col (6) Paid Losses and LAE As Of	Col (6A) Pro- jection Factor
Develop- ment Factors										
15-27 months	_____	_____	_____	_____	_____	_____	_____	_____	15 months	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____	_____	27 months	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____	_____	39 months	_____

	Col (1) L + LAE at 3/89	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred
Calendar/ Accident Year			
88	_____	_____	_____
87	_____	_____	_____
86	_____	_____	_____
85	_____	1.000	_____

INSURANCE

PROPOSALS

Exhibit Six—Part Four
Development of Paid Losses
and LAE

	Calendar/Accident Year						
	81	82	83	84	85	86	87
Losses Paid During							
0-15 months	_____	_____	_____	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____

Exhibit Six—Part Five
Development of Paid Losses
and LAE

	Calendar/Accident Year						
	81	82	83	84	85	86	87
Losses Paid As Of							
15 months	_____	_____	_____	_____	_____	_____	_____
27 months	_____	_____	_____	_____	_____	_____	_____
39 months	_____	_____	_____	_____	_____	_____	_____
51 months	_____	_____	_____	_____	_____	_____	_____

Exhibit Six—Part Six
Paid Loss and LAE Development Factors
Calendar/Accident Year

	81	82	83	84	85	86	87	Col (5A)	Col (6)	Col (6A)
Develop- ment Factors								Selected Factor	Paid Losses As Of	Pro- jection Factor
15-27 months	_____	_____	_____	_____	_____	_____	_____	_____	15 months	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____	_____	27 months	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____	_____	39 months	_____
	Col (1)	Col (2)	Col (3)							
Calendar/ Accident Year	Losses + LAE at 3/88	Projection Factor to Ultimate	Ultimate Incurred							
87	_____	_____	_____							
86	_____	_____	_____							
85	_____	_____	_____							

Exhibit Six—Part Seven
Development Adjustment

	Col. (1)	Col (2)	Col (3)
	Ultimate Incurred per Exhibit Six- Part Six	Ultimate Incurred per Exhibit Six- Part Three	Difference
Calendar/ Accident Year	Col (3)	Col (3)	Col (2) minus Col (1)
85	_____	_____	_____

PROPOSALS**Interested Persons see Inside Front Cover****INSURANCE****Exhibit Seven****Part One—Countrywide Expenses
From Insurance Expense Exhibit****Calendar Year 1988**

(This Exhibit is also to be completed separately for calendar years 1987 and 1986.)

	Private Passenger Auto Liability		Private Passenger Auto Physical Damage	
	Col (1)	Col (2)	Col (3)	Col (3A)
Net Earned Premium	_____	1.000	_____	1.000
Other Acquisition	_____	_____	_____	_____
General Expenses	_____	_____	_____	_____
Net Written Premium	_____	1.000	_____	1.000
Commission and Brokerage	_____	_____	_____	_____
Taxes, Licenses, Fees	_____	_____	_____	_____
Losses Incurred	_____	1.000	_____	1.000
Loss Adjustment Expenses Incurred	_____	_____	_____	_____

Exhibit Seven**Part Two—New Jersey Expenses****Calendar/Accident Year 1988**

(This exhibit is also to be completed for calendar/accident years 1987 and 1986.)

Check one:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

	Col (1)	Col (2)	Col (3)	Col (3A)
Item 1: Direct Earned Premium	_____	1.000	_____	1.000
Item 2: Direct Other Acquisition	_____	_____	_____	_____
Item 3: Direct General Expenses	_____	_____	_____	_____
Item 4: Direct Written Premium	_____	1.000	_____	1.000
Item 5: Direct Commission and Brokerage	_____	_____	_____	_____
Item 6: Direct Taxes, Licenses, Fees	_____	_____	_____	_____
Item 7: Direct Losses Incurred	_____	1.000	_____	1.000
Item 8: Direct Loss Adjustment Expenses Incurred	_____	_____	_____	_____
Item 9: Prepaid Expenses	_____	_____	_____	_____

INSURANCE

PROPOSALS

Exhibit Seven—Part Three—A

Check one:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Allocation of Commission and
Brokerage Fees to
Calendar/Accident Year 1988

Col (2)

Item 1: 1988 Direct Written Premium _____

Item 2: Commission and Brokerage Fees that arise
from the writing of policies, the premium of
which is listed in Item 1 _____

Item 3: Dollars of 1988 Direct Written Premium that
are earned in 1988 _____

Item 4: Ratio Item 3 divided by Item 1 _____

Item 5: Item 2 multiplied by Item 4 _____

Item 6: 1987 Direct Written Premium _____

Item 7: Commission and Brokerage Fees that arise
from the writing of policies, the premium of
which is listed in Item 6 _____

Item 8: Dollars of 1987 Direct Written Premium that
are earned in 1988 _____

Item 9: Ratio Item 8 divided by Item 6 _____

Item 10: Item 9 multiplied by Item 7 _____

Item 11: 1988 Commission and Brokerage Incurred
Item 10 plus Item 5 _____

Exhibit Seven—Part Three—B

Check one:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Allocation of Commission and
Brokerage Fees to
Calendar/Accident Year 1987

Col (6)

Item 1: 1987 Direct Written Premium _____

Item 2: Commission and Brokerage Fees that arise
from the writing of policies, the premium of
which is listed in Item 1 _____

Item 3: Dollars of 1987 Direct Written Premium that
are earned in 1987 _____

Item 4: Ratio Item 3 divided by Item 1 _____

Item 5: Item 2 multiplied by Item 4 _____

Item 6: 1986 Direct Written Premium _____

Item 7: Commission and Brokerage Fees that arise
from the writing of policies, the premium of
which is listed in Item 6 _____

Item 8: Dollars of 1986 Direct Written Premium that
are earned in 1987 _____

Item 9: Ratio Item 8 divided by Item 6 _____

Item 10: Item 9 multiplied by Item 7 _____

Item 11: 1987 Commission and Brokerage
Item 10 plus Item 5 _____

Exhibit Seven—Part Three—C

Check one:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Allocation of Commission and
Brokerage Fees to
Calendar/Accident Year 1986

Col (11)

Item 1: 1986 Direct Written Premium _____

Item 2: Commission and Brokerage Fees that arise
from the writing of policies, the premium of
which is listed in Item 1 _____

Item 3: Dollars of 1986 Direct Written Premium that
are earned in 1986 _____

Item 4: Ratio Item 3 divided by Item 1 _____

Item 5: Item 2 multiplied by Item 4 _____

Item 6: 1985 Direct Written Premium _____

Item 7: Commission and Brokerage Fees that arise
from the writing of policies, the premium of
which is listed in Item 6 _____

Item 8: Dollars of 1985 Direct Written Premium that
are earned in 1986 _____

Item 9: Ratio Item 8 divided by Item 6 _____

Item 10: Item 9 multiplied by Item 7 _____

Item 11: 1986 Commission and Brokerage
Item 10 plus Item 5 _____

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

Exhibit Seven—Part Four—A

Check one:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

General Expenses

Calendar Year 1988

Col (3)

Item 1: General Expenses Paid During 1988 _____

Item 2: General Expenses Unpaid at 12/31/88 _____

Item 3: General Expenses Unpaid at 12/31/87 _____

Item 4: Item 1 + Item 2 - Item 3 _____

Exhibit Seven—Part Four—B

Check one:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

General Expenses

Calendar Year 1987

Col (7)

Item 1: General Expenses Paid During 1987 _____

Item 2: General Expenses Unpaid at 12/31/87 _____

Item 3: General Expenses Unpaid at 12/31/86 _____

Item 4: Item 1 + Item 2 - Item 3 _____

Exhibit Seven—Part Four—C

Check one:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

General Expenses

Calendar Year 1986

Col (12)

Item 1: General Expenses Paid During 1986 _____

Item 2: General Expenses Unpaid at 12/31/86 _____

Item 3: General Expenses Unpaid at 12/31/85 _____

Item 4: Item 1 + Item 2 - Item 3 _____

Exhibit Eight

Check one:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Exhibit Eight—Part One

Actual Investment Income

Calendar Year 1988

(This exhibit is also to be completed for each calendar year 1987 and 1986.)

Col (2)

Item 1 Agents Balances—Countrywide _____

Item 2 Unearned Premium Reserve—Countrywide _____

Item 3 Ratio (Item 1)/(Item 2) _____

Item 4 Direct Prepaid Expenses _____

Item 5 Direct Premiums Written _____

Item 6 Ratio (Item 4)/(Item 5) _____

Item 7 Direct Unearned Premium Reserves—1988 _____

Item 8 Direct Unearned Premium Reserves—1987 _____

Item 9 (Item 7 + Item 8)/2 _____

Item 9A Investable Unearned Premiums _____

Item 10 Direct Losses Unpaid—1988 _____

Item 11 Direct Losses Unpaid—1987 _____

Item 12 (Item 10 + Item 11)/2 _____

Item 13 Direct Loss Adjustment Expenses Unpaid—1988 _____

Item 14 Direct Loss Adjustment Expenses Unpaid—1987 _____

Item 15 (Item 13 + Item 14)/2 _____

Item 16 (Item 12 + Item 15) _____

Item 17 (Item 16 + Item 9A) _____

Item 18 Exhibit Eight Part One—A _____

Item 7 _____

Item 19 (Item 18) X (Item 17) _____

Exhibit Eight—Part One—A

Note: The source of data for Exhibit Eight—Part One—A is the statutory annual statement for the calendar year. Items 1A, 2A, and 3A are from Schedule D—Summary By Country which is on page 29 of the 1988 statement.

Items 1 through 7 are from Underwriting and Investment Exhibit, Part 1—Interest, Dividends, and Real Estate Income, which is on page 6 of the 1988 statement.

Item Source _____

Item 1A Schedule D—Summary By Country
page 29, column 6, line 20 _____

Item 2A Schedule D—Summary By Country
page 29, column 6, line 24 _____

Item 3A Schedule D—Summary By Country
page 29, column 6, line 28 _____

INSURANCE

PROPOSALS

Item 4A	Item 1A + Item 2A + Item 3A	_____	Item 4	Underwriting and Investment Exhibit Part 1—Interest, Dividends, and Real Estate Income Page 6, column 8, line 14	_____
Item 1	Underwriting and Investment Exhibit Part 1—Interest, Dividends, and Real Estate Income Page 6, column 8, line 1.2	_____	Item 5	(Item 3) × (Item 4)	_____
Item 2	Underwriting and Investment Exhibit Part 1—Interest, Dividends, and Real Estate Income Page 6, column 8, line 10	_____	Item 6	(Item 1) – (Item 5)	_____
Item 3	Ratio (Item 1)/(Item 2)	_____	Item 7	Ratio (Item 6)/(Item 4A) **Note: The value of Item 7 may be subject to a minimum as provided by a regulation issued pursuant to N.J.S.A. 17:29A-5.8**	_____

Exhibit Eight—Part Two

Check one:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Anticipated Investment Income

	Calendar/Accident Year	1986	1987	1988
Item 1:	Earned Premium	_____	_____	_____
Item 2:	Filed and Approved Investment Income Offset	_____	_____	_____
Item 3:	Anticipated Investment Income	_____	_____	_____
Item 4:	Actual Investment Income	_____	_____	_____
Item 5:	Excess Investment Income	_____	_____	_____

Exhibit Nine—Part One

Development of AIRE Compensation
to Ultimate

	Calendar/Accident Year	86	87	88
AIRE Compensation Received During				
0-15 months	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____

Exhibit Nine—Part Two

Development of AIRE Compensation
to Ultimate

	Calendar/Accident Year	86	87	88
AIRE Compensation Received As Of				
15 months	_____	_____	_____	_____
27 months	_____	_____	_____	_____
39 months	_____	_____	_____	_____

Exhibit Nine—Part Three

AIRE Compensation Development Factors

	Calendar/Accident Year	86	87	
Develop- ment Factors				
15-27 months	_____	_____	_____	
27-39 months	_____	_____	_____	
		Col (1)	Col (2)	Col (3)
		AIRE Comp'n at 3/89	Projection Factor to Ultimate	Ultimate Comp'n
Calendar/ Accident Year				
88	_____	_____	_____	_____
87	_____	_____	_____	_____
86	_____	_____	_____	_____
85	_____	_____	_____	_____
84	_____	_____	_____	_____

PROPOSALS**Interested Persons see Inside Front Cover****INSURANCE**

Exhibit Ten
Excess Profit Calculation

Check one:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

	1986	1987	1988	Three Year Total
Item 1: Direct Calendar Year Written Premium	_____	_____	_____	_____
Item 2: Direct Calendar Year Earned Premium	_____	_____	_____	_____
Item 2A: AIRE Compensation, Developed to Ultimate	_____	_____	_____	_____
Item 2B: AIRE Charges	_____	_____	_____	_____
Item 2C: Item 2A - Item 2B	_____	_____	_____	_____
Item 3: Direct Calendar/Accident Year Losses and Loss Adjustment Expenses Incurred, Developed to Ultimate	_____	_____	_____	_____
Item 4: Item 3 as a Ratio to Item 2	_____	_____	_____	_____
Item 5: Direct Commission and Brokerage Fees Incurred	_____	_____	_____	_____
Item 6: Item 5 as a Ratio to Item 1	_____	_____	_____	_____
Item 7: Direct Other Acquisition, Field Supervision, and Collection Expenses Incurred	_____	_____	_____	_____
Item 8: Item 7 as a Ratio to Item 1	_____	_____	_____	_____
Item 9: Direct General Expenses Incurred	_____	_____	_____	_____
Item 10: Item 9 as a Ratio to Item 2	_____	_____	_____	_____
Item 11: Direct Taxes, Licenses, and Fees Incurred	_____	_____	_____	_____
Item 12: Item 11 as a Ratio to Item 1	_____	_____	_____	_____
Item 13: Direct Policyholder Dividends Other Than Excess Profits Refunds or Credits Incurred	_____	_____	_____	_____
Item 14: Credit or Refund of Excess Profits	_____	_____	_____	_____
Item 15: Subtotal Item 13 + Item 14	_____	_____	_____	_____
Item 16: Item 15 as a Ratio to Item 2	_____	_____	_____	_____
Item 17: Underwriting Income = Item 2 + Item 2A - Item 2B - Item 3 - Item 5 - Item 7 - Item 9 - Item 11 - Item 15	_____	_____	_____	_____
Item 18: Allowance for Profit and Contingencies	_____	_____	_____	_____
Item 19: Actuarial Gain	_____	_____	_____	_____
Item 20: Total Development Adjustment	X	X	X	_____
Item 21: Total Actuarial Gain	X	X	X	_____
Item 22: Excess Investment Income	_____	_____	_____	_____
Item 23: Item Two times .025	_____	_____	_____	_____
Item 24: Excess Profit	X	X	X	_____
Item 25: Non-excessive Subsidization	X	X	X	_____
Item 26: Excessive Subsidization	X	X	X	_____

INSURANCE

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Exhibit Eleven—Supplementary Data

Year _____

Item 1:	PIP Incurred Losses exclusive of limitation due to reimbursement by UCJF, as provided by N.J.S.A. 39:6-61 et seq.	_____
Item 2:	Dollars of PIP Losses Assumed by UCJF	_____
Item 3:	UCJF Assessments Paid	_____
Item 4:	UCJF Reimbursements Rec'd	_____
Item 5:	Item 2 + Item 4 - Item 3	_____

Exhibit Twelve—UCJF Premium Offset

Calendar Year 1988

Item 1:	UCJF Assessments Paid in 1988	_____
Item 2:	Reserve for Two Future UCJF Assessments, Evaluated at 12/87	_____
Item 3:	Reserve for Two Future UCJF Assessments, Evaluated at 12/88	_____
Item 4:	UCJF Premium Offset	_____

(a)

DIVISION OF ADMINISTRATION

Unsatisfied Claim and Judgment Fund

Proposed New Rules: N.J.A.C. 11:3-26, 27 and 28

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

Authority: N.J.S.A. 39:6-61 et seq., 39:6-64a, 39:6-64.1 and
39:6-73.1.

Proposal Number: PRN 1989-140.

Submit comments by April 19, 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

Originally the Unsatisfied Claim and Judgment Fund ("UCJF") and its board were established in but not a part of the Division of Motor Vehicles of the Department of Law and Public Safety pursuant to N.J.S.A. 39:6-64. However, Assembly Bill No. 1846, P.L. 1985, c. 148, approved and effective April 24, 1985, transferred the UCJF and its board from the Division of Motor Vehicles to the Department of Insurance.

The proposed new rules implement the inter-departmental transfer of regulatory authority. The proposed new rules are basically identical to the rules promulgated and adopted by the UCJF Board and the Director of the Division of Motor Vehicles currently codified at N.J.A.C. 13:18-2.1, 13:18-10, and 13:19-3, except that as a result of the transfer, certain editorial and technical amendments are being made to the rules.

Also, a change is being made to the previous rule regarding the excess medical expense benefits threshold in N.J.A.C. 11:3-28.6(b). Previously, if there were multiple policies applicable to a claim, medical benefits in excess of \$75,000 had to have been expended on each policy before an insurer could seek reimbursement. The UCJF Board, however, has decided that since the "no fault" statute (N.J.S.A. 39:6A-1 et seq.) was amended regarding primacy of coverage, it would be more consistent and more equitable to insurers to allow reimbursement when an insurer has expended in excess of \$75,000 in medical benefits on account of injury in any one accident. If there were two primary insurers responsible on a claim, however, both would have to expend in excess of \$75,000 in medical benefits before reimbursement would commence.

Social Impact

The proposed new rules implement the Unsatisfied Claim and Judgment Fund Law by providing a measure of relief to persons who would otherwise be remediless because of losses or injuries inflicted by financially irresponsible or unidentified motor vehicle operators.

The proposed new rules are identical to the existing UCJF rules with the exception of the excess medical benefits threshold criteria and some minor technical changes.

The social impact of the change on the threshold criteria is that now, even if there are multiple policies, an insurer will be reimbursed for medical benefits it expends in excess of \$75,000 and not when each policy exceeds the threshold. This would benefit insurers. The adoption of these rules, otherwise, will not have any social impact different from that covered by the initial adoption of the rules by the Division of Motor Vehicles.

Economic Impact

The economic impact of the proposed new rules will benefit insurers in that they may receive reimbursement if they expend in excess of \$75,000 in medical benefits rather than when in excess of \$75,000 in medical benefits is expended on each policy.

The proposed new rules otherwise will create no new or different economic impact upon the insureds or insurance industry. The proposed rule change will result in greater cost to the UCJF. Maintenance of the fund is through assessments from insurers and the fund is responsible for the administrative and claim expenses of the fund. Therefore, any expenses incurred by the Department in administering these regulations will either be reimbursed out of the fund's monies or absorbed into the existing budget.

Regulatory Flexibility Analysis

These proposed new rules impose reporting and record keeping requirements, largely already imposed under the Division of Motor Vehicles rules referenced in the Summary, on all automobile liability insurers seeking reimbursement from the UCJF for excess medical benefits paid. Some of these insurers are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As these requirements provide only for notification to the Fund in certain circumstances of information normally maintained by insurers in the course of business, and the filing of applications, there should be no costs to insurers beyond the minimal administrative cost of notification and application filing. As the amounts of individual reimbursement claims are not related to insurer size, and the reimbursement process benefits all insurers equally, no differentiation in requirements is proposed based on insurer size.

Full text of the proposal follows:

SUBCHAPTER 26. ACCIDENT CLAIMS

11:3-26.1 Claim information

(a) A Notice of Intention to Make Claim under N.J.S.A. 39:6-65 as amended by P.L. 1958, c.99, approved July 1, 1958, shall contain the following information:

1. The claimant's name and address;
2. The time and place of accident;
3. The identity of the operators and vehicles involved in the accident;
4. Such witnesses to said accidents as are then known;
5. A short description of the accident;
6. A description of the injuries then known, and attached thereto a medical certificate if then available. In any event the medical certificate shall be filed as soon as available; and
7. A description of the damage sustained to property, and attached thereto an estimate of the cost of repairs if then available.

11:3-26.2 Claims filing: form

(a) A Notice of Intention to Make Claim under N.J.S.A. 39:6-65 may be filed on a form of the Unsatisfied Claim and Judgment Fund Board designated as a "Notice of Intention to Make Claim."

(b) A written notice to the Board in any other form that contains the information required by this section shall be acceptable.

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Interested Persons see Inside Front Cover

LABOR

SUBCHAPTER 27. UNSATISFIED CLAIM AND JUDGMENT FUND BOARD

11:3-27.1 Uninsured's current financial status

(a) Upon review of a case by the Unsatisfied Claim and Judgment Fund Board, if the Board does not have sufficient current information to determine whether or not the uninsured's installment payment is reasonable, a request will be addressed to the uninsured asking for a statement of current financial status.

(b) If the uninsured fails to furnish a completed statement of current financial status within a time period to be established by the executive director, the Unsatisfied Claim and Judgment Fund Board will request the Director of Motor Vehicles to suspend the license and all registrations of the uninsured pursuant to N.J.S.A. 39:5-30 and 39:5-87, for failure to furnish this information.

SUBCHAPTER 28. UNSATISFIED CLAIM AND JUDGMENT FUND'S REIMBURSEMENT OF EXCESS MEDICAL EXPENSE BENEFITS PAID BY INSURERS

11:3-28.1 Notification of potential for payment of excess medical expense benefits

An automobile liability insurer shall, as soon as practical, notify the Unsatisfied Claim and Judgment Fund on forms provided by the Fund of all claims for medical expense benefits, as defined in N.J.S.A. 39:6A-2(e), where the potential exposure to the insurer exceeds \$75,000 on account of personal injury to any one person in any one accident occurring after 12:00 A.M. on February 19, 1978.

11:3-28.2 Report of such claims when the carrier has paid at least \$50,000 for medical expense benefits

In cases where the potential exposure to the automobile liability insurer exceeds \$75,000, the insurer shall report on forms provided by the Fund whenever medical expense benefits in a total amount of \$50,000 have been paid on account of personal injury to any one person in any one accident.

11:3-28.3 Notice of change in the amount of reserves

Whenever an automobile liability insurer has paid medical expense benefits on account of personal injury to any one person in any one accident in a total amount of \$50,000, said insurer shall notify the Fund of any changes in the amount of reserves established for payment of the claim or closing of the file.

11:3-28.4 Supplemental form to be submitted to the Fund

A reimbursement and reserve form shall be filed with the Fund within 90 days after an automobile insurer has paid medical expense benefits on account of personal injury to any one person in any one accident in a total amount of \$75,000. Such form shall be filed each quarter that the insurer seeks reimbursement.

11:3-28.5 Insurer's continuing obligation to investigate claims

An automobile liability insurer shall be required to discharge its duty of investigating claims where the potential exposure to the insurer exceeds \$75,000. Said insurer's duty and obligation with regard to claim handling shall exist and continue to exist notwithstanding this rule. The Executive Director may direct such investigations as often as he or she deems necessary. All expenses relating to the investigation of claims, including expenses for medical examinations and file maintenance, are the responsibility of the automobile liability insurer.

11:3-28.6 Reimbursement of excess medical expense benefits paid by insurers

(a) Insurers shall submit to the Fund itemized accounts with supporting documentation of claim payments as soon as practicable after the close of the quarter for which reimbursement is sought. The Fund shall reimburse automobile liability insurers for excess medical expense benefits on a quarterly basis. Insurers shall not be reimbursed for interest, attorney fees or punitive damages.

(b) The Fund shall not reimburse an insurer for excess medical expense benefits if it is determined that there are multiple insurance policies applicable to a claim unless an insurer has expended medical

benefits in an amount exceeding \$75,000 on account of personal injury to any one person in any one accident. Where there are two or more different primary insurers liable, the Fund shall not reimburse such an insurer for excess medical benefits unless each primary insurer has expended medical benefits in an amount exceeding \$75,000 on account of personal injury to any one person in any one accident.

(c) Where the Fund has reimbursed an insurer for excess medical expense benefits and thereafter determines that there were or are multiple insurance policies applicable to the underlying claim, the insurer shall return all moneys paid from the Fund. The insurer(s) shall apportion the medical benefits payment and make individual application to the Fund where the potential exposure to the insurer(s) exceeds \$75,000 on account of personal injury to any one person in any one accident.

(d) Whenever an insurer recovers amounts expended by it for medical benefits, it shall not be reimbursed for excess medical expense benefits unless it has fully repaid the amount previously reimbursed by the Fund.

11:3-28.7 Audits

Upon request of the Fund, the insurer(s) shall present for audit at the direction of the Executive Director at a New Jersey location all policy and claim records on which notice of potential for payment of excess medical expense benefits have been submitted.

(a)

DIVISION OF ACTUARIAL SERVICES

Notice of Withdrawal of Proposal

Guidelines for Hospital Preadmission Certification Programs

Proposed New Rules: N.J.A.C. 11:4-30

Take notice that the Department of Insurance hereby withdraws its Guidelines for Hospital Preadmission Certification Programs, Proposed New Rules N.J.A.C. 11:4-30, Proposal Number PRN 1988-212, published at 20 N.J.R. 880(c) on Monday, April 18, 1988.

LABOR

(b)

OFFICE OF THE CONTROLLER

Remuneration

Proposed Amendment: N.J.A.C. 12:16-4.8

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

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 43:21-1 et seq., specifically 43:21-11.

Proposal Number: PRN 1989-143.

Submit comments by April 19, 1989 to:

Alfred B. Vuocolo, Jr.

Chief Legal Officer

Office of the Commissioner

New Jersey Department of Labor

CN 110

Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

Upon reviewing certain chapters of the New Jersey Administrative Code, the Department has noticed several areas in which improvements could be made. In an effort to update obsolete sections of the Code, and to revise sections which require annual updates, the Department is proposing this amendment to N.J.A.C. 12:16-4.8.

Specifically, the proposed amendment will replace the fixed dollar amount rates paid to employees for board and room and meals and lodging with a percentage rate. This will eliminate the need for annual

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revision of the fixed dollar amount. The percentage rates specified in the proposed amendment are the ones currently used to determine the fixed dollar amount; thus, there will be no change in the actual dollar amount received. The Department intends to notify the public on an annual basis of the actual dollar amounts which correspond to the percentages.

Social Impact

As the proposed amendment is merely replacing an annual dollar amount received with a fixed percentage rate which can be applied year after year to determine the dollar amount of the benefits, the Department does not foresee any negative social impact.

Economic Impact

There may be a slight impact on some employers and employees as a result of these proposed amendments, because without the amendments the monetary value of these benefits would not necessarily increase over time. Additionally, as a result of an increase in wages, some individuals may be eligible for unemployment insurance benefits who otherwise would be ineligible. The percentages stated in the Code will be accurate, without the Department having to adjust the amount every year.

Regulatory Flexibility Statement

The proposed amendment does not place any additional reporting, recordkeeping or compliance requirements on small businesses, pursuant to 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 proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

12:16-4.8 Other remuneration

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

(c) Money value for board and room, meals and lodging shall be treated as follows:

1. (No change.)

2. The Controller shall establish rates for board and room, meals and lodging furnished in addition to, or in lieu of, money wages, unless the employer can establish different costs determined by generally accepted accounting principles, as follows:

i. Full board and room, weekly—[\$72.00] **35 percent of the current taxable wage base divided by 52**

ii. Meals per day—[8.20] **20 percent of the current taxable wage base divided by 260**

If less than 3 meals per day, the individual meals shall be valued as follows:

Breakfast (meals served between 12:01 A.M. and 11:00 A.M.)—[2.40] **30 percent of meals rate** and

Lunch (meals served between 11:00 A.M. and 4:00 P.M.)—[2.40] **30 percent of meals rate** and

Dinner (meals served between 4:00 P.M. and 12:00 P.M.)—[3.40] **40 percent of meals rate** and

iii. Lodging per week—[31.00] **15 percent of the current taxable wage base divided by 52**

(d) Dollar amounts shall be computed to two decimal places and rounded to the nearest one-tenth of one dollar.

(a)

DIVISION OF VOCATIONAL REHABILITATION SERVICES

Transportation for Employees of Sheltered Workshops

Proposed New Rules: N.J.A.C. 12:45-2

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

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 34:16-55.

Proposal Number 1989-142.

Submit comments by April 19, 1989 to:

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

(CITE 21 N.J.R. 690)

NEW JERSEY REGISTER, MONDAY, MARCH 20, 1989

The agency proposal follows:

Summary

On January 19, 1988, the "Transportation for Employees of Sheltered Workshop Act", N.J.S.A. 34:16-51 et seq., became effective. The purpose of this Act is to defray the costs of public transportation and paratransit expenses of citizens with handicaps (clients) enrolled in sheltered (extended) employment programs at sheltered workshops (see N.J.S.A. 34:16-51).

Pursuant to N.J.S.A. 34:16-53, the Commissioner of the Department of Labor (Commissioner) is responsible for establishing and implementing a program to be administered by the Division of Vocational Rehabilitation Services (Division) to defray the costs of public transportation and paratransit expenses of clients enrolled in sheltered (extended) employment programs at sheltered workshops. The program may provide for the defraying of these expenses by the purchase of bus cards or other appropriate methods as prescribed by the Commissioner.

Pursuant to N.J.S.A. 34:16-54, the Division must conduct a survey to assess the transportation needs of clients enrolled in sheltered (extended) employment programs at sheltered workshops.

Finally, pursuant to N.J.S.A. 34:16-55, the Commissioner must adopt rules to effectuate the purposes of the Act.

In November, 1988, the Division completed its survey of transportation needs of clients enrolled in sheltered (extended) employment programs at sheltered workshops for fiscal year 1989. Based on an analysis of the surveys received, the Commissioner has established five categories of daily expense that will serve as the basis for determining the amount of reimbursement for each client.

These proposed new rules set forth the categories of expense and the responsibilities of sheltered workshops to administer the disbursement of checks to clients.

N.J.A.C. 12:45-2.1 sets forth the purpose and scope of the rules.

N.J.A.C. 12:45-2.2 sets forth the definitions applicable to the rules.

N.J.A.C. 12:45-2.3 sets forth the responsibilities of the sheltered workshops. Under this section, sheltered workshops are responsible for completing and submitting to the Division by May 1 and November 1 of each year a survey of the transportation needs of each client. This section also sets forth the data required in each survey. The format and instructions for completing the survey are set forth in Appendix A.

N.J.A.C. 12:45-2.4 sets forth the categories of expenses. The categories of expenses are established by the Division after an analysis of all surveys utilizing an equitable distribution of funds available for the applicable fiscal year. The amount of reimbursement for each client will be based on the particular category of expense that applies to the client. The categories of expenses may be subject to change during a fiscal year depending on survey results and availability of funds.

N.J.A.C. 12:45-2.5 sets forth the procedures for disbursement of funds by the Department of Labor (Department) and sheltered workshops. This section also sets forth that the Department will reimburse each sheltered workshop for the administrative costs associated with the disbursement of checks to clients.

Social Impact

The proposed new rules will benefit clients enrolled in sheltered (extended) employment programs at sheltered workshops. The proposed new rules provide clients with funds to defray their transportation costs. This, in turn, enables clients to achieve a greater sense of fulfillment from their employment in that a major portion of their paychecks will not have to be used for transportation costs.

The proposed new rules will benefit sheltered workshops in that the ability of clients to achieve a greater sense of fulfillment from their employment will enable the workshops to more effectively achieve vocational goals for clients.

The Department will benefit from the proposed new rules in that the rules establish standards and procedures that provide for administrative uniformity and efficiency.

Economic Impact

The proposed new rules will benefit clients of sheltered workshops in that clients will no longer have to spend a major portion of their earnings on transportation expenses.

Sheltered workshops will incur administrative costs associated with the disbursement of checks to clients. These costs, however, will be reimbursed by the Department from the funds appropriated by the Legislature for the program.

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The Department will incur minor expenses associated with analyzing the surveys, disbursing funds and conducting audits. These expenses will be absorbed in the current operating budget.

Regulatory Flexibility Analysis

The proposed new rules will affect all sheltered workshops possessing valid certificates to vend services to the Division. Some sheltered workshops are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules require all sheltered workshops to complete and submit, on a biannual basis, a survey of the transportation needs of clients. The data in the survey includes client names, mode of transportation and cost to the client. The data required in each survey is basic information which the sheltered workshops have at their disposal. Therefore, completion of the surveys will not involve any major time allocation or expense.

All costs incurred by the sheltered workshops in the administration of the disbursement of checks to clients will be paid by the Department out of the funds made available by the legislature. However, the sheltered workshops are responsible for maintaining accurate attendance records since the funds to defray the transportation costs of clients are subject to audit by the Department.

Full text of the proposed new rules follows:

SUBCHAPTER 2. TRANSPORTATION FOR EMPLOYEES OF SHELTERED WORKSHOPS

12:45-2.1 Purpose and scope

This subchapter sets forth the procedures and standards used by the Department and sheltered workshops to defray the costs of public transportation and paratransit expenses of clients enrolled in sheltered (extended) employment programs at sheltered workshops.

12:45-2.2 Definitions

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

"Department" means the New Jersey Department of Labor.

"Division" means the Division of Vocational Rehabilitation Services in the Department of Labor.

"Fiscal year" means the 12 month period from July 1 to June 30.

"Paratransit" means and includes any service, other than motorbus regular route service and charter services, including, but not limited to, dial-a-ride, nonregular route, jitney or community minibus, and shared-ride services such as vanpools, limousines or taxicabs which are regularly available to the public. Paratransit shall not include limousine or taxicab service reserved for the private and exclusive use of individual passengers.

"Public transportation" means all rail passenger service operated by the New Jersey Transit Corporation, and all motorbus regular route service operated pursuant to P.L. 1979, c. 150 (N.J.S.A. 27:25-1 et seq.) or operated pursuant to N.J.S.A. 43:4-3.

"Sheltered workshop" means a facility possessing a valid certificate to vend services to the Division issued by the Director thereof, in compliance with the rules governing vocational rehabilitation facilities.

12:45-2.3 Responsibilities of sheltered workshops

(a) Each sheltered workshop shall complete, on a biannual basis, a survey of the transportation needs of each client (see Appendix A incorporated herein and made part of by reference).

1. Each survey shall include the facility name, the name and phone number of each person completing the survey, and the following information for each client:

- i. Name, address and social security number;
- ii. Mode of transportation (that is, public transportation or paratransit);
- iii. Round trip mileage from residence to the sheltered workshop;
- iv. Daily out-of-pocket cost;
- v. Daily actual cost; and
- vi. Actual number of days in attendance per client during the prior six month period.

(b) Each sheltered workshop shall submit a completed survey by May 1 and November 1 of each year to:

Chief of Facilities Programs
Division of Vocational Rehabilitation Services
CN 398

Trenton, New Jersey 08625-0398

1. Failure to submit the surveys by the due dates may result in a delay in the allocation of funds to the sheltered workshop.

12:45-2.4 Categories of expenses

(a) Upon receipt of the completed surveys, the Division shall conduct an analysis of all surveys and establish categories of expenses. Categories of expenses shall be established utilizing an equitable distribution of funds available for the applicable fiscal year.

(b) The categories of expenses established for fiscal year 1989 shall be as follows:

Categories of Expenses	Daily Reimbursement
1. \$1.60 or less:	\$1.00
2. \$1.61 to \$2.25:	\$1.60;
3. \$2.26 to \$3.25:	\$2.25;
4. \$3.26 to \$5.00:	\$3.25; and;
5. \$5.01 or more	\$4.75.

(c) Each category of expense may be subject to change during a fiscal year depending on survey results and availability of funds.

12:45-2.5 Disbursement of funds

(a) The Department shall allocate available funds to each sheltered workshop by June 1 and December 1 of each year based on their transportation needs.

(b) Each sheltered workshop shall issue checks to clients to be used to defray transportation costs by July 1 and January 1 of each year.

(c) The Department shall reimburse each sheltered workshop for the reasonable administrative costs associated with the disbursement of checks to clients.

APPENDIX A

Instructions for Completing Transportation Survey for Employees (Clients) of Sheltered Workshops

- A. Complete facility name, person completing survey, and telephone number.
- B. Place a check mark in the appropriate blanks related to Adult Activity or Work Activity Training Centers.
- C. Complete remaining survey for each client as per the following:
 1. **Client name, address and social security number:** Complete for each eligible client (even if they do not need transportation funding assistance.)
 2. **Mode of transport:** How does the client get to your facility? If by public transit, please use the following code to complete this section for each client:
 - NJ = NJ Transit
 - C = County Transportation
 - PC = Private Contractor
 - F = Facility Operated Transportation System
 - PC/F = Private Contractor Arranged by Facility
 - DDD = Division of Developmental Disabilities

If client drives to the facility by auto (paratransit), please indicate the number of miles the client travels round trip each day. If the client car pools, take a percentage of the miles based on the number of persons sharing the car.

3. **Distance from facility:** Please indicate the round trip mileage for the client from the facility.

4. **Daily client out of pocket costs:** Indicate how much the client pays each day and/or how much the client is billed for the daily transport. (Example: A client may be billed by a facility for a particular amount but to date has not been able to pay.)

5. **Daily actual cost? Who pays the difference?** Indicate the actual cost of the daily transportation and if it is not being paid by the client, who is paying for the cost.

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Transportation Survey for Employees (Clients) of Sheltered Workshops

Facility Name: _____ Person Completing Form: _____ Telephone Number: _____

Is there an Adult Activity Center on your premises or in close proximity? Yes _____ No _____ Work Activity Center? Yes _____ No _____

Client Name	Address	SS#	Mode of Transport		Time in Transit (Round trip)	Distance from Facility (Round trip)	Daily Client out of Pocket Cost	Daily Actual Cost?/Who Pays Difference?	Number of Days in Attendance
			Public	Paratransit (include mileage)					

(a)

OFFICE OF WAGE AND HOUR COMPLIANCE**Definitions****Proposed Amendment: N.J.A.C. 12:56-2.1**

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

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 34:11-56(a)1 et seq., specifically 34:11-56(a)19.

Proposal Number: PRN 1989-141.

Submit comments by April 19, 1989 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
Department of Labor
CN 110

Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The Department of Labor has, on several occasions, encountered difficulty in criminally prosecuting violators of the Wage and Hour laws as a result of the vague definition of "employee" as defined at N.J.A.C. 12:56-2.1. Specifically, the current definition of employee does not address individuals who are trainees in company programs. The Department proposes to amend the definition of employee to address those workers who are enrolled in a trainee program.

Social Impact

The proposed amendment will enable the Department to effectively prosecute violators of the Wage and Hour law, which will protect the general public. The expanded definition of employee will also help employers understand what wages to pay trainees.

Economic Impact

The proposed amendment merely codifies existing Departmental policies concerning trainees. Through clarification of the meaning of employee, employers may devise an economic benefit through proper determination of employee status under the Wage and Hour laws.

Regulatory Flexibility Statement

The proposed amendment does not impose any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 51:14B-16 et seq., as the amendment merely clarifies the definition of employee. Thus, a regulatory flexibility analysis is not required.

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

12:56-2.1 Definitions

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

"Employee" includes any individual employed by an employer[.], except:

- i. For trainees who are involved in a program in which:
 - i. The training is for the primary benefit of the trainee;
 - ii. The employment for which the trainee is training requires some cognizable trainable skill;
 - iii. The training is not specific to the employer, that is, is not exclusive to its needs, but may be applicable elsewhere for another employer or in another field of endeavor;
 - iv. The training, even though it includes actual operation of the facilities of the employer, is similar to that which may be given in a vocational school;
 - v. The trainee does not displace a regular employee on a regular job or supplement a regular job, but trains under close tutorial observation;
 - vi. The employer derives no immediate benefit from the efforts of the trainee and, indeed, on occasion may find his or her regular operation impeded by the trainee;
 - vii. The trainee is not necessarily entitled to a job at the completion of training;
 - viii. The training program is sponsored by the employer, is outside regular work hours, the employee does no productive work while attending and the program is not directly related to the employee's present job (as distinguished from learning another job or additional skill); and
 - ix. The employer and the trainee share a basic understanding that regular employment wages are not due for the time spent in training, provided that the trainee does not perform any productive work.
2. If a trainee does not meet all of the above-listed criteria, the trainee shall be considered to be an employee.

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COMMERCE AND ECONOMIC DEVELOPMENT

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

URBAN ENTERPRISE ZONE AUTHORITY

Business Certification for Zone Business Benefits

Proposed New Rules: N.J.A.C. 12A:120-2

Authorized By: Urban Enterprise Zone Authority,
Borden R. Putnam, Chairman.

Authority: N.J.S.A. 52:27H-60, specifically 52:27H-65.

Proposal Number: PRN 1989-125.

Submit comments by April 19, 1989 to:

Bernard J. McBride
Administrative Practice Officer
Department of Commerce, Energy and
Economic Development
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

New rules are being proposed to implement the New Jersey Urban Enterprise Zone program, N.J.S.A. 52:27H-60 et seq. (the Act). These rules are promulgated by the New Jersey Urban Enterprise Zone Authority (UEZA), which is given responsibility for implementing the Act and associated programs. The purpose of these rules is to establish standards for the certification of a zone business to receive zone business benefits.

Some key provisions of the proposed rules include:

1. Information needed to be contained in an application for a business to reapply for zone business benefits (see N.J.A.C. 12A:120-2.3);
2. The time for reapplication for zone business benefits (see N.J.A.C. 12A:120-2.4);
3. Alternative methods of recertification for qualified small businesses (see N.J.A.C. 12A:120-2.5); and
4. Situations under which a business may be granted conditional zone business recertification (see N.J.A.C. 12A:120-2.7).

Social Impact

There will be little or no social impact of these rules as they apply to the Urban Enterprise Zone program. These rules are technical in nature and apply to those businesses wishing to receive zone business benefits. It is anticipated that continued recertification of businesses for zone business benefits will result in a positive social impact through economic stimulation.

Economic Impact

The economic impact of these rules will be minimal as it relates to the State and businesses affected under these rules. Businesses currently receiving zone business benefits are required to reapply on a yearly basis for those benefits. The State will not incur any additional administrative cost associated with this program because this function is already being done under the Urban Enterprise Zone program. Continued recertification of businesses for zone business benefits should produce a positive economic impact on the urban enterprise zone.

Regulatory Flexibility Analysis

As certification and recertification for zone business benefits is voluntary for qualified zone businesses, it is not possible to estimate the number of small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that will be affected by these rules. All businesses reapplying for zone business benefits and for conditional zone business recertification are required to submit to the Administrator certain information, the extent and cost of production, if any, of which will vary depending on each individual business's circumstances. No record keeping, reporting or compliance requirements except those which are a part of the voluntary application process are imposed on small businesses. Qualified small businesses, as defined in this subchapter, are given the option to make an investment in lieu of creating new employment, to continue entitlement to zone business benefits. Evidence of such investments must be provided to the Authority.

Full text of the proposal follows.

SUBCHAPTER 2. BUSINESS CERTIFICATION FOR ZONE BUSINESS BENEFITS

12A:120-2.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Urban Enterprise Zone Authority (UEZA) to implement P.L. 1983, c.303, as amended by P.L. 1988, c.93, the New Jersey Urban Enterprise Zones Act (the Act), and to implement standards of business certification for zone business benefits. This subchapter is divided into two parts: the first part which establishes standards for the recertification of zone business (N.J.A.C. 12A:120-2.3 to 2.6), and the second part which establishes standards for the conditional recertification of zone businesses (N.J.A.C. 12A:120-2.7 to 2.10).

(b) The Act provides for the establishment of an UEZA which is to designate certain areas of the State as Urban Enterprise Zones (UEZ). The Act also provides that the UEZA provide continuing review of the implementation of the Act and report annually to the Governor and the Legislature on the effectiveness of UEZs in addressing the conditions cited in the Act, including any recommendations for legislation to improve the effectiveness of operation of the UEZs.

(c) Applications and questions concerning UEZs should be directed to:

Urban Enterprise Zone Program
New Jersey Department of Commerce, Energy
and Economic Development
20 West State Street
Trenton, New Jersey 08625

12A:120-2.2 Definitions

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

"Act" means the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303 (N.J.S.A. 52:27H-60).

"Administrator" means the Administrator of the Urban Enterprise Zone Program in the Department of Commerce, Energy and Economic Development.

"Authority" or "UEZA" means the New Jersey Urban Enterprise Zone Authority.

"Commissioner" means the Commissioner of the Department of Commerce, Energy and Economic Development.

"Enterprise zone" or "zone" means an urban enterprise zone designated by the New Jersey Urban Enterprise Zone Authority pursuant to the Act.

"Qualified business" means any entity authorized to do business in the State of New Jersey which, at the time of designation as an enterprise zone, is engaged in the active conduct of a trade or business in that zone; or an entity which, after that designation but during the designation period, becomes newly engaged in the active conduct of a trade or business in that zone and for which at least 25 percent of its full-time employees, newly hired during the two years after issuance of the business's certificate of occupancy to work at a business location in the zone, meet one or more of the following criteria:

1. Resident within the zone, within another zone or within the municipality in which the zone or any other zone is located; or
2. Unemployed for at least a year prior to being hired and residing in New Jersey, or recipients of New Jersey public assistance programs for at least one year prior to being hired; or
3. Determined to be economically disadvantaged pursuant to the Job Training Partnership Act, Pub.L. 97-300 (29 U.S.C. §§ 1501 et seq.)

"Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which application for enterprise zone designation is submitted pursuant to section 14 of the Act, an annual average of at least 2,000 unemployed persons, and in which the municipal average annual unemployment rate for that year exceeded the State average annual unemployment rate; except that a municipality which qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) shall qualify if its municipal average unemployment rate for that year

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exceeded the State average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Statistics, Division of Planning and Research of the State Department of Labor.

"Qualified small business" means any entity authorized to do business in the State of New Jersey which, at the time of designation of the enterprise zone, had been engaged in the active conduct of a trade or business in that zone for at least one year prior to that designation, and which employs fewer than 50 full-time employees.

"Zone business benefits" means those benefits as defined by N.J.S.A. 52:27H-75 to 52:27H-79.

"Zone development corporation" means a nonprofit corporation or association created by the governing body of a qualifying municipality to formulate and propose a preliminary zone development plan pursuant to section 9 of the Act.

"Zone development plan" means a plan adopted by the governing body of a qualifying municipality for the development of an enterprise zone therein, and for the direction and coordination of activities of the municipality, zone businesses and community organizations within the enterprise zone toward the economic betterment of the residents of the zone and the municipality.

"Zone neighborhood association" means a corporation or association of persons who either are residents of, or have their principal place of employment in, a municipality in which an enterprise zone has been designated pursuant to the Act; which is organized under the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes, and which has for its principle purpose the encouragement and support of community activities within, or on behalf of, the zone so as to stimulate economic activity, increase or preserve residential amenities, or otherwise encourage community cooperation in achieving the goals of the zone development plan.

12A:120-2.3 Reapplication for zone business benefits

Any business desiring to continue to receive zone business benefits shall forward to the Administrator a letter specifying the benefits which it wants to receive, a certification that the business is located in the zone, the amount of full-time employees of the business located within the zone, the amount of full-time employment projected for the next year, actual and projected capital expenditures and any other additional information requested by the Administrator.

12A:120-2.4 Time for reapplication for zone business benefits

(a) A business must reapply for zone business benefits no later than one year after the prior date of certification of that business to receive zone business benefits.

(b) The Administrator may extend the reapplication period deadline by no more than six months when the business has demonstrated good faith efforts to produce the information required by the Administrator.

12A:120-2.5 Alternative qualified small business recertification

(a) A qualified small business desiring to continue to receive zone business benefits may, upon agreement with the governing body of the qualifying municipality in which the enterprise zone is located and subject to the approval of the UEZA, agree to undertake investments in the enterprise zone in lieu of creating new employment. For purposes of this section, investments in the enterprise zone shall include, but shall not be limited to:

1. Improvements in the exterior appearance or customer facilities of the property constituting the place of business of the qualified business within the zone; or
2. Monetary or in-kind contributions to the qualifying municipality to undertake improvements to increase the safety or attractiveness of the zone to businesses which may wish to locate there or to consumer visitors to the zone, including, but not limited to:
 - i. Litter clean up and control;
 - ii. Landscaping
 - iii. Creation or improvement of parking areas and facilities
 - iv. Creation or improvement of recreational and rest area facilities;
 - v. Repair or improvement of public streets, curbing, sidewalks and pedestrian thoroughfares;
 - vi. Creation or improvement of street lighting; or

vii. Increase in police, fire or sanitation services in the enterprise zone.

(b) In order for an investment to constitute an alternative means by which a small business may become recertified as qualified zone business, the investment by that business shall:

1. Be no less than \$5,000 if the business employs 10 or fewer employees; or
2. If the business employs more than 10 employees, not less than the amount produced by multiplying the number of employees employed by the small business by \$500.00.

12A:120-2.6 Acceptance as a recertified qualified zone business

(a) When a business has been granted recertification by the Administrator, the business shall be placed on the qualified zone business register. The business shall be eligible for all zone business benefits as determined by UEZA.

(b) Once a business is placed on the qualified business register, it shall be eligible for zone business benefits until its next annual date of recertification, subject to N.J.A.C. 12A:120-2.4.

12A:120-2.7 Standards for conditional zone business recertification

(a) When a zone business applies for recertification to receive zone business benefits and that business has not increased employment at the business located in the zone since issuance of its certificate of occupancy, the Administrator may conditionally recertify that business when:

1. The business has exhibited good faith efforts to fulfill the projections of increased employment; and
2. The business has experienced unforeseen adverse business conditions unrelated to its location within the zone; or
3. The business has been unable to fulfill its projected increase in employment due to unforeseen adverse conditions within the State's labor force; or
4. The business has been unable to fulfill its projected increase in employment for other good cause demonstrated to the Administrator.

12A:120-2.8 Time for application for conditional zone business recertification

A business seeking conditional zone business certification shall apply within one year after its prior zone business certification.

12A:120-2.9 Application procedures for conditional zone business recertification

As part of its application to the Administrator for conditional zone business recertification, the business shall document the reasons why the business could not meet its projected increase in employment. Where available, this documentation shall include appropriate forms or reports otherwise submitted to or issued by State and Federal agencies, as well as a professional analysis of the conditions which prevented the business from meeting its projected increase in employment.

1. If the applicant fails to provide adequate documentation in its application, the application may be delayed or rejected. The Administrator may establish deadlines for an applicant business to provide information, and when those deadlines are not met, he or she may deny the application.

2. If the applicant knowingly supplies incomplete or inaccurate information, the business shall be ineligible to receive zone business benefits for a period of not less than two years and no more than five years.

(b) An applicant for conditional zone business recertification shall forward its application and accompanying documentation by certified mail return receipt requested.

12A:120-2.10 Conditional recertification as an eligible zone business

(a) When a business is conditionally recertified as an eligible zone business, that business will be placed on the zone business register.

(b) The business shall agree to commence increasing its employment during the first quarter of the new year of certification and to reach the conditions set forth in its projection of increased employment.

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(c) The business shall agree to implement a capital improvement program, as may be prescribed by the Administrator, to be commenced during the year of the conditional recertification year, unless an alternate plan is agreed to by the Administrator.

(d) The business shall agree to communicate at least each quarter with the Administrator and the local Urban Enterprise Zone coordinator concerning the progress the business is making toward fulfilling the obligations of the conditional business recertification.

12A:120-2.11 Denial of recertification or conditional recertification of a qualified zone business

(a) When a business has been denied recertification or conditional recertification based upon the information provided by the business to the Administrator, the business may appeal the Administrator's decision.

(b) A business which is denied recertification or conditional recertification shall have 10 working days from the date of notification of denial to submit an appeal.

12A:120-2.12 Procedure for appealing denial of recertification or conditional recertification

(a) An appeal of denial of recertification or conditional recertification shall be made in writing and shall be forwarded to the Administrator by certified mail return receipt requested.

(b) The written appeal shall be accompanied with evidence to support a basis for appeal of the Administrator's decision.

(c) The Department of Commerce, Energy and Economic Development shall notify the appealing business of the date, time and place of the review, and the right of the business to attend and be represented at the review.

(d) The review will be conducted by a designee of the Commissioner. The designee shall issue a written report to the Commissioner within 10 working days of the close of the review.

(e) The appealing business will be permitted to file written exceptions of the designee's report no later than five working days from the receipt of the report.

(f) Thereafter, the Commissioner shall issue a final decision on the appeal and notify the business by certified letter, return receipt requested.

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(a)

DIVISION OF CRIMINAL JUSTICE

Police Training Commission

Definitions; Certification Requirements

Proposed Amendments: N.J.A.C. 13:1-1.1, 4.6 and 5.1

Authorized By: Donald R. Belsole, Acting Attorney General and Chairman, Police Training Commission.

Authority: N.J.S.A. 52:17B-71(h) and P.L. 1988, c. 176.

Proposal Number: PRN 1989-126.

Submit written comments by April 19, 1989 to:

Leo A. Culloo
Administrator of Police Services
Police Training Commission
CN-085
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Police Training Commission was created in 1961. Its purpose was to provide proper education and clinical training primarily for municipal and county police officers. P.L. 1988, c. 176 amended the Police Training Act to require that State and county corrections officers and juvenile detention officers complete training approved by the Commission. The following proposed amendments are intended to include the training of those officers under the jurisdiction of the Commission.

Social Impact

The proposed amendments are intended to include the training of State and county corrections officers and juvenile detention officers under the jurisdiction of the Police Training Commission. The public will benefit from the improved quality of training which will now be required of this category of law enforcement officers.

Economic Impact

The legislation requiring the Police Training Commission to approve the training of State and county corrections officers and juvenile detention officers appropriated funds for its implementation. It is anticipated that the State and those counties which elect to conduct their own schools will provide adequate funding in order to comply with Police Training Commission requirements.

Regulatory Flexibility Statement

A Regulatory Flexibility Analysis is not required because these proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. They relate solely to the training of State and county employees.

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

13:1-1.1 Definitions

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

...
"Appointing authority" means a person or group of persons having the power of appointment to or removal from offices, positions or employment as law enforcement officers, **corrections officers and juvenile detention officers**.

"Basic Course" means an entry-level [police] training course at a Commission-approved school designed for trainees who are required by law to be trained under Commission jurisdiction.

...
"In-service course" means any course of study which a police officer, **corrections officer or juvenile detention officer** shall attend after completion of the basic course.

...
"Law enforcement agency" means any police force, **corrections authority** or organization functioning within this State, except for the Division of State Police, which has by statute or ordinance the responsibility of detecting crime and enforcing the criminal **or penal** laws of this State.

...
"Police officer" means any employee of a law enforcement agency, other than a civilian employee, [and] any member of a fire department or force who is assigned to an arson investigation unit pursuant to Public Law 1981, Chapter 409 **and any corrections officer or juvenile detention officer**.

13:1-4.6 Certification requirements for instructors of certain subjects

(a) Applicants who seek certification to instruct in certain subjects must be certified as an instructor and also comply with the following requirements:

1. An individual seeking certification as a firearms instructor must successfully complete a Commission-recognized firearms instructor course. Under the immediate supervision of a school's range master, the individual must successfully:

- i. Demonstrate knowledge of the established range safety rules;
- ii. Identify the major parts of [the handguns and shotguns] **those firearms which will be used in the training program;**
- iii. Demonstrate the ability to handle [handguns and shotguns] **those firearms which the Commission shall designate safely under conditions such as the following:**

(1)-(4) (No change.)

iv.-v. (No change.)

2.-3. (No change.)

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13:1-5.1 Certification requirements; basic courses

(a) A trainee shall be eligible for certification when the school director affirms that:

1. The trainee has achieved the minimum requirements set forth in the Basic Course for Police Officers, the Basic Course for Investigators, [or] the Basic Course for Special Law Enforcement Officers, **the Basic Course for Corrections Officers or the Basic Course for Juvenile Detention Officers** and has demonstrated an acceptable degree of proficiency in the performance objectives contained therein;

2-3. (No change.)

(a)

STATE BOARD OF MEDICAL EXAMINERS

Advertising and Solicitation Practices

Proposed Amendment: N.J.A.C. 13:35-6.10

Authorized By: New Jersey Board of Medical Examiners, Frank J. Malta, M.D., President. Authority: N.J.S.A. 45:9-2.

Proposal Number: PRN 1989-132.

Submit comments by April 19, 1989 to:

Charles A. Janousek, Executive Director
Board of Medical Examiners, Room 602
28 West State Street
Trenton, New Jersey 08608

The agency proposal follows.

Summary

The proposed amendment is being recommended by the Board of Medical Examiners to modify an existing total prohibition on the use of testimonials, the giving of discounts and the offering of free services by licensees of the Board of Medical Examiners.

The rule changes regarding testimonials include N.J.A.C. 13:35-6.10(c)7, which will permit personal testimonials within the patient's competency to assess and new subsection N.J.A.C. 13:35-6.10(n) which sets forth specific statements to be made regarding the suitability of and the risks involved in a procedure. Requirements for the maintenance of specific documentation and a prohibition of the guaranteeing of results from any procedure are also added.

Proposed new subsection N.J.A.C. 13:35-6.10(g) relates to advertising free and discounted services and includes requirements to disclose the usual fee or range of fees and how long those fees have been in effect; to state the specific charges for all associated or reasonably anticipated services not included in the offer of free or discounted services; to maintain a list by date of all patients receiving discounted services; and to file with the Board each advertisement for free or discounted services.

Revisions to N.J.A.C. 13:35-6.10(1) further clarify already existing requirements relating to misleading advertising of medical services by requiring that all advertisements circulated away from the office premises include a licensee's name and address or telephone number, and a new subsection (m) requires that licensees who advertise a Board certification in a specialty must, in fact, possess certification by a certifying agency recognized by the Board of Medical Examiners.

Social Impact

The proposed amendment will have a beneficial social impact since it seeks to mitigate overzealous or deceptive solicitation of potential consumer patients. For example, testimonials cannot contain statements guaranteeing a result from any procedure and are limited to the commenter's competency to assess. Statements relating to the suitability of and risks involved in certain procedures are also required. In addition, the confidentiality of patient identity in advertisements is protected by the requirement that written permission be obtained from the patient prior to disclosure.

The amended rule will provide additional safeguards for the public in that advertisements for free or discounted services must be filed with the Board and records must be maintained for review to determine the propriety of those advertised services. The records pertaining to services performed at discount or for free must also be made available to patients upon request.

Economic Impact

Positive economic benefits should result from the proposed amendment. Disclosure of a usual fee or range of fees when free or discounted services are advertised will enable the consumer to calculate the true value

of the services. The requirement that specific charges for all associated or reasonably anticipated services be included when free or discounted services are advertised will allow the consumer to anticipate potential additional medical costs.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., physicians are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The proposed compliance requirements generally relate to advertising and specifically include testimonials, free and discounted services, and advertisements circulated away from office premises. They are uniformly applicable to all businesses, without differentiation as to size, but should not unreasonably burden small businesses. This is consistent with the Board's desire to increase public awareness and to prevent overzealous and deceptive solicitation of customers. Recordkeeping requirements include the maintenance of records relating to testimonials and advertisements of free and discounted services. Reporting requirements include the filing of copies of advertisements offering free or discounted services with the Board.

Professional services which may be needed to comply with the proposed amendment include utilizing a certifying agency recognized by the Board but only if the licensee advertises a Board certification in a specialty.

Any costs incurred by licensees, as a result of this proposed amendment, will be dependent on the amount and kind of advertising selected by the licensee.

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

13:35-6.10 Advertising and solicitation practices

(a) [Definitions:] The following words and terms, when used in the section, shall have the following meanings, unless the context clearly indicates otherwise.

1.-6. (No change.)

7. The term **"graphic representation"** shall mean the use of drawings, animations, clinical photographs, dramatizations, music or lyrics.

(b) (No change.)

(c) A Board licensee who engages in the use of advertising which contains any of the following shall be deemed to be engaged in professional misconduct:

1. Any statement, claim or format **including, but not limited to, a graphic representation**, which is false, fraudulent, misleading or deceptive.

2.-6. (No change.)

7. Any personal testimonial attesting to the quality or competence of a service or treatment by a licensee **involving medical or technical assessments which are beyond the patient's competency to assess, or any testimonial not in compliance with (n) below;**

8. The communication of any fact, data or information which may personally identify a patient **without that patient's signed written permission obtained in advance;**

9.-10. (No change.)

[11. Any statement offering gratuitous services or the substantial equivalent thereof, provided, however, nothing herein contained shall be deemed to prohibit the rendering by a Board licensee of professional services for which no fee is charged.]

11. **Any guarantee of results from any procedure is prohibited;**

12. **Any violations of (d) through (n) below.**

(d) (No change.)

(e) A Board licensee shall not engage either directly or through the use of any agent, employee or representative in in-person solicitation with a prospective patient or consumer. This subsection shall not prohibit a licensee from offering services through materials provided to a community service organization which makes known the availability of all professional services desiring to be listed; nor shall it prohibit the offering of services by a Board licensee to any bona fide representative of prospective patients including, but not to limited to, employers, labor union representatives, or insurance carriers.

(f) (No change.)

(g) [Offers of discounts or fee reductions shall state a bona fide fee or range of fees against which discounts are to be made.] **The requirements for advertising free or discounted services are as follows:**

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1. An advertisement offering a fee reduction shall state the reduced fee or range of fees and the physician's usual fee or range of fees for each service for which a reduction is advertised. The reference fee required in this subsection shall have been the usual fee charged for the advertised service for a period of not less than 90 days prior to the advertised reduction.

2. All offers of free services or discounts shall include a statement of the specific charges for all associated or reasonably anticipated services which are not included in the offer of free or discounted services. If the discount or free service does not apply to all services to be rendered, the advertisement shall specify any associated or reasonably anticipated services which are not included (for example, free eye screening for senior citizens does not include charges for refraction, eyeglasses and contact lens fitting).

3. The licensee shall maintain a list of the patient names and dates of service for all patients for whom he or she has provided free or discounted services. The list may be maintained as part of the physician's appointment book as long as the patient receiving free or discounted services is identifiable. The list shall be maintained for seven years from the date of last entry except in the case of massive screening programs performed off-site (out of the office) as a community service, and which are sponsored by a governmental or non-profit organization.

4. Any person offering free or discounted medical services shall file copies of any such advertisement with the Board within 30 days of initial publication. The Board's acceptance for filing of such an advertisement shall not be deemed approval of the advertisement's content.

5. Any offer of free or discounted diagnostic services shall include the providing of results to the patient or a designated licensee or duly authorized representative within 30 days of a written request by the patient or duly authorized representative.

6. A patient record shall be maintained for all discounted or free services for seven years from the date of last entry except in the case of massive screening programs done off-site (out of the office) as a community service, and which are sponsored by a governmental or non-profit organization.

7. The patient record maintained shall be made available upon patient request to the same extent as under the Board's patient record rule (N.J.A.C. 13:35-6.5), and the patient shall be advised at the time the service is rendered that the record will be available to him or her.

8. Except for those services specifically excluded in the advertisement offering free services, the physician shall not charge for any service whatsoever rendered during a period of 72 hours from the time the free service was rendered.

(h)-(k) (No change.)

(l) All Board licensee advertisements and public representations intended to be displayed or circulated away from the office premises [shall contain the name and address or name and telephone number of the Board licensee or the professional service corporation or trade name under which the practice is conducted and the nature of professional practice. All such advertisements], including telephone directory advertisements, may, if desired, list [only] the professional service corporation or trade name **under which the practice is conducted** but [must] shall disclose the nature of the practice, and the name and address or telephone number [, and the name] of at least one of the principal practitioners. This requirement does not apply to licensees employed by an ambulatory health care facility licensed by the New Jersey State Department of Health.

(m) [All advertisements shall be presented in a dignified manner without the use of drawings, animations, clinical photographs, dramatizations, music or lyrics.] Any licensee advertising Board certification in a specialty must possess certification by a certifying agency recognized by the Board of Medical Examiners. A list of recognized agencies shall be maintained by the Board.

(n) The requirements for testimonial advertisements are as follows:

1. All testimonials involving a specific or identifiable procedure shall truthfully reflect the actual experience of the patient and shall include the following conspicuously displayed statements:

i. "This procedure may not be suitable for every patient. All patients must be evaluated by a physician as to the appropriateness of performing the procedure" or words to the same effect.

ii. "The above testimonial represents the individual's response and reaction to the procedure; however, no medical procedure is risk free.

Associated potential risks and complications should be discussed with the physician rendering this procedure" or words to the same effect.

iii. Any compensation, direct or indirect, received by a person giving a testimonial shall be disclosed by specifying the type of compensation and amount or value of compensation in the testimonial advertisement.

2. A physician who advertises through the use of testimonials shall maintain documentation relating to such testimonials for a period of three years from the date of the last use of the testimonial. Such documentation shall include, but not be limited to, the name, address and telephone number of the individual in the advertisement, the type and amount or value of compensation and a signed, notarized statement and release verifying the truthfulness of the information contained in the testimonial and indicating that person's willingness to have his or her testimonial used in the advertisement obtained prior to the time the testimonial is advertised.

3. Any guarantee of results from any procedure is prohibited.

[(n)] (o) Nothing contained in this section shall be construed to prohibit the licensing board from adopting additional [regulations] rules concerning advertising by Board licensees. To the extent that any conflict or inconsistency may arise between the provisions of this section and any subsequently adopted rule dealing more specifically with the same subject matter as set forth, such subsequent adopted rule shall control.

(a)

STATE BOARD OF MEDICAL EXAMINERS

Notice of Pre-Proposal

Repeal of N.J.A.C. 13:35-1A, Standards for New Jersey Clinical Training Programs Sponsored by Medical Schools Not Eligible for Evaluation and Not Approved by the L.C.M.E., the A.O.A. or Other Agency Recognized by the New Jersey State Board of Medical Examiners

Authority: N.J.S.A. 45:9-2; pre-proposed repeal pursuant to N.J.A.C. 1:30-3.2.

Pre-Proposal Number: PPR 1989-1.

Take notice that the Board of Medical Examiners is announcing its intention to repeal all of the subchapter appearing at N.J.A.C. 13:35-1A, dealing with the standards for New Jersey clinical training programs sponsored by medical schools not eligible for evaluation and not approved by the Liaison Committee on Medical Education (L.C.M.E.), the American Osteopathic Association (A.O.A.) or any other agency recognized by the Board. The Board intends to propose repeal of subchapter 1A pursuant to a recommendation of the Joint Committee of the New Jersey Board of Higher Education and the Board of Medical Examiners. Once the subchapter is repealed, foreign medical schools will not be authorized to conduct clinical training programs in this State.

N.J.A.C. 13:35 is due to expire on November 19, 1989 pursuant to Executive Order No. 66(1978). However, rather than allow this subchapter to expire automatically, the Board believes that the wiser course is to provide opportunity for all parties to be heard in the context of an informal conference on pre-proposed repeal.

This pre-proposal represents the preliminary stage of rulemaking and the Board is interested in alternate suggestions; comments from all interested parties are welcome. The Board is scheduling an **informal conference** to discuss the pre-proposal on April 19, 1989 at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor Conference Center, Trenton, New Jersey 08625. The conference will begin at 10:00 A.M. and will last until 3:30 P.M. with an hour for lunch. **Persons who wish to participate in the discussion** should write to the Board's Executive Director at the following address:

Charles Janousek, Executive Director
Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

A summary of comments which any participant intends to offer should be provided to Mr. Janousek no later than April 14, 1989.

LAW AND PUBLIC SAFETY

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If sufficient interest is demonstrated, additional opportunity to be heard may be scheduled.

Full text of the pre-proposed repeal appears at N.J.A.C. 13:35-1A.

(a)

Legalized Games of Chance Control Commission

Automatic Revocation: N.J.A.C. 13:47-2.8

Authorized By: William J. Yorke, Executive Officer, Legalized Games of Chance Control Commission.

Authority: N.J.S.A. 5:8-1 et seq., specifically 5:8-6.

Proposal Number: PRN 1989-144.

Submit comments by April 19, 1989 to:

William J. Yorke, Executive Officer
Legalized Games of Chance Control Commission,
Room 518
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

N.J.A.C. 13:47-2.8, which relates to the automatic revocation of identification ("ID") numbers issued to registered organizations is proposed for repeal. The present rule requires that if an organization to which an ID number is issued has not applied to conduct a game of chance within a two-year period that the ID number be automatically revoked. Inasmuch as an organization applying to conduct a game of chance must attest with each application that there have been no changes in its bylaws since the initial registration and issuance of its ID number, the Legalized Games of Chance Control Commission ("Commission") sees no need to continue what has become an administrative burden.

Social Impact

The proposed repeal will eliminate unnecessary paperwork for both a qualified organization whose ID number has been revoked, and the Commission. The elimination of the need for reapplication will allow volunteers to devote more of their time to the educational, charitable and public-spirited programs which benefit society. The staff hours saved as a result of this repeal will allow State employees to carry out other necessary administrative duties.

Economic Impact

There will be a positive economic impact on both registered organizations and the Commission from the proposed repeal. The absence of this automatic revocation requirement will enable organization volunteers and State employees to focus on more productive tasks. It is important to note that revenues generated from legalized games of chance substantially lessen the governmental burden of educating youth, providing human services and protecting lives and property Statewide.

Regulatory Flexibility Statement

The proposed repeal does not require a regulatory flexibility analysis since it does not place any reporting, recordkeeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

13:47-2.8 [Automatic revocation] (**Reserved**)

[Identification numbers heretofore or hereafter issued shall automatically be revoked if the organization to which they are issued has not applied to conduct a game of chance within two years of the issuance of the identification number or if the organization fails to utilize the identification number for any period of two years. Such revocation shall be without prejudice to the right of the organization to apply for a new identification number.]

(b)

LEGALIZED GAMES OF CHANCE CONTROL COMMISSION

Conduct of Bingo; Personnel

Proposed Amendment: N.J.A.C. 13:47-7.1

Authorized By: Legalized Games of Chance Control Commission, William J. Yorke, Executive Officer.

Authority: N.J.A.C. 5:8-1 et seq., specifically 5:8-6.

Proposal Number: PRN 1989-145.

Submit comments by April 19, 1989 to:

William J. Yorke, Executive Officer
Legalized Games of Chance Control Commission, Room 518
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Legalized Games of Chance Control Commission ("Commission") proposes to amend N.J.A.C. 13:47-7.1 by adding subsections (e) and (f), which state that a person may either work or participate as a player at a single bingo occasion, but not both. This amendment is made in response to numerous complaints received by the Commission.

Social Impact

This proposed amendment is expected to have a positive social impact since it will eliminate even an "appearance of impropriety" in the holding, operating or conducting of bingo games. The removal of actions which might detract from the integrity of the games will encourage public participation and enable the sponsoring organization to continue to provide funding for various programs and services of value to society.

Economic Impact

Revenues generated from legalized games of chance, such as bingo, enable qualified organizations to continue their support of educational, charitable and public-spirited programs. This amendment is expected to have a positive economic impact since there may be an increase in the number of participants and per capita spending if there is no appearance of impropriety whatsoever in the conduct of the games.

Regulatory Flexibility Analysis

The proposed amendment places compliance requirements on all organizations conducting bingo games, including those which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to maintain the integrity and propriety of gaming operations, no differentiation in these requirements can be made based upon business size.

Full text of the proposal follows (additions indicated in boldface **thus**).

13:47-7.1 Personnel

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

(e) **No person who has conducted or assisted in the holding, operating or conducting of bingo on an occasion shall participate as a player on that occasion.**

(f) **No person who has participated as a player on an occasion when bingo is played shall conduct or assist in the holding, operating or conducting of bingo on that occasion.**

TRANSPORTATION

(c)

TRANSPORTATION OPERATIONS

Speed Limits

Route N.J. 35 in Monmouth County

Proposed Amendment: N.J.A.C. 16:28-1.49

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

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

Proposal Number: PRN 1989-122.

PROPOSALS

Interested Persons see Inside Front Cover

TRANSPORTATION

Submit comments by April 19, 1989 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish speed limit zones along Route N.J. 35 in Ocean Township and Eatontown Borough, Monmouth County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from local officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of speed limit zones along Route N.J. 35 in Ocean Township and Eatontown Borough, Monmouth County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.49 based upon the requests from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish speed limit zones along Route N.J. 35 in Ocean Township and Eatontown Borough, Monmouth County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Additionally, the amendment outlines the specific areas by mileposts in which the speed limit is effective. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the amended rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects the motoring public.

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

16:28-1.49 Route 35 including Higgins Avenue, Route U.S. 9 and 35 and Route 35' and 71

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

(c) The rate of speed designated for the certain part of State highway Route 35—Route 35 and 71—Route 35 described in this subsection shall be established and adopted as the maximum legal rate of speed:

i. In Monmouth County:

i.-ii. (No change.)

iii. Zone three: [50 mph in Ocean Township and Eatontown Borough to the Route 35 and Route 36 traffic circle (milepost 29.5); thence]

(1) Ocean Township:

(A) 50 mph between the Route N.J. 35-Route N.J. 66 traffic circle and the Eatontown Borough-Ocean Township line (mileposts 24.80 to 28.18); thence

(2) Eatontown Borough:

(A) 50 mph between the Ocean Township-Eatontown Borough line and Weston Place (mileposts 28.18 to 28.95); thence

(B) 45 mph between Weston Place and the Route N.J. 35-Route N.J. 36 traffic circle (mileposts 28.95 to 29.48); thence

iv. through x. (No change.)

(d) (No change.)

(a)

TRANSPORTATION OPERATIONS

Speed Limits

Route N.J. 15 in Sussex County

Proposed Amendment: N.J.A.C. 16:28-1.76

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

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

Proposal Number: PRN 1989-148.

Submit comments by April 19, 1989 to:

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

The agency proposal follows:

Summary

The proposed amendment will establish speed limit zones along Route N.J. 15 in the Townships of Lafayette and Frankford, Sussex County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Additionally, this amendment effects administrative changes depicting and outlining the specific townships and counties to which the speed limits are applicable.

Based upon a request from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of speed limits along Route N.J. 15 in the Townships of Lafayette and Frankford, Sussex County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.76 based upon the request from local governments and the traffic investigation.

Social Impact

The proposed amendment will establish speed limit zones along Route N.J. 15 in the Townships of Lafayette and Frankford, Sussex County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Additionally, this amendment effects administrative changes depicting and outlining the specific townships and counties to which the speed limits are applicable. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the amended rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects the motoring public.

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

16:28-1.76 Route 15

(a) The rate of speed for the certain parts of State highway Route 15 described in this subsection shall be established and adopted as [a] the maximum legal rate of speed. [thereat:]

1. For both directions of traffic in [Sussex County] **Morris County**:

i. In the Town of Dover:

[i.](A) Zone 1: 25 miles per hour [in the Town of Dover] from [its] the southerly [Junction] **junction** with Route 46 at Mt. Hope Avenue to Fairview Avenue (milepost 0.5); thence

[ii.](B) Zone 2: 40 miles per hour [in the Town of Dover] extending through Rockaway Township and into Wharton Borough to the Route I-80 interchange (milepost 2.0).

2. For northbound traffic in [Sussex] **Morris County**:

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i. Zone 3: 55 miles per hour in Wharton Borough extending through Rockaway Township, Jefferson Township, **Morris County**, and into Sparta Township, **Sussex County**, to the northerly terminus of Route 181 (milepost 14.2).

3. For southbound traffic [in Sussex County]:

i. In **Sussex County**:

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

ii. In **Morris County**:

[ii](A) (No change in text.)

[(A)](1) (No change in text.)

[iii](B) (No change in text.)

[(A)](1) (No change in text.)

[(B)](2) (No change in text.)

4. For both directions of traffic in Sussex County:

i. In **Sparta Township**:

[i](A) Zone 7: 50 miles per hour [in Sparta Township] from the northerly terminus of Route 181 extending into Lafayette Township to 500 feet north of Limecrest Road—Route 94 (milepost 16.8); thence

ii. In **Lafayette Township**:

[ii](A) Zone 8: 35 miles per hour [Lafayette Township to the bridge over the Paulins Kill Creek (milepost 18.3); thence] **between 500 feet north of Limecrest Road—Route N.J. 94 and 400 feet north of Stateville Quarry Road (mileposts 16.73 to 18.27); thence**

iii. In **Frankford Township**:

[iii](A) Zone 9: 50 miles per hour [in Lafayette Township extending into Frankford Township to Route 565—Route U.S. 206 (milepost 19.6)] **between 400 feet north of the Stateville Quarry Road and Route U.S. 206—County Road 565 (mileposts 18.27 to 19.52).**

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping

Route N.J. 27 in Middlesex and Somerset Counties

Proposed Amendment: N.J.A.C. 16:28A-1.18

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1989-131.

Submit comments by April 19, 1989 to:

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

The agency proposal follows:

Summary

The proposed amendment will establish "no parking" zones along Route N.J. 27 in South Brunswick Township, Middlesex County, and Franklin Township, Somerset County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Additionally, the amendment provides clarity in identifying the specific locations within the various townships affected by this rulemaking.

Based upon requests from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking" zones along Route N.J. 27 in South Brunswick Township, Middlesex County, and Franklin Township, Somerset County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.18 based upon the requests from the local governments and the traffic investigations.

Social Impact

The proposed amendment will establish "no parking" zones along Route N.J. 27 in South Brunswick Township, Middlesex County, and Franklin Township, Somerset County, for the safe and efficient flow of

traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local governments will bear the costs for "no parking bus stop" zones signs. Motorists who violate the amended rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects the motoring public.

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

16:28A-1.18 Route 27

(a) (No change.)

(b) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. through 4. (No change.)

5. Along the northbound (easterly) side in South Brunswick Township, Middlesex County [and Franklin Townships]:

i. Far side bus stops:

(1) Allston Road [(105 feet);]—**Beginning at the northerly curb line of Allston Road and extending 130 feet north therefrom.**

(2) Stanworth Road [(105 feet);]—**Beginning at the northerly curb line of Stanworth Road and extending 125 feet north therefrom.**

[(3) Sand Hill Road (105 feet);]

[(4)] (3) Stillwell Road [(105 feet);]—**Beginning at the northerly curb line of Stillwell Road and extending 170 feet north therefrom.**

(4) Beekman Road—**Beginning at the northerly curb line of Beekman Road and extending 130 feet north therefrom.**

ii. Near side bus stops:

(1) [New Road (120 feet);] **Heathcote Road—Beginning at the southerly curb line of Heathcote Road and extending 105 feet southerly therefrom.**

(2) [Henderson Road (120 feet);] **Kingston Road—Beginning at the southerly curb line of Kingston Road and extending 105 feet southerly therefrom.**

(3) **Raymond Road—Beginning 1235 from the northerly curb line of Raymond Road and extending 135 feet north therefrom.**

iii. Mid-block bus stops:

(1) Allston Road—**Beginning 823 feet from the northerly curb line of Allston Road and extending 135 feet north therefrom.**

(2) **New Road—Beginning 186 feet from the southerly curb line of New Road and extending 135 feet southerly therefrom.**

(3) **Stanworth Road—Beginning 330 feet north of the northerly curb line of Stanworth Road and extending 135 feet north therefrom.**

(4) **Sand Hill Road—Beginning 186 feet from the northerly curb line of Sand Hill Road and extending 135 feet north therefrom.**

(5) **Henderson Road—Beginning 336 feet south of the southerly curb line of Henderson Road and extending 135 feet south therefrom.**

6. Along the southbound (westerly) side in [South Brunswick] **Franklin Township, Somerset County**:

i. Far side bus stops:

(1) Allston Road (105 feet);

(2) [Henderson] **Bunker Hill Road (105 feet).**

ii. Near side bus stops:

(1) through (3) (No change.)

[(4) Bunker Hill Road (120 feet).]

iii. Mid-block bus stops: [From a point 220 feet south of the southerly curb line of Henderson Road to a point 120 feet southerly therefrom.]

(1) **From a point 220 feet south of the southerly curb line of Henderson Road to a point 120 feet southerly therefrom.**

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(2) **Beginning 800 feet north of the northerly curb line of Allston Road and extending 135 feet northerly therefrom.**

[7. Along both sides of Route 27 in South Brunswick and Franklin Townships:

i. Mid-block bus stop: Beginning 800 feet north of the northerly curb line of Allston Road and extending 135 feet northerly therefrom.]

Recodify existing 8. through 24. as 7. through 23. (No change in text.)

24. All bus stops are to be the length specified in this subsection, measured from the curb line of the intersecting street or prolongation of the curb line of the street which intersects.

(c)-(e) (No change.)

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping

Routes N.J. 28 in Union County and N.J. 324 in Gloucester County

Proposed New Rule: N.J.A.C. 16:28A-1.109

Proposed Amendment: N.J.A.C. 16:28A-1.19

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-197.5 and 39:4-199.

Proposal Number: PRN 1989-147.

Submit comments by April 19, 1989 to:

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

The agency proposal follows:

Summary

The proposed amendment will establish restricted parking space along Route N.J. 28 at 262½ Westfield Avenue in the City of Elizabeth, Union County, for the use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles. Additionally, new rule N.J.A.C. 16:28A-1.109 is being proposed establishing "no stopping or standing" zones along Route N.J. 324 in Logan Township, Gloucester County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of the handicapped parking space along Route N.J. 28 in Elizabeth City, Union County, and the "no stopping or standing" zones along Route N.J. 324 in Logan Township, Gloucester County were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.19 and add new rule N.J.A.C. 16:28A-1.109, based upon the requests from local governments and the traffic investigations.

Social Impact

The proposed amendment will establish restricted parking space along Route N.J. 28 at 262½ Westfield Avenue in the City of Elizabeth, Union County, for the use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles; and a new rule is being proposed establishing "no stopping or standing" zones along Route N.J. 324 in Logan Township, Gloucester County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zones signs and the local governments will bear the costs for handicapped

parking zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendment and new rule do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring public.

Full text of the proposal follows (additions indicated in boldface thus).

16:28A-1.19 Route 28

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

(d) The certain parts of the State highway Route 28 described in this subsection shall be designated and established as Restricted Parking Space, for the use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking spaces.

i. Restricted parking in the City of Elizabeth, Union County:

(1) (No change.)

(2) Handicapped parking at 262½ Westfield Avenue on the south side beginning 256 feet east of the prolongation of the easterly curbline of Magie Avenue and extending 24 feet easterly therefrom.

(e) (No change.)

16:28A-1.109 Route 324

(a) The certain parts of State highway Route 324 described in this subsection shall be designated and established as "no stopping or standing" zones, where stopping or standing is prohibited at all times.

1. No stopping or standing in Logan Township, Gloucester County:

i. Along both sides:

(1) For the entire length within the corporate limits of Logan Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated Bus Stops and Time Limit Parking areas. Signs to be posted only in areas where an official Township resolution has been submitted.

(b)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping

Routes N.J. 45 in Salem County and U.S. 130 in Burlington County

Proposed Amendments: N.J.A.C. 16:28A-1.31 and 1.46

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1989-123.

Submit comments by April 19, 1989 to:

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

The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along Routes N.J. 45 in Mannington Township, Salem County, and U.S. 130 in Delran Township, Burlington County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Additionally, the amendments add a mid-block bus stop in Mannington Township and near side and far side bus stops in Delran Township along Haines Mill Road and Chester Avenue.

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Based upon requests from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking bus stop" zones along Routes N.J. 45 in Mannington Township, Salem County, and U.S. 130 in Delran Township, Burlington County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.31 and 1.46 based upon the requests from the local governments and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking bus stop" zones along Routes N.J. 45 in Mannington Township, Salem County, and U.S. 130 in Delran Township, Burlington County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local governments will bear the costs for "no parking bus stop" zones signs. Motorists who violate the amended rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small business as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments primarily affect the motoring public.

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

16:28A-1.31 Route 45

(a) (No change.)

(b) The certain parts of the State [Highway] **highway** Route 45 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. through 8. (No change.)

9. Along the northbound (easterly) side in Mannington Township, Salem County:

i. (No change.)

ii. **Mid-block bus stop:**

(1) **Between the driveway (Entrance/Exit) in front of the ARC Center parking lot.**

16:28A-1.46 Route U.S. 130

(a) (No change.)

(b) The certain parts of State highway Route U.S. 130 described in this subsection shall be established and designated as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect **appropriate** signs at the following established **bus** stops:

1. through 4. (No change.)

5. Along the southbound (westerly) side in Delran Township, Burlington County:

i. [At the near] **Near side bus stops: [beginning]**

(1) **Beginning** at the prolongation of the northerly curb line of Tenby Chase Drive and extending 105 feet northerly therefrom.

(2) **Chester Avenue—Beginning at the northerly curb line of Chester Avenue and extending 105 feet northerly therefrom.**

ii. **Far side bus stop:**

(1) **Haines Mill Road—Beginning at the southerly curb line of Haines Mill Road and extending 100 feet southerly therefrom.**

6. Along the northbound (easterly) side in Delran Township, Burlington County:

i. **Near side bus stops:**

(1) **Haines Mill Road—Beginning at the southerly curb line of Haines Mill Road and extending 105 feet southerly therefrom.**

(2) **Chester Avenue—Beginning at the southerly curb line of Chester Avenue and extending 105 feet southerly therefrom.**

Recodify existing 6. through 11. as **7. through 12.** (No change in text.)

(c) (No change.)

(a)

TRANSPORTATION OPERATIONS

Turns

Route N.J. 27 in Middlesex County

Proposed New Rule: N.J.A.C. 16:31-1.26

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-193.6.

Proposal Number: PRN 1989-149.

Submit comments by April 19, 1989 to:

Charles L. Meyers

Administrative Practice Officer

Department of Transportation

1035 Parkway Avenue

CN 600

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule will establish no left turn movements along Route N.J. 27 in the Borough of Metuchen, Middlesex County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request from local officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of no left turn movement along Route N.J. 27 in the Borough of Metuchen, Middlesex County, was warranted.

The Department therefore proposes new rule N.J.A.C. 16:31-1.26 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed new rule will establish no left turn movements along Route N.J. 27 in the Borough of Metuchen, Middlesex County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no left turn" signs. Motorists who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed new rule 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. The rule primarily affects the motoring public.

Full text of the new rule follows:

16:31-1.26 Route 27

(a) Turning movements of traffic on the certain parts of State highway Route 27 described in this section are regulated as follows:

1. In the Borough of Metuchen, Middlesex County:

i. No left turn from Route 27 (southbound) to Wakefield Avenue (eastbound).

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Interested Persons see Inside Front Cover

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(a)

TRANSPORTATION ASSISTANCE

**Office of Regulatory Affairs
Zone of Rate Freedom**

Proposed Redoption: N.J.A.C. 16:53D

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-20 through 2.25.

Proposal Number: PRN 1989-136.

Submit comments by April 19, 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 provisions of Executive Order No. 66(1978), N.J.A.C. 16:53D, zone of rate freedom, expires on May 7, 1989. The Department of Transportation, through its Office of Regulatory Affairs, has reviewed these rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department proposes to readopt these rules without changes.

The rules implement the Legislature's enactment of legislation supplementing Chapter 2 of Title 48, which directed the Commissioner of the Department of Transportation to establish a "zone of rate freedom" for the regular route bus carriers operating within the State.

The "zone of rate freedom" constitutes a limited percentage range to be set annually by the Commissioner in which regular route carriers are to be permitted to adjust their rates, fares or charges without petitioning the Department for approval. Provided the carrier remains within the designated percentage range, all that is required is notice to the Department and the riding public of the rate, fare or charge adjustment. If, however, the regular route carrier seeks a percentage adjustment greater than that provided for in the "zone of rate freedom", the carriers will be required to follow the standard petitioning procedures specified in N.J.S.A. 48:2-21.

The percentage limitations, published annually, are scaled in consideration of the varying fares currently charged by intrastate regular route operators, and are not applicable to charter, casino and special bus services operating within the State, in accordance with authority granted the Commissioner by the legislation.

N.J.A.C. 16:53D-1.1 provides the general provisions and standards for regular route autobus carriers to follow, and establishes the maximum percentage for increases for the calendar year.

N.J.A.C. 16:53D-1.2 establishes requirements for regular route autobus carriers which seek fare adjustment.

N.J.A.C. 16:53D-1.3 outlines the types and categories of autobuses exempt from this rulemaking requirement.

Social Impact

The charts of percentage limitations to fare adjustments will promote the continued validity of non-subsidized intrastate autobus operations by providing meaningful fare flexibility. Regular route bus carriers shall be able to adjust their rates, fares or charges within what the Department views as reasonable limits without enduring the costly and time consuming petitioning procedures of the past, which hindered the carriers' ability to respond to economic and competitive climates. The zone of rate freedom provides percentage limitations which allows carriers to respond to economic changes, thereby engendering stable, responsive and reliable bus service, and ensures that the public is protected from unreasonable and unwarranted fare increases.

Economic Impact

The percentage limitations to fare adjustments will substantially reduce the instances in which bus carriers will be required to submit lengthy petitions to the Department.

While rate, fare or charge increases by regular route bus service are anticipated as a result of the zone of rate freedom, the percentage limitations established will minimize the adverse impact on the public. Only reasonable rate, fare or charge increases are allowed. In the Department's

analysis, the public would not benefit from rate regulation of charter, casino and special bus operations, because of the competitive nature of these markets, and thus anticipates no adverse economic impact as a result of the exemption.

Regulatory Flexibility Statement

A number of autobus carriers affected by these rules are small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. First time autobus carriers commencing operations will have to meet the bookkeeping and recordkeeping requirements otherwise established by law for autobus carriers.

Full text of the redoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:53D.

OTHER AGENCIES

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Political Communications; Cost Reporting

Proposed New Rules: N.J.A.C. 19:25-11.10 and 11.11

Proposed Amendment: N.J.A.C. 19:25-16.34

Authorized By: The Election Law Enforcement Commission,
Frederick M. Herrmann, Ph.D., Executive Director.

Authority: N.J.S.A. 19:44A-38 and P.L. 1989, c.4, specifically section 12.

Proposal Number: PRN 1989-164.

Public hearings concerning the proposed amendment and new rules will be held on:

March 21, 1989 at 10:00 P.M., and on
April 18, 1989 at 10:00 P.M.
Election Law Enforcement Commission
28 West State Street, 12th Floor
Trenton, New Jersey

Submit written comments by April 19, 1989 to:

Nedda Gold Massar, Esq.
Election Law Enforcement Commission
National State Bank Building, 12th Floor
CN-185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The Election Law Enforcement Commission (the Commission), through the proposed new rules and amendment, seeks to address the uncertainty that exists concerning political communications which may be subject to campaign reporting in the gubernatorial context.

Candidates must be provided with a definition by which to determine whether communications are political in nature and whether they must be reported as campaign expenditures. The potential loss of disclosure of these expenditures deprives the electorate of vital information. This need for clarification creates an emergent need for definition which the Commission has met by proposing a rule to define such communications for all candidates, including gubernatorial candidates. Gubernatorial candidates specifically must be made aware that certain communications after January 1, 1989 may trigger reporting obligations in the primary election.

New rule, N.J.A.C. 19:25-11.10, Political communications, is proposed to define criteria for determining whether a communication will be regarded as political and will, therefore, require reporting. In regard to gubernatorial candidates specifically, it provides that communications after January 1 of a gubernatorial primary election year are deemed to be political if certain other specified tests are met.

Proposed new rule, N.J.A.C. 19:25-11.11, Reporting of political communication costs, explains the reporting of such expenditures by the candidate and his or her campaign committee and treatment of such costs if made by a person or entity other than the candidate.

A new subsection (b), affecting gubernatorial candidates only, is proposed for N.J.A.C. 19:25-16.34, Computation of value of goods and services, (see recodification to N.J.A.C. 19:25-16.35 adopted on an emergency basis and concurrently proposed elsewhere in this issue of the New Jersey Register). This new subsection is intended to identify those political

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communications which have not been paid for by the gubernatorial campaign but must nevertheless be reported by the gubernatorial campaign. The cost of the communication will be applied against the expenditure limit of the gubernatorial candidate because the advertisement aids or promotes the gubernatorial candidacy.

Pursuant to its authority under P.L. 1989, c.4, section 12, the Commission intends these new rules and amendment to be effective upon the filing of their notice of adoption with the Office of Administrative Law. The Commission contemplates such filing will occur in late April, 1989.

Social Impact

The Commission believes that the social impact of the proposed new rules and amendment will be beneficial. The new rules and amendment principally affect candidates for public elective offices, and provide them with specific criteria for determining whether a communication they have prepared, made or circulated will be deemed as political. If so, the expense incurred in the preparation, making and circulation of the communication is subject to campaign reporting. Also, the proposed new rules and amendment permit incumbent officeholders seeking reelection to exclude from such reporting a communication necessitated by a bona fide public emergency, or necessary so that the public can be informed of governmental events requiring them to make applications within a specific time period. The Commission's experience has been that candidates for reelection and their opponents have frequently asked for guidance on this subject. Litigation on the issue has resulted in two Superior Court Appellate Division opinions, *In re Dawes*, 156 N.J. Super. 195 (App. Div. 1978), and *Election Law Enforcement Commission v. Brown*, 206, N.J. Super. 206 (App. Div. 1985).

Economic Impact

The Commission believes these proposed new rules and amendment will have no significant economic impact. Candidates or political committees affected by the rules and amendment may incur some minimal reporting costs, but the additional expense typically would be only a small percentage of the overall costs candidates and filing entities incur to comply with the provisions of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq.

Regulatory Flexibility Statement

The proposed new rules and amendment do not place any reporting, recordkeeping or compliance requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. The rules and amendment apply to candidates and their campaign entities.

Full text of the proposal follows (additions indicated in boldface thus).

19:25-11.10 Political communications

(a) A communication circulated to 10 or more persons that contains an appeal for votes for a candidate in an upcoming election, solicits campaign contributions or otherwise makes an unambiguous reference to an upcoming election shall be deemed to be a political communication and any costs associated with production or circulation shall be subject to campaign reporting.

(b) A communication that does not contain any of the elements described in (a) above shall nevertheless be deemed political and subject to campaign reporting if all of the following criteria are applicable to the communication:

1. The communication is circulated to 10 or more persons and contains a statement or reference concerning the governmental or political objectives or achievements of a candidate in an upcoming election;
2. The communication is circulated to an audience that is substantially similar to the electorate voting on the public office being elected in the upcoming election; and
3. The communication is circulated fewer than 60 days before the date of any election in which the candidate referred to is seeking elected office, except that in the case of a candidate for nomination for the office of Governor in a primary election, the period of time that a communication may be deemed political shall be on or after January 1st in a year in which a primary election for Governor is being conducted, and in the case of a candidate for election to the office of Governor in a general election, the period of time that a communication may be deemed political shall begin on the day following the date of the gubernatorial primary election.

(c) Nothing contained in (b) above shall be construed to require reporting of a communication by an incumbent officeholder seeking reelection which communication is circulated to constituents for the sole and limited purpose of communicating governmental events requiring those constituents to make applications or take other actions within a specified time period, or for the sole and limited purpose of communicating facts relevant to a bona fide public emergency.

19:25-11.11 Reporting of political communication costs

(a) If any political communication as defined in N.J.A.C. 19:25-11.10 is incurred or paid for by any candidate or his or her designated committee, the candidate shall report such expenditure in accordance with N.J.A.C. 19:25-12.

(b) Any political communication as defined by N.J.A.C. 19:25-11.10 incurred or paid for by any person or entity other than the candidate's campaign fund, which political communication is prepared, made or circulated with the consent or cooperation of the candidate, shall be reported by that candidate as a campaign contribution of goods and/or services in accordance with N.J.A.C. 19:25-11.5.

(c) Any political communication not prepared, made or circulated with the consent or cooperation of a candidate and incurred or paid for by any other person or entity shall be reported in accordance with N.J.A.C. 19:25-12.8.

19:25-16.34 Computation of value of goods and services

(a) (No change.)

(b) The costs of a political communication as defined in N.J.A.C. 19:25-11.10 which aids or promotes a candidate for Governor, and is undertaken, made or circulated with the cooperation or consent of the candidate, shall be reported by the candidate in the same manner as the receipt of any goods and services, and shall be valued for the purposes of the contribution limit in N.J.A.C. 19:25-16.6 and the expenditure limit in N.J.A.C. 19:25-16.9(a)3 in the same manner as any other contributed goods or services.

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Public Financing of Primary Election For Governor

Coordinated Expenditures

Proposed New Rule: N.J.A.C. 19:25-16.30.

Authorized By: The Election Law Enforcement Commission,
Frederick M. Hermann, Ph.D., Executive Director.

Authority: N.J.S.A. 19:44A-38 and P.L. 1989, c.4, specifically section 12.

Proposal Number: PRN 1989-152.

Public hearings concerning this proposed new rule will be conducted on March 21, 1989 at 10:00 A.M. and on April 18, 1989 at 10:00 A.M. at the Office of the Election Law Enforcement Commission, 28 West State Street, 12th Floor, Trenton, New Jersey.

Submit comments by April 19, 1989 to:

Nedda Gold Massar, Esq.
Election Law Enforcement Commission
National State Bank Building, 12th Floor
CN-185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

A new rule, N.J.A.C. 19:25-16.30, Coordinated expenditures, is proposed to regulate communication expenditures by a non-gubernatorial candidate which aid or promote a gubernatorial candidate and are coordinated with that gubernatorial candidate.

Candidates for governor in a primary election are subject to an overall expenditure limit of \$2,200,000 (see N.J.S.A. 19:44A-7, as amended by P.L. 1989 c.4). Under this proposed rule, a communication expenditure by a non-gubernatorial candidate (that is, political advertising) is deemed to be a coordinated expenditure with a gubernatorial candidate if the communication makes unambiguous reference to that candidate and if the gubernatorial candidate has consented to or authorized the communication, or if the communication has been made with the cooperation

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or in consultation with the gubernatorial candidate. Under such circumstances, the cost of the advertisement, even though paid for by the non-gubernatorial candidate, would be allocated to the gubernatorial candidate at a proportion based upon the extent to which the advertisement aided or promoted that gubernatorial candidate. For example, if the cost of the advertisement was \$1,000, and the advertisement equally promoted the gubernatorial and non-gubernatorial candidate, and the gubernatorial candidate consented in the placement of the advertisement, the sum of \$500.00 would be allocated against the expenditure limit of that gubernatorial candidate.

In an opinion filed on February 2, 1989, the New Jersey Supreme Court held that prior advisory opinions issued by the Commission to the effect that such allocations could be made against a gubernatorial candidate even in the absence of the consent, consultation or cooperation of that candidate exceeded the Commission's grant of authority under the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, the Act) (see *Friends of Governor Tom Kean v. New Jersey Election Law Enforcement Commission*, Dkt. No. A-86-85, ___ N.J. ___ (1989)). However, where the non-gubernatorial candidate coordinates the communication expenditure with the gubernatorial candidate receiving its benefit, the Act does permit the Commission to make a proportional allocation against that gubernatorial candidate's expenditure limit. As the opinion notes, in the absence of such authority, gubernatorial candidates might circumvent the expenditure limit by conducting part of their campaigns through non-limited candidates, thereby frustrating one of the purposes of the Act.

In proposed subsection (b), the Commission proposes that where such a coordinated expenditure takes place, a minimum allocation of 15 percent of that expenditure shall be made against the gubernatorial candidate's expenditure limit. However, the 15 percent is a minimum, and as the example above illustrates, a larger percentage may be allocated where the Commission determines that the benefit of the advertisement to the gubernatorial candidacy exceeded 15 percent of the cost.

Pursuant to its authority under P.L. 1989, c.4, section 12, the Commission intends this new rule to be effective upon the filing of its notice of adoption with the Office of Administrative Law. The Commission contemplates such filing will occur in late April, 1989.

Social Impact

This proposed new rule affects principally candidates for governor in a primary election who have elected to participate in public financing and thereby are subject to the overall expenditure limit contained in N.J.S.A. 19:44A-7. The Commission believes that the rule will have a beneficial social impact because, as noted by the New Jersey Supreme Court in the above-cited opinion, in the absence of such a rule, gubernatorial candidates might circumvent the expenditure limit by conducting part of their campaigns through non-gubernatorial candidates. For example, in the absence of this proposed restriction, a gubernatorial candidate concerned that his or her campaign might exceed the expenditure limit might coordinate with legislative or other local candidates of the same political party communication expenditures for political advertising that the gubernatorial candidate could not otherwise make because of the expenditure limit.

Economic Impact

The Commission believes that this proposed new rule does not have any substantial economic impact, other than minimal costs that a gubernatorial candidate might incur for recordkeeping and reporting purposes. The rule will require a gubernatorial candidate making coordinated expenditures to make and maintain sufficient records to document a reasonable basis for determining the proportion of the communication expense that should be allocated to the gubernatorial candidate, and records sufficient for the conduct of an audit should the Commission investigate any reported or non-reported coordinated expenditure. Such documents would include, but not be limited to, a photostatic copy of any print advertising, or a tape of any video or sound broadcast.

Regulatory Flexibility Statement

The proposed new rule does not impose any recordkeeping or reporting requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While it is conceivable that small businesses may be employed or otherwise contracted by gubernatorial candidates for the purpose of preparing or circulating political advertising, the reporting and recordkeeping requirements generated by this rule are solely on the gubernatorial and non-gubernatorial candidates purchasing such services.

Full text of the proposal follows:

19:25-16.30 Coordinated expenditures

(a) A communication expenditure by a candidate other than a gubernatorial candidate is a coordinated expenditure of the gubernatorial candidate and is properly allocable against the expenditure limit of the gubernatorial candidate (N.J.S.A. 19:44A-7) if:

1. The communication makes unambiguous reference to the gubernatorial candidate in a visual or printed format; and

2. The gubernatorial candidate or his or her campaign has consented to or authorized the coordinated communication, or if the communication has been made with the cooperation or prior consent of, or in consultation with or at the request or suggestion of, the gubernatorial candidate or his or her campaign.

(b) Where a coordinated expenditure exists pursuant to (a) above, a minimum of 15 percent of all expenses related to the communication shall be allocated against the expenditure limit of the gubernatorial candidate. A percentage greater than 15 percent of the expenses related to the communication shall be allocated against the expenditure limit of the gubernatorial candidate if the effect of the communication was to aid or promote the gubernatorial candidate in a proportion greater than 15 percent.

(a)

CASINO CONTROL COMMISSION

Casino Service Industries

Proposed Readoption with Amendments: N.J.A.C. 19:43

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69, 70(a) and (i), 92, and 94.

Proposal Number: PRN 1989-137.

Submit comments by April 19, 1989, to:

Mark Neary, Assistant Counsel
Casino Control Commission
3131 Princeton Pike
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order 66 (1978), the Casino Control Commission (hereafter, the "Commission") proposes to readopt, with amendments, N.J.A.C. 19:43 concerning casino service industries. These rules would otherwise expire on April 27, 1989.

This chapter became effective on February 16, 1978, and was first readopted on April 27, 1984. The rules contained in this chapter implement the provisions of the Casino Control Act (hereafter, the "Act"), N.J.S.A. 5:12-1 et seq., concerning the licensure of businesses which provide goods or services to casino licensees. These rules identify the businesses which must be so licensed ("casino service industry enterprises"), the persons associated with those businesses who must be qualified, and the standards for qualification. They also establish various other requirements applicable to such casino service industry enterprises, such as recordkeeping and the duty to cooperate with the regulatory authorities, among others.

The proposed readoption includes proposed amendments which incorporate amendments made to the Act since the last readoption (P.L. 1987, c.354 and c.355). One of these amendments brings within the scope of the rules those entities providing goods or services to applicants for casino licenses as well as those providing goods or services to holders of such licenses (N.J.A.C. 19:43-1.2 and 1.9(a)5). Another requires the licensure of enterprises doing any type of business regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility even if such enterprises have not contracted directly with a casino applicant or licensee (N.J.A.C. 19:43-1.2(b) and (d)). Another amendment identifies construction companies as a type of enterprise which must be licensed pursuant to subsections 92c and d of the Act (N.J.A.C. 19:43-1.2(b)). Yet another requires entities seeking licensure under this chapter to establish their good character, honesty and

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integrity, rather than their "reputation" for such qualities (N.J.A.C. 19:43-1.3(b) and (c)). The final amendment resulting from changes to the Act extends the license renewal term for those casino service industry enterprises which provide goods or services directly relate to gaming, and licensed pursuant to subsections 92a and b of the Act (N.J.A.C. 19:43-1.8(a)). The renewal term is extended to two years after an initial term of one year and two successive renewal terms of one year.

Other amendments are proposed to reduce the recordkeeping requirements of casino service industry enterprises. Two of these proposed amendments would require that such enterprises maintain correspondence or financial records for only those transactions which relate to their casino hotel business (N.J.A.C. 19:43-1.9(a)2. and 5.). They would no longer be required to maintain correspondence or financial records of transactions with any and all applicants, licensees or registrants under the Act where such correspondence or transactions are not related to the casino hotel business of the casino service industry enterprises. Such contact or transactions may be merely coincidental, and the maintenance of records regarding them does not appear to serve any important regulatory purpose. Another of these proposed amendments would eliminate the requirements that casino service industry enterprises maintain personnel files beyond five years and that they forward a copy of their personnel files to the Commission upon termination of the business. These are burdensome requirements which have not been shown to be of significant importance in the regulatory process.

The rest of the proposed amendments merely correct existing technical errors. These amendments do not change the substance of any of the rules.

Social Impact

The readoption of this chapter will have a positive impact upon the public and the industry. This chapter helps to protect the casino industry from the influence of unfit and unqualified individuals and businesses. It does so by requiring those entities which do substantial business with casino applicants or licensees, and certain persons associated with such entities, to demonstrate that they have the qualifications necessary to participate in the casino industry. The chapter therefore makes an important contribution to the integrity of the industry and the regulatory process.

Economic Impact

This chapter requires casino service industry enterprises and certain associated persons to be qualified and licensed by the Commission. This process requires the payment of license application fees by such enterprises and individuals. In addition, these casino service industry enterprises and associated persons may incur other costs associated with compiling and submitting the information and documentation required in the application. Some could also be required to submit additional information in response to inquiries which may arise during the application process. Nevertheless, the most effective and cost efficient way for the regulatory agencies to gain access to the information necessary to make a determination regarding the qualification of a casino service industry enterprise and associated persons is to have the enterprise or associated persons compile and submit that information themselves.

Regulatory Flexibility Analysis

This chapter imposes reporting and compliance requirements upon casino service industry enterprises. As of the end of the 1987 calendar year, there were approximately 800 licensed casino service industry enterprises, and approximately 1,100 applications pending. This results in a total of approximately 1,900 entities which are subject to these reporting and compliance requirements. The Commission estimates that a large number of these enterprises, possibly 80 to 90 percent, or 1,500 to 1,700, qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

This chapter requires all casino service industry enterprises to compile and submit information which demonstrates their qualifications for licensure. The Commission has determined that exempting small businesses from the requirement that they produce this information would endanger the public health, safety and welfare. The Legislature, recognizing the harmful influence, which had plagued the gambling industry in the past, sought to protect casino gaming in New Jersey from these influences by demanding strict regulation of all persons associated with "licensed casino enterprises and all related service industries . . ." (N.J.S.A. 5:12-1b (6)). The Legislature therefore required all casino service industry enterprises to be licensed to certain standards (N.J.S.A. 5:12-92). Without the information supplied by casino service industry enterprises in the licensing process, the regulatory authorities could not ensure the qualifications of these enterprises, as demanded by the Act.

The compliance and reporting requirements of this chapter also include the maintenance of certain business records by casino service industry enterprises. Most of these records concern the casino related business of the casino service industry enterprises. These records also assist the regulatory authorities in enforcing the strict regulation of those entities doing business with casino licensees as mandated by the Legislature. Thus, small businesses are not exempted from these recordkeeping requirements. However, the proposed readoption includes proposed amendments to these recordkeeping requirements which are responsive to the Regulatory Flexibility Act. These amendments eliminate certain recordkeeping requirements which are not related to the casino hotel business of an enterprise and which have not proven necessary to effective enforcement. This change should provide relief from significant regulatory obligations heretofore imposed.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:43.

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

19:43-1.2 License requirements

(a) No enterprise shall provide goods or services directly related to casino or gaming activity to, or otherwise transact business directly related to casino or gaming activity with, a casino **applicant or** licensee, its employees or agents unless licensed in accordance with [Sections] **subsections 92a and b of the Act**; provided, however, that upon a showing of good cause by a casino **applicant or** licensee for each business transaction, the Commission may permit an applicant for a casino service industry **license** to conduct business transactions with such casino **applicant or** licensee prior to the licensure of [that] **the casino service industry license** applicant pursuant to N.J.S.A. 5:12-92a.

1. The following enterprises shall be required to be licensed as casino service industry enterprises in accordance with [the above cited sections] **subsections 92a and b of the Act**:

i.-iii. (No change).

iv. [Such] **Any form of enterprise which provides such** other goods or services determined by the Commission to be so utilized in or incident to gaming or casino activity as to require licensing in order to contribute to the integrity of the gaming industry in New Jersey.

(b) [No] **Unless otherwise licensed in accordance with (a) above**, no enterprise shall, on a regular or continuing basis, provide goods or services **regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility** [or otherwise transact business not included in (a) above and not directly related to casino or gaming activity] to a casino **applicant or** licensee, its employees or agents unless **such enterprise** is licensed or exempted in accordance with [Sections] **subsections 92c and d of the Act** or authorized to do so pursuant to N.J.A.C. 19:41-11.3(g) [, which enterprise shall include but not be limited to] . **In determining whether an enterprise is subject to the requirements of this subsection, it shall not matter whether the casino applicant or licensee is a party to any agreement pursuant to which said goods or services are being provided. Enterprises subject to the provisions of this subsection shall include, without limitation, suppliers of alcoholic beverages, food and nonalcoholic beverages, garbage handlers, vending machine providers, linen suppliers, maintenance companies, shopkeepers located [with] within the approved hotel [and], limousine services and construction companies contracting with casino applicants or licensees or their employees or agents.**

(c) In determining if a person or enterprise does or will, on a regular or continuing basis, provide goods or services **regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility** to [or otherwise transact business with any casino licensee or] casino **applicants or** licensees, their employees or agents, the following factors shall be considered:

1.-7. (No change.)

(d) Notwithstanding the provisions of (c) above, persons and enterprises which provide, or imminently will provide, goods or services **regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility** to [, or otherwise

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transact business with, any casino licensee or] casino applicants or licensees, their employees or agents shall, unless otherwise determined by the Commission, be deemed to be transacting such business on a regular or continuing basis if:

1. The total dollar amount of such transactions with a single casino applicant or licensee, its employees or agents, is or will be equal to or greater than \$50,000 within any 12-month period; or

2. The total dollar amount of such transactions with casino applicants or licensees, their employees or agents, is or will be equal to or greater than \$150,000 within any 12-month period.

(c) (No change.)

19:43-1.3 Standards for qualification

(a) (No change.)

(b) Each applicant required to be licensed as a casino service industry in accordance with [sections] subsections 92a and b of the [act] Act, except for gaming schools ([See] see N.J.A.C. 19:44-3[.1 et seq.]), shall, prior to the issuance of any casino service industry license, produce such information, documentation and assurances to establish by clear and convincing evidence:

1. (No change.)

2. The applicant's [reputation for] good character, honesty, and integrity;

3. (No change.)

4. That all owners, management and supervisory personnel, principal employees and sales representatives qualify under the standards except residency, established for qualification of a casino key employee under section 89 of [this act] the Act;

5. The integrity [and good reputation] of all financial backers, investors, mortgagees, bondholders, and holders of indentures, notes or other evidences of indebtedness, either in effect or proposed, which bears any relationship to the enterprise; and

6. The integrity [, and good reputation] of all officers, directors, and trustees of the applicant.

(c) Each applicant required to be licensed as a casino service industry in accordance with [section] subsections 92c and d of the Act shall, prior to the issuance of any casino service industry license, produce such information and documentation, including without limitation as to the generality of the foregoing its financial books and records, and assurances to establish by clear and convincing evidence its [reputation for] good character, honesty and integrity.

(d) Any enterprise directed to file an application for a casino service industry license pursuant to [Section] subsections 92(c) and (d) of the Act may request permission from the Commission to submit a modified form of such application. The Commission, in its discretion, may permit such modification if the enterprise can demonstrate to the Commission's satisfaction that securities issued by it are listed, or are approved for listing upon notice of issuance, on the New York Stock Exchange or the American Stock Exchange.

(e) (No change.)

19:43-1.8 Duration of licenses.

(a) License pursuant to N.J.S.A. 5:12-92a is granted for a term of one year for the initial license term and the first two successive renewals, and for a term of two years for all subsequent renewals; provided, however, that the Commission shall reconsider the granting of such a license at any time at the request of the Division. License pursuant to N.J.S.A. 5:12-92c is granted for three years. An application for renewal of a license shall be filed no later than 120 days prior to the expiration of that license. The application for renewal of a license need contain only that information which represents or reflects changes, deletions, additions or modifications to the information previously filed with the Commission.

(b) (No change.)

19:43-1.9 Record keeping

(a) All casino service industry licensees shall maintain in a place secure from theft, loss or destruction, adequate records of business operations which shall be made available to the Commission or Division upon request. These records shall include:

1. (No change.)

2. All correspondence [between the licensee and any of its customers who are applicants, licensees or registrants under the Act]

concerning the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility.

3.-4. (No change.)

5. Financial records of all transactions [with casino/hotel complexes and all other licensees under the Casino Control Act and these regulations] concerning the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility.

(b) The records listed in (a) above shall be held for at least five years. [A permanent personnel file shall be maintained for each employee indefinitely. In the event of closing or discontinuing, a copy of the personnel file shall be forwarded to the Commission.]

19:43-1.14 Casino service industry licenses

(a) No casino service industry license shall issue unless the individual qualifications of each of the following persons shall have first been established in accordance with all provisions, including those cited, of the Act and of the [regulations] rules of the Commission.

1. In the case of casino service industry licenses issued in accordance with [sections] subsections 92a and b of the Act:

i. (No change.)

ii. If the enterprise is, or if it is to become a subsidiary [;], each holding company and each intermediary company which the Commission deems necessary in order to further the purposes of the Act;

iii.-x. (No change.)

2. In the case of casino service industry licenses issued in accordance with [section] subsections 92c and d of the Act:

i. (No change.)

ii. If the enterprise is, or if it is to become a subsidiary [;], each holding company and each intermediary company which the Commission deems necessary to qualify or approve in order to further the purposes of the Act;

iii.-x. (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

New Jersey Pollutant Discharge Elimination System Proposed Readoption with Amendments: N.J.A.C. 7:14A

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

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:10-23.11 et seq., 58:11-18.10 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 58:4A-5 et seq., 58:4A-4.1 et seq., and 58:12A-1 et seq.

DEP Docket Number: 009-89-02.

Proposal Number: PRN 1989-135.

A public hearing concerning this proposed readoption with amendments will be held on:

May 8, 1989 at 10:00 A.M.
Labor Education Center Auditorium
Cook College
Ryders Lane
Rutgers University
New Brunswick, New Jersey

Submit written comments by May 10, 1989 to:

Thomas A. Borden, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection's ("Department") Division of Water Resources currently administers the New Jersey Pollutant Discharge Elimination System ("NJPDDES"), N.J.A.C. 7:14A, which controls the discharge of pollutants into the surface and ground waters of the State pursuant to the Water Pollution Control Act, N.J.S.A.

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58:10A-1 et seq. N.J.A.C. 7:14A establishes a permitting program for various types of discharges including underground injection wells, sanitary landfills, indirect discharges to public and private wastewater treatment plants, surface water discharges, industrial waste management facilities, surface impoundments, land application of residuals, infiltration percolation lagoons, land application of effluents by overland flow, and land application of effluents by spray irrigation. This chapter also governs the Department's approval of the construction and operation of treatment works, sewage collection systems and treatment plants.

In accordance with the requirements of Executive Order 66(1978), N.J.A.C. 7:14A expires on June 4, 1989. The Department has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The proposed readoption of these rules includes, for the most part, non-substantive amendments, such as correction of typographical errors, updating agency names, correcting cross references and replacing obsolete or superseded document titles with current references. For example, the Department is proposing to amend all uses of "groundwater" to "ground water".

The following is a summary of each subchapter in N.J.A.C. 7:14A including the proposed amendments thereto:

SUBCHAPTER 1. GENERAL INFORMATION

N.J.A.C. 7:14A-1 sets forth the general policy considerations in the NJPDES program including the purpose and scope of N.J.A.C. 7:14A. This subchapter also includes the fee schedule for applicants and NJPDES permittees, and the definition section.

N.J.A.C. 7:14A-1.3 is being amended to more accurately state the general prohibition against landfill disposal of sewage sludge. In order to allow a domestic treatment works to landfill sludge, the Department must determine that there are no other reasonable alternatives for sludge management. In addition, the landfill must be prepared to collect and treat all of the leachate and the domestic treatment works must sign a consent order which establishes a schedule for sludge management.

The Department is proposing amendments to N.J.A.C. 7:14A-1.9 in order to include new and updated definitions of "applicant", "biochemical oxygen demand", "chemical oxygen demand", "domestic pollutant", "domestic treatment works", "domestic wastewater", "final permit", "grab sample", "individual IWMP permit", "industrial treatment works", "permitted flow", "pretreatment", "publicly owned treatment works", "residuals", "SIU pretreatment works", "suspended solids" and "ultimate management". The proposed amendments are being included in order to define words also used in the proposed sludge quality rules, N.J.A.C. 7:14-4 (see the New Jersey Register, February 21, 1989 at 21 N.J.R. 373(a)).

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR THE NJPDES PERMIT

N.J.A.C. 7:14A-2 sets forth the procedures required to apply for a NJPDES permit, the conditions which are applicable to all permits and the process of modifying, suspending or revoking permits. Given the complexity of the NJPDES program, this subchapter is essential to the NJPDES permitting process.

In N.J.A.C. 7:14A-2.5, the Department is proposing amendments that would make compliance with the Statewide Sludge Management Plan and various statutes and rules containing provisions for landfill disposal of sludge a condition of all permits issued pursuant to this chapter.

The Department is proposing, in N.J.A.C. 7:14A-2.12(a), to clarify the Department's right to modify, suspend, revoke and reissue a NJPDES permit. The amendment includes language that was included in a prior version of N.J.A.C. 7:14A-2.12, but was inadvertently omitted.

In N.J.A.C. 7:14A-2.12(b)6 and 2.14(a)10, the amendments include a clarification of the Department's authority to modify an existing NJPDES permit to include conditions pertaining to industrial waste management facilities (IWMFs).

SUBCHAPTER 3. ADDITIONAL REQUIREMENTS APPLICABLE TO DISCHARGES TO SURFACE WATER (DSW)

N.J.A.C. 7:14A-3 includes the permitting requirements, conditions and limitations for discharges to surface water. The subchapter also sets forth specific requirements for particular discharges such as animal feeding operations, aquaculture, silviculture and separate storm sewers.

The Department is proposing to amend N.J.A.C. 7:14A-3.13(a)3 in order to clarify the permit reopener clause. The requirements which specifically apply to dischargers in a primary industry category are being

clarified at N.J.A.C. 7:14A-3.13(a)3i. The Department is proposing to include a new provision in N.J.A.C. 7:14A-3.13(a)3iv which will allow limitations and requirements regarding toxic pollutants to be incorporated into any permit. The United States Environmental Protection Agency ("EPA") is proposing that whole effluent limits and chemical specific effluent limits be used in permits in order to reduce or eliminate the toxic impact of the effluent (see 53 FR 47632, November 23, 1988 and 54 FR 1300, January 12, 1989). In addition, the Department is proposing, in N.J.A.C. 7:14A-3.14(d)2, to require effluent limitations for all toxic substances to be stated as a daily maximum concentration. These proposed amendments will enable the Department to implement the individual control strategies for those water segments impacted by toxic pollutants as required by the Federal Water Quality Act of 1987 (P.L. 100-4, February 4, 1987).

The Department is proposing in N.J.A.C. 7:14A-3.13(a)15 to delete the deadlines for abandonment of landfill disposal of sludges and eliminate references to expired rules and guidelines because they have been included in the Statewide Sludge Management Plan.

SUBCHAPTER 4. ADDITIONAL REQUIREMENTS FOR AN INDUSTRIAL WASTE MANAGEMENT FACILITY

N.J.A.C. 7:14A-4 sets forth the specific permitting requirements for industrial waste management facilities (IWMFs). The Department is proposing amendments to N.J.A.C. 7:14A-4 which will clearly differentiate the requirements for an individual IWMF permit or the requirements for an IWMF eligible for permit-by-rule status.

SUBCHAPTER 5. ADDITIONAL REQUIREMENTS FOR UNDERGROUND INJECTION CONTROL PROGRAM (UIC)

N.J.A.C. 7:14A-5 includes the policy provisions, classification system, permit conditions and criteria applicable to underground injection wells. These provisions are necessary for the purpose of protecting the State's ground water resources. The Department is proposing to readopt this subchapter with only editorial amendments.

SUBCHAPTER 6. ADDITIONAL REQUIREMENTS FOR DISCHARGES TO GROUND WATER (DGW)

N.J.A.C. 7:14A-6 establishes permitting requirements for ground water dischargers. The requirements include monitoring, sampling, criteria and recordkeeping for groundwater discharges. The Department's proposed amendments to this subchapter are also editorial in nature.

SUBCHAPTER 7. PROCEDURES FOR DECISION MAKING

N.J.A.C. 7:14A-7 sets forth the procedures used by the Department to issue, modify, revoke, reissue or terminate permits. In the proposed amendments to N.J.A.C. 7:14A-7, references to a "final draft NJPDES Permit" have been replaced by reference to a "final NJPDES Permit". A final draft permit does not exist.

N.J.A.C. 7:14A-7.2(a)9iv is being amended to require that 30 days prior to the expiration of a discharge allocation certificate (DAC), a written request for an extension shall be submitted to the Department. The procedure to apply for an extension of a DAC in N.J.A.C. 7:14A-7.2(a)9 is being proposed in order to be consistent with a similar provision in N.J.A.C. 7:14A-3.3(f)2.

SUBCHAPTER 8. PUBLIC COMMENT AND NOTICE PROCEDURES

N.J.A.C. 7:14A-8 includes the procedures the Department will follow for public notice, public hearings, and adjudicatory hearings when permits are issued, modified, denied or contested. The proposed amendment to N.J.A.C. 7:14A-8 corrects a reference to the Division of Water Resources.

SUBCHAPTER 9. SPECIFIC PROCEDURES APPLICABLE TO DISCHARGES TO SURFACE WATER (DSW)

N.J.A.C. 7:14A-9 sets forth the procedures used to grant variances for surface water discharges. The proposed amendments in N.J.A.C. 7:14A-9 simply correct cross references.

SUBCHAPTER 10. FILING REQUIREMENTS FOR NJPDES PERMITS

N.J.A.C. 7:14A-10 sets forth specific requirements to submit data and specific plans regarding a discharge to surface water, treatment plants,

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land application sites or ground water. Throughout N.J.A.C. 7:14A-10, the Department is proposing to delete the terms "sludge" and "seepage" and replace them with "residuals". The purpose of this amendment is to obtain a consistent terminology among the various rules.

N.J.A.C. 7:14A-10.5(a)1v is being amended in order to replace the term "significant quantities", in the list of those indirect dischargers required to obtain a NJPDES permit, with a specific daily volume of 25,000 gallons per day. The use of a specific volume in gallons per day will be consistent with the definition of significant indirect user (SIU) and will clarify the existing policy regarding the interpretation of the words "significant quantities".

The National Pretreatment Regulations, 40 C.F.R. 403, require municipal treatment plants, referred to as publicly owned treatment works (POTWs), to perform most of the legal, administrative, monitoring and permitting elements of the pretreatment program. The POTWs that have a program approved by the Department pursuant to 40 CFR Part 403 are audited annually to evaluate their compliance with the requirements of the industrial pretreatment program (IPP). Many POTWs issue discharge permits as their control mechanism for industrial dischargers; thus, it is redundant for the Department to issue a NJPDES/SIU permit for the same industrial discharger. N.J.A.C. 7:14A-10.5(a)3 currently includes a provision designed to avoid unnecessary duplication of effort in areas where the POTW has an approved IPP. However, dischargers classified as Industrial Waste Management Facilities (IWMFs) were inadvertently omitted from the provision and are subject to the unnecessary duplication of permitting.

The Department is proposing, in N.J.A.C. 7:14A-10.5(a)1ii(1) and (2), to exclude the IWMFs discharging to a POTW that has an approved pretreatment program (pursuant to 40 CFR Part 403 and N.J.A.C. 7:14A-13) from the requirement to obtain an individual NJPDES/SIU permit, unless they otherwise are required to obtain an individual NJPDES/SIU permit under other provisions of the NJPDES rules. The POTW will be solely responsible for monitoring these IWMFs for compliance with the POTW's approved pretreatment program. IWMFs which do not receive individual SIU permits are still responsible for meeting the standards of operation contained within the permit-by-rule requirements in N.J.A.C. 7:14A-4. The Department will periodically review these IWMFs for compliance status during the annual auditing of the POTWs.

The Department is proposing, in N.J.A.C. 7:14A-10.8 (e)2iii (1), to expand the parameters for which analysis is required when applying for a permit to land apply residuals. These additional parameters will be consistent with the required parameters proposed in the sludge quality assurance rules, N.J.A.C. 7:14-4 (see the New Jersey Register, February 21, 1989 at 21 N.J.R. 373(a)).

SUBCHAPTER 11. PUBLIC ACCESS TO INFORMATION AND REQUIREMENTS FOR DEPARTMENT DETERMINATION OF CONFIDENTIALITY

N.J.A.C. 7:14A-11 sets forth the procedures to be followed to assert a claim for confidentiality and the Department's procedure for determining a claim for confidentiality. The procedures include those for safeguarding confidential information and for obtaining access to the information. The limited instances when access to the information is permitted are also set forth. The Department's proposed amendments are editorial in nature.

SUBCHAPTER 12. REQUIREMENTS FOR A TREATMENT WORKS APPROVAL

N.J.A.C. 7:14A-12 includes the procedures used to approve the construction or modification of the treatment works used to collect, treat or discharge pollutants. The subchapter also covers sewer connection ban requirements and exemptions. The proposed amendment to N.J.A.C. 7:14A-12 is an editorial correction.

SUBCHAPTER 13. ADDITIONAL REQUIREMENTS FOR USERS OF DOMESTIC TREATMENT WORKS (DTWs)

N.J.A.C. 7:14A-13 sets forth the requirements for pretreatment of indirect discharges entering a domestic treatment works. The subchapter also includes the procedure and criteria for approving and withdrawing a domestic treatment works' pretreatment program. The Department is proposing editorial amendments to N.J.A.C. 7:14A-13.

SUBCHAPTER 14. OIL AND GREASE EFFLUENT LIMITATIONS

N.J.A.C. 7:14A-14 establishes effluent limitations for oil and grease for all discharges to surface water and indirect discharges to a domestic treatment works. The Department is proposing to readopt N.J.A.C. 7:14A-14 without change.

Social Impact

The readoption of N.J.A.C. 7:14A will have a beneficial social impact. N.J.A.C. 7:14A is an essential guide to those dischargers required to obtain a NJPDES permit. The rules set forth the applicable permit conditions, application procedures, and filing requirements for all permittees. The NJPDES rules create a permit program which requires the treatment of domestic, municipal and industrial wastewater thereby protecting the surface and ground waters of the State. These waters have uses such as domestic, municipal and industrial water supplies, commercial and recreational fishing, clamming, crabbing, swimming and boating. The readoption of these rules will allow the Department to continue to protect the waters of the State in an efficient and effective manner.

Economic Impact

The readoption of these rules with the proposed amendments will neither increase nor decrease the cost of the NJPDES program. The NJPDES rules establish a self-supported permit system where permit fees support the administration of the NJPDES permit program. This proposed readoption contains no changes to the methods used in the fee calculation or assessment process. The annual fee report for 1988-1989 sets forth a proposed budget of \$19 million for fiscal year 1989. The NJPDES fees are assessed to applicants for discharge permits and are subject to an annual fee hearing. The NJPDES program has significantly improved the environmental quality of New Jersey's ground and surface waters by abating the negative impact of water pollution. The improvements in environmental quality to have a positive economic impact on property values, business interests and the tourist industry.

Environmental Impact

The proposed readoption of N.J.A.C. 7:14A will assist the Department in effectively administering the NJPDES program. The amendments to N.J.A.C. 7:14A will provide additional limitations and requirements for the control of toxic pollutants in wastewater effluent which are necessary to protect both human health and the environment. The NJPDES program will continue to provide the Department with the regulatory means to mitigate and prevent adverse impacts from discharges to the waters of the State. A discharge permit includes pollutant limits, monitoring requirements, reporting requirements and compliance schedules. The NJPDES permit process is an essential device in protecting the water quality of the State.

Regulatory Flexibility Statement

The readoption of N.J.A.C. 7:14A applies to all businesses which discharge wastewater to surface water, ground water, treatment plants, injection wells or land application sites. The Department estimates that there are approximately 1800 permitted individuals or facilities which are considered to be a "small business" as defined by the New Jersey Regulatory Flexibility Act, N.J.A.C. 52:14B-16 et seq. In order to comply with these rules, the small businesses will be required to obtain permits, submit discharge monitoring reports, keep records of monitoring information and comply with permit limitations and compliance schedules.

Professional services likely to be utilized to comply with N.J.A.C. 7:14A would include, but would not be limited to, licensed professional engineers, licensed surveyors and laboratories certified to perform specific chemical analyses. The initial capital costs for compliance with these rules could vary from approximately \$200.00 to several thousand dollars, depending on the required professional services, facility modifications, permits and water testing and sampling fees. Annual costs range from a minimal amount to several thousand dollars, depending on the need for the preceding activities.

N.J.A.C. 7:14A is primarily designed to protect and preserve human health and the environment with regard to the volume of wastewater rather than the size of the facility. No significant new compliance requirements are included in the proposed amendments. The Department has balanced the need to protect the environment against the economic impact upon small businesses and has provided exemptions for small businesses in the reporting requirements for surface water discharges, N.J.A.C. 7:14A-10.3(a)10, and indirect discharges, N.J.A.C. 7:14A-10.5(c)11.

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Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:14A.

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

7:14A-1.3 General prohibitions

(a) The Department shall not issue a NJPDES permit:

1.-4. (No change.)

5. To [any facility which requires] **a domestic treatment works (DTW) where the NJPDES permit provides for the disposal of [liquid] domestic wastewater sludge [into] at a landfill [after March 15, 1985] unless:**

i. The Department determines that there are no reasonable alternative sludge management options available to the DTW;

ii. The Department determines that the landfill is equipped with an adequate system for the interception, collection and treatment of any and all leachate; and

iii. The DTW has signed a consent order with the Department which sets forth the date sewage sludge disposal shall cease and the date acceptable sewage sludge management shall be instituted.

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.-3. (No change.)

4. Payment of all fees shall be made by check or money order, payable to "Treasurer, State of New Jersey" and submitted to:

New Jersey Department of Environmental Protection

[Bureau of Collections and Licensing]

Bureau of Revenue

CN 402

Trenton, New Jersey 08625

5.-9. (No change.)

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 the square root of the total pollutant load to calculate environmental impact for the period July 1, 1989 to June 30, 1990. The Department shall use the total pollutant load 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:

1. The Environmental Impact of a Discharge to Ground Water 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), where:

i. Pollutant Type 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

1 Non-contact cooling water, treated [groundwater] **ground water, filter backwash.**

2 Sanitary wastewater, food processing waste, stormwater runoff [from] **including** 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, **ground water**, wastewater or sludge containing hazardous constituents.

ii.-vi. (No change.)

(e)-(f) (No change.)

(g) The annual fee for discharges by a significant indirect user to a domestic treatment works is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge by a [Significant Indirect User] significant indirect user (SIU) to a [Domestic Treatment Works] **domestic treatment works** (DTW) is derived by applying the formula: Environmental Impact = Toxicity Factor x (COD Load) where:

i. Toxicity Factor is the rating number, based on the degree of hazard, assigned by the Department to each industrial [Category] **category**. The rating numbers are assigned as follows:

Rating Industrial Category

1 Food Products

2 Brewery/Yeast, **Glass**

3 Coffee, Soap and Detergent, Foundry, Pulp, Paper and Paperbound, Glue, Coil Coating

4 Explosives, Machine and Mechanical (Roller Bearing)

5 Electroplating, Leather Tanning, Tank[storage]**Storage**, Inorganic Chemicals

6 Organic Chemicals, Pharmaceuticals

10 Ground water decontamination, Hazardous Waste Facilities that recover and recycle hazardous waste

15 Landfill leachate

20 Hazardous Waste Facilities that treat and discharge hazardous waste, Industrial Waste Management Facilities

ii. (No change.)

(h) (No change.)

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

"Applicant" means any person, corporation, government body or other legal entity which applies for a NJPDES permit, DAC, or Departmental approval pursuant to this chapter, or makes a request for an exemption from a sewer connection ban as provided for [in] **at N.J.A.C. 7:14A-[12.25]12.22** and has a substantial interest in the property subject to such ban.

"BOD" (biochemical oxygen demand) means the quantity of dissolved oxygen (in milligrams per liter, mg/l) required during stabilization of decomposable organic matter by aerobic biochemical action as determined by analytical procedures set forth in the "Manual of Methods for Chemical Analysis of Water and Wastes" (USEPA, Office of Technology Transfer, Washington, D.C., March 1983).

"COD" (chemical oxygen demand) means the quantity of dissolved oxygen (in milligrams per liter, mg/l) required to oxidize the organic matter in a waste sample under specific conditions of an oxidizing agent, temperature and time as determined by analytical procedures set forth in the "Manual of Methods for Chemical Analysis of Water and Wastes" (USEPA, Office of Technology Transfer, Washington, D.C., March 1983).

"Domestic pollutant" means a pollutant which results from the discharge of household, commercial or other wastes from bathrooms, toilet facilities, home laundries and kitchens which are predominantly the result of natural human waste elimination associated with bodily function and food preparation.

"Domestic [Treatment Works] **treatment works**" (DTW) means [a] all publicly [or privately] owned treatment works [and shall include a] as well as any privately owned treatment works processing primarily domestic [wastes] **wastewater and pollutants** together with any ground water, surface water, storm water or [industrial] process wastewater that may be present.

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"Domestic wastewater" means the liquid waste or liquid borne wastes discharged into a domestic treatment works.

"Final [draft] permit" means a document issued according to the procedures [in] at N.J.A.C. 7:14A-7.2.

"Grab sample" means a single sample collected at a particular time and place.

"Individual IWMF permit" means a permit, authorization, license, or equivalent control document issued by the Department to an IWMF pursuant to N.J.A.C. 7:14A-4.4. An individual IWMF permit does not include an IWMF permit-by-rule.

"Industrial treatment works" means a ["]treatment works["] which [handles] treats primarily process wastewater and/or ["] industrial pollutants["] as determined by the percentage of process wastewater, or mass loading of BOD, COD or suspended solids in the wastewater flow. Industrial treatment works shall also include any treatment works, whether publicly or privately owned, which treats primarily wastewater or leachate from a municipal solid waste facility or a potable water treatment plant. This definition shall also encompass SIU pretreatment works.

"Permitted flow" means a treatment work's maximum allowable flow (in MGD) as stated in the facility's NJPDES Permit.

"Pretreatment" means applications of physical, chemical and/or biological processes to reduce the amount of pollutants in, or alter the nature of the polluting properties of, a process wastewater prior to discharging such wastewater into a domestic treatment works.

"Publicly owned treatment works" ("POTW") means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality". This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. However, despite public ownership of potable water treatment plants and solid waste facilities which may provide for treatment and/or discharge of pollutants, treatment works associated with potable water treatment and solid waste facilities shall be considered industrial treatment works for the purpose of this chapter.

["Residuals" means accumulated solids and liquids which are by-products of a physical, chemical, biological, thermal or mechanical process or partial process. Residuals include, at a minimum, sludge and septage.]

"Residuals" means solids and associated liquids which are removed through a physical, chemical or biological process or any other process designed to treat wastewater or any other discharges subject to regulation under the State Act. For the purposes of this chapter residuals include, but are not limited to, sludges, grit and screenings and scum.

"SIU pretreatment works" means any treatment works serving exclusively a SIU facility and treating the facility's industrial process wastewater, or a combination of its process and domestic wastewater, prior to the discharge thereof into a domestic treatment works.

"Suspended solids" means the total nonfilterable residue as determined by analytical procedures set forth in the "Manual of Methods for Chemical Analysis of Water and Wastes" (USEPA, Office of Technology Transfer, Washington, D.C., March 1983).

"Ultimate management" means final management of sludge at a facility or operation such that no additional permit or approval actions are required for further processing or movement.

7:14A-2.1 Application for a NJPDES permit

(a) All applications for a NJPDES permit shall be submitted to:

Assistant Director
[Water Quality Management]
Wastewater Facilities Management Element
Division of Water Resources
CN-029
Trenton, N.J. 08625
(b)-(k) (No change.)

7:14A-2.2 Emergency permits

(a) (No change.)

(b) Notwithstanding any other provision of this chapter, the Department may issue an emergency permit, except for a DSW, to an owner and/or operator of a facility to allow:

1. (No change.)

2. Treatment and storage or disposal of hazardous waste for a non-permitted IWMF [facility] or of hazardous waste not covered by the permit for an IWMF [facility] with an effective permit; or

3. (No change.)

(c) (No change.)

7:14A-2.5 Conditions applicable to all permits

(a) Permittees shall comply with the following:

1.-3. (No change.)

4. The permittee may only continue [on] an activity regulated by a NJPDES permit after the expiration of a permit if it has complied with the provisions of N.J.A.C. 7:14A-2.3.

5.-11. (No change.)

12. The permittee shall provide for monitoring and records as follows:

i.-vii. (No change.)

viii. Wastewater monitoring frequency and sample type shall, at a minimum, be in accordance with Appendix H for the parameters listed therein.

13.-14. (No change.)

15. The permittee shall conform with the requirements for the [disposal] management of [sludge and septage] residuals under:

i.-iii. (No change.)

iv. [(Reserved)] **The Statewide Sludge Management Plan promulgated pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; and**

v. **The provisions concerning disposal of sewage sludge and septage in sanitary landfills set forth at N.J.A.C. 7:14A-1.3, N.J.S.A. 13:1E-42 and the Statewide Sludge Management Plan.**

7:14A-2.8 Schedules of compliance

(a) The Department may, when appropriate, specify in the permit a schedule of compliance leading to compliance with the State and Federal Acts and all other applicable authority for this chapter.

1. (No change.)

2. Except as provided in (b)ii below, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

i. (No change.)

ii. If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. Examples of interim requirements include:

(1) Submit a complete [Step 1 construction grant] **New Jersey Wastewater Treatment Trust Fund Loan Application** (for POTWs);

(2)-(4) (No change.)

3. (No change.)

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

7:14A-2.11 Transfer of permits

(a) (No change.)

(b) As an alternative to transfers under (a) above, any NJPDES permit, except a UIC permit for a well injecting hazardous waste, may be automatically transferred to a new permittee if:

1. The current permittee notifies the Department in writing by certified mail of the proposed transfer as follows:

i. Where production levels, products produced, rates of discharge, and wastewater characteristics will remain unchanged, the following information shall be submitted at least 90 days prior to a proposed "transfer date":

(1)-(5) (No change.)

(6) A notarized statement signed by the new principal officer stating that [he/she] **he or she** has read the NJPDES permit and certifies (pursuant to N.J.A.C. 7:14A-2.4(d)) **(b)Si** to abide by all the conditions of the permit and that production levels, products produced, rates of discharge and wastewater characteristics shall remain unchanged.

ii. (No change.)

2.-4. (No change.)

7:14A-2.12 Modification, suspension or revocation of permits

(a) [When the Department determines, pursuant to (b) below, that just cause exists to modify, suspend or revoke a NJPDES permit, the Department may modify, suspend, or revoke the permit accordingly, subject to the limitations of (c) below, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. (When the permit modification satisfies the criteria in N.J.A.C. 7:14A-2.14 for "minor modifications", the permit shall be modified without a draft permit or public review. Otherwise, a draft permit shall be prepared and the procedures in N.J.A.C. 7:14A-7 and 8 shall apply.) When a permit is suspended or revoked, the entire permit is reopened and subject to revision.] **When the Department receives any information as, for example, from inspection of the facility or from information submitted by the permittee as required in the permit (for example, see N.J.A.C. 7:14A-2.5, 3.10 and 3.11 (DSW), 4.4 (IWMF), 5.9 (UIC), 7:14A-6), receives a request for modification or revocation under N.J.A.C. 7:14A-7.5, or conducts a review of the permit file, a determination may be made by the Department as to whether cause exists including, but not limited to, causes as provided under this subsection and (b) below, for modification, suspension or revocation of the permit. If cause exists, the Department may modify, suspend or revoke the permit accordingly, subject to the limitations of (c) below, and may request an updated application if necessary. When a permit is modified, only those conditions subject to modification shall be reopened. If a permit is revoked, the entire permit shall be reopened and subject to revision. The permit may be reissued for a new term (see N.J.A.C. 7:14A-7.5(c)2). If a permit modification satisfies the criteria in N.J.A.C. 7:14A-2.14 for "minor modifications", the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and the procedures in N.J.A.C. 7:14A-7 and 8 shall apply.**

(b) The following are causes for modification, suspension, or revocation of a permit:

1.-3. (No change.)

4. [Applicable only for] **For a** modification of a compliance schedule, good cause[,] as determined by the Department, and including an act of God, strike, flood, or other events over which the permittee has little or no control [and], for which the **Department determines** there is no control, and for which there is no reasonably available remedy. However, in no case shall a NJPDES compliance schedule be modified to extend beyond an applicable statutory deadline. (See also N.J.A.C. 7:14A-2.14(c)) (minor modifications) and (c)11 below (DSW) innovative technology). This does not preclude the Department from the revocation or suspension of a compliance schedule for good cause shown.

5. Notification has been received by the Department (pursuant to N.J.A.C. 7:14A-2.5(a)[12]14iii) of a proposed transfer of the permit. A permit may also be modified to reflect a transfer after the effective date of an automatic transfer (N.J.A.C. 7:14A-2.11(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

6. Where the Department classifies a facility with an existing NJPDES permit as an IWMF (see N.J.A.C. 7:14A-4).

(c) The Department may only modify, suspend or revoke a permit for discharges to surface water (DSW):

1.-12. (No change.)

13. To incorporate new information and/or applicable water quality standards, effluent standards, other standards or judicial decisions.

(d) (No change.)

7:14A-2.14 Minor modification of permits

(a) The Department, with the consent of the permittee, may modify a permit to make corrections or allowances for changes in the permitted activity listed in this section. Such changes shall be made without following the procedures set forth in N.J.A.C. 7:14A-7 and 8. A permit modification not processed as a minor modification under this section shall be made for cause and shall conform with the draft permit and public notice requirements of N.J.A.C. 7:14A-7 and 8 as required in N.J.A.C. 7:14A-2.12. Minor modification may only:

1.-3. (No change.)

4. Allow for a change in ownership or operational control of a facility where the Department [determines] **determines** that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Department;

5.-7. (No change.)

8. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; [or]

9. List sewer extensions to a domestic treatment works which are approved by the Department pursuant to [subchapter 12 of this chapter] **N.J.A.C. 7:14A-12**. Public notice of approved sewer extensions shall be published in the DEP Bulletin[.] ; or

10. Incorporate IWMF permit-by-rule conditions (N.J.A.C. 7:14A-4.6) into the existing NJPDES permits of IWMFs.

7:14A-3.1 Scope

(a) (No change.)

(b) The following discharges do not require DSW permits:

1.-2. (No change.)

3. Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR [1510] **300** (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR 153.101(e) (Pollution by Oil and Hazardous Substances), and the State "Spill Compensation and Control Act", N.J.S.A. 58:10-23.11 et seq.;

4.-5. (No change.)

(c) (No change.)

7:14A-3.3 Discharge allocation certificate (DAC)

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

(f) [Duration] **DAC duration is as follows:**

1.-3. (No change.)

4. A POTW may apply for a new DAC at least 180 days but not more than 360 [prior] days prior to the expiration of a DAC. The terms and conditions of a DAC for a POTW shall expire and shall not be stayed pending the issuance of a new DAC.

(g) (No change.)

(h) Submission of application for a DSW permit **shall be as follows:**

1.-4. (No change.)

5. Within 60 days of the planned discharge, the Department shall inspect the facility or site and shall issue a DSW discharge permit provided:

i. The applicant submits the certification described in N.J.A.C. 7:14A-3.3(f)2(ii)iii; and

ii. (No change.)

6. (No change.)

7:14A-3.8 Separate storm sewers

(a) Permit requirement: Separate storm sewers, as defined in this section, are point sources subject to the DSW permit program. Separate storm sewers may be permitted either individually or under a general permit[.] ([See] see N.J.A.C. 7:14A-3.9[.]) A DSW permit for discharges into waters of the State from a storm sewer covers all conveyances which are part of that separate storm sewer system, even though there may be several owners or operators of these

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conveyances. However, discharges into separate storm sewers from point sources which are not part of the separate storm systems may also require a permit.

(b) [Definition] For purposes of this section, definitions are as follows:

1.-4. (No change.)

(c) Case-by-case designation of separate storm sewers: The Department may designate a storm sewer not located in an urbanized area as a separate storm sewer. This [designated] **designation** may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category or when:

1.-2. (No change.)

7:14A-3.10 Additional conditions applicable to all DSW permits (a) (No change.)

(b) Bypass requirements are as follows:

1. (No change.)

2. Notice requirements are as follows:

i.-ii. (No change.)

3. [Prohibition of bypass] **Bypass prohibition is as follows:**

i. Bypass is prohibited, and the [Department] **Department** may take enforcement action against a permittee for bypass, unless:

(1)-(3) (No change.)

ii. (No change.)

(c) [Upset] **The following relate to an upset:**

1. Effect of an upset: An upset may constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of (c)2 below are met. Where no determination was made during administrative review of claims that noncompliance was caused by upset, and [there] **there** has been no Departmental action for noncompliance, the lack of such determination is final administrative action subject to judicial review.

2-3. (No change.)

7:14A-3.11 Additional conditions applicable to specified categories of DSW permits

(a) The following conditions, in addition to those set forth in N.J.A.C. 7:14A-2.5, 3.10 and 3.12, apply to all DSW permits within the categories specified below:

1. (No change.)

2. DTW[']s: All DTWs must provide adequate notice to the Department of the following:

i.-ii. (No change.)

[iii.] 3. For purposes of (a)2 [of this section] **above**, adequate notice shall include information on:

[(1)] i. The quality and quantity of effluent introduced into the [DWT] **DTW**; and

[(2)] ii. (No change in text.)

7:14A-3.12 Emergency plans

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

(e) [Filing] **The requirements for filing for an exemption are as follows:**

1.-3. (No change.)

4. If the quality and/or quantity of the discharge from the facility changes in [a] such a manner that the facility no longer qualifies for an exemption, the permittee shall notify the Department of the changes, in writing, within 30 days of such change.

5. (No change.)

(f)-(h) (No change.)

7:14A-3.13 Establishing DSW permit conditions

(a) In addition to the conditions established under N.J.A.C. 7:14A-2.6(a), each DSW permit shall include conditions meeting the following requirements when applicable.

1.-2. (No change.)

3. [Reopener clause: for any discharger within a primary industry category (see Appendix E),] **The requirements under Section 307(a)(2) of the Federal Act or Sections 4 or 6 of the State Act for the inclusion of a reopener clause in permits. The provisions are as follows:**

i. On or before June 30, 1981, for any discharger within a primary industry category (see Appendix E):

(1)-(2) (No change.)

ii. (No change.)

iii. The Department shall promptly modify or revoke and reissue any permit, **including any permit** containing the clause required under (a)3i above, to incorporate an applicable effluent standard or limitation under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Federal Act or Sections 4 or 6 of the State Act which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

iv. **The Department may modify or revoke and reissue any permit to incorporate limitations or requirements to control the discharge of toxic pollutants, including whole effluent, chronic and acute toxicity requirements, chemical specific limitations or toxicity reduction requirements, as applicable.**

4.-14. (No change.)

15. [Sewage sludge and septage] **Residuals:** Any requirements under:

i. (No change.)

ii. The "Solid Waste Management Act", N.J.S.A. 13:1E-1 et seq. [One year from the effective date of the NJPDES regulations, any person who is disposing sludge in a sanitary landfill shall submit to the Department a statement of the following:

(1) Justification for the continuance of the disposal of the sludge in a landfill; and

(2) A description of the steps being taken to comply with the March 15, 1985 deadline for abandonment of landfills for the disposal of sludge.

(3) The manner in which solid sludge will be disposed of until March 15, 1985.]

iii. The "Sludge Quality Assurance Regulations", N.J.A.C. 7:14-4.1 et seq.; and

iv. The ["Regulations Concerning the Statewide Management of Septage", N.J.A.C. 7:14-5:] **Statewide Sludge Management Plan adopted November 4, 1987 under the authority of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.**

[v. To the extent practicable, the "Guidelines for the Utilization and Disposal of Municipal and Industrial Sludges and Septage"; and

vi. The provisions concerning the disposal of sludge in sanitary landfills which will be developed in the Statewide Sludge Management Plan promulgated pursuant to the "Water Quality Planning Act", N.J.S.A. 58:11A-1 et seq. and the State Act.]

16.-17. (No change.)

7:14A-3.14 Calculating NJPDES permit conditions

(a) Outfalls and discharge points: All permit effluent limitations, standards, and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under N.J.A.C. 7:14A-3.13(a)1 ii (BMPs where [limitations are] **limitations** are infeasible) and (i) below (limitations on internal waste streams).

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

(d) Continuous discharges: For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall, unless impracticable, be stated as:

1. (No change.)

2. Average weekly and average monthly discharge limitations for POTW[s], **except that effluent limitations for any toxic substance listed in N.J.A.C. 7:9-4.14 or Appendix F, shall be stated as a daily maximum concentration. Average monthly limitations may be calculated using applicable scientific or statistical procedures including "Technical Support Document for Water Quality Based Toxics Control" (EPA publication number, EPA-440/4-85-032, September 1985), and subsequent revisions.**

(e)-(j) (No change.)

(k) Water quality based effluent limitations applicable to discharge into the surface waters of the State shall be developed in accordance with ["Treatment of Wastewater Discharged into Waters of the State,"] **"Wastewater Discharge Requirements", N.J.A.C. 7:9-5.1 et seq.] and/or "Surface Water Quality Standards", N.J.A.C. 7:9-4.**

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the effluent mass assigned to the toxic substances listed in Appendix F shall be used in computing limitations of an individual toxic substance being discharged from a source into surface waters. The effluent mass assigned through use of these values shall determine the maximum effluent concentration of an individual toxic substance which may be discharged, as set forth in N.J.A.C. 7:26-12.3, and where applicable, 40 CFR Section 136.3, is not exceeded.

[i.] (No change.)

The limitation (W) established through use of the following formulae shall apply only when the Department, through more rigorous scientific analysis (including where applicable, bioassays) does not establish revised effluent limitations in conformance with wasteload allocation procedures in N.J.A.C. 7:9-[5.6]4.6. The Department reserves the right to set toxic effluent limitations for hazardous dischargers in conformance with such wasteload allocation procedures.

[i.] (No change.)

The effluent discharges into surface waters of the State with essentially multi-dimensional flow:

$$W = 0.0864 \times C \times Q^2 \times S$$

W = The maximum total weight in kilograms per day ([Kg]kg/d) which may be discharged by the treatment works of any pollutant listed in Appendix F, over any 24-hour period.

C = The values for determination of NJPDES permit toxic effluent limitation in micrograms per liter (ug/l) of any pollutant listed in Appendix F. This concentration cannot be exceeded at the water surface at the point indicated as S in figure 1 of Appendix F.

Q = The effluent discharge flow rate of the treatment works in cubic meters per second (m³/sec).

S = The dilution factor of the effluent at the surface as shown in figure 1 of Appendix F. S shall be calculated based on the type of diffuser as follows:

[i.] (No change.)

[ii.](2) (No change in text.)

7:14A-4.2 Scope

(a) Specific inclusions: An industrial waste management facility (IWMF) which treats, stores, or disposes of hazardous waste which is received exclusively from [intercompany] **intracompany** and interstate sources and includes the following:

1. Wastewater treatment units which are subject to regulation under Section 402 or 307[(a)](b) of the Federal Act and that:

[i.](1) (No change.)

2. The treatment, storage or disposal of hazardous waste in a surface impoundment; [and]

3. A land treatment facility for hazardous waste; [and]

4-5. (No change.)

(b) Specific exclusions: The following exclusions to this subchapter are required to obtain a Hazardous Waste Facility (HWF) permit pursuant to N.J.A.C. 7:26-12.

1. Wastewater treatment units which meet the requirements of (a)[i] through [ii] above but not (a)[iii] above [because] **where the hazardous wastewater is received from intercompany or interstate sources [; and] except as provided in (a)5 above;**

2-3. (No change.)

(c) General requirements are as follows:

1. (No change.)

2. Where eligibility for an IWMF permit-by-rule has been terminated by the Department, the owner or operator of the IWMF shall apply for and is required to obtain an **individual IWMF permit** [which incorporates and requires compliance with] **in accordance with** N.J.A.C. 7:14A-4.4.

3. The owner or operator of an IWMF as described in (a)2 and 3 above shall obtain [a] **an individual NJPDES/IWMF permit** in accordance with N.J.A.C. 7:14A-4.4.

7:14A-4.3 Definitions

The following [definitions apply to] **words and terms, as used in this subchapter[.], shall have the following meanings:**

"Hazardous agent" means those elements, compounds, or mixtures that dissolve, emulsify, neutralize, precipitate, reduce, oxidize, volatilize, concentrate, congeal, entrap, fix, gel, make the

pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects of removal of the pollutant from the wastewater.

[1.] "Existing facility" means a facility which was in operation or for which construction has commenced, on or before November 19, 1980. Construction had commenced if the owner or operator has obtained all necessary Federal permits as well as any permit required by the [Solid Waste Administration] **Division of Solid Waste Management** and either:

[i.-ii.] 1-2. (No change in text.)

[2.] (No change in text.)

[3.] "Wastewater treatment unit" means a device which:

[i.](1) (No change in text.)

[ii.](2) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in N.J.A.C. 7:26-1, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in N.J.A.C. 7:26-1, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in N.J.A.C. 7:26-1] **2. Is designed to change the physical, chemical or biological character or composition of the wastewater so as to prepare it for further treatment or for reuse or disposal; and**

[iii.](3) Meets the [definition of tank in this section] **criteria specified in N.J.A.C. 7:14A-4.2(a)1i through iii.**

[4.] (No change in text.)

7:14A-4.4 Application for [a] **an individual IWMF permit**

(a) [Except] **Unless eligible for a permit-by-rule** as provided [in] at N.J.A.C. 7:14A-4.5 [(permit-by-rule)], an IWMF shall apply for [a] **an individual IWMF permit** in accordance with this section. Applicants shall refer to N.J.A.C. 7:26-12 (Permit Requirements for Hazardous Waste Facilities—Rules of the [Solid Waste Administration] **Division of Solid Waste Management**) for requirements and procedures for submission of an application for an **individual IWMF permit**. Such IWMF[s] shall comply with all of the requirements set forth therein with the exception of the following:

1. An environmental [impact] and health **impact** statement (EHIS) is not required or an IWMF; and

2. (No change.)

(b) For land treatment facilities only[.], **the following apply:**

1. In addition to complying with the requirements of N.J.A.C. 7:26-12, an applicant for a hazardous waste land treatment facility shall comply with N.J.A.C. 7:14A-10.8 and shall provide a description of design and operating procedures which demonstrates compliance with the requirements of N.J.A.C. 7:14A-4.7.

2-3. (No change.)

(c) For surface impoundments only[.]; In addition to complying with the requirements of N.J.A.C. 7:26-12.1, applicants for an **individual IWMF permit** for a surface impoundment which treats or stores hazardous waste shall provide a description of design and operating procedures which demonstrates compliance with the requirements of N.J.A.C. 7:26-10.6.

(d) Existing IWMFs [facilities.]; Prior to final disposition of an **individual IWMF permit application submitted in accordance with this section**, an existing IWMF [facility] may continue to operate in accordance with the standards and procedures set forth at N.J.A.C. 7:26-12.3. In addition to the requirements set forth at N.J.A.C. 7:26-12.3(e), an owner or operator of an existing treatment facility shall comply with the standards set forth at 40 CFR 265.270 through 282.

7:14A-4.5 IWMF [P]permits-by-rule

(a) Notwithstanding any other provision of this subchapter or N.J.A.C. 7:14A-7 and 8, the following shall be deemed to have [a] **an individual IWMF permit** if the conditions listed are met:

1-2. (No change.)

3. Wastewater treatment units, **as follows:**

i. The owner or operator [at] of a wastewater treatment unit if [he/she] **he or she** complies with the requirements of N.J.A.C. 7:14A-4.6, unless required to have an individual IWMF permit under (a)3ii below. Additional NJPDES Permit requirements which may apply to wastewater treatment units that are industrial waste management facilities are contained in N.J.A.C. 7:14A-3 (DSW), 6 (DGW)

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and 13.2 (SIU). Compliance with N.J.A.C. 7:14A-4.6 does not waive these additional requirements.

ii. The Department may terminate eligibility for a permit-by-rule under this section and require an owner or operator of a wastewater treatment unit to apply for and obtain [a] **an individual IWMF permit** [under this subchapter] **in accordance with N.J.A.C. 7:14A-4.4(a)**, if:
(1)-(3) (No change.)

7:14A-4.6 Standards for wastewater treatment units subject to a permit-by-rule

(a) Purpose, scope and applicability **are as follows:**

1.-2. (No change.)

(b) EPA identification number **requirements are as follows:**

1.-2. (No change.)

(c) Security **requirements are as follows:**

1. (No change.)

(d) Inspection **requirements are as follows:**

1. The owner or operator must inspect the wastewater treatment unit for malfunctions and deterioration, operator errors, and discharges which may be causing or may lead to unauthorized release of hazardous waste to the environment or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they may pose a threat to or harm human health or the environment. For DSWs, such inspections and the basis for the inspection shall be addressed in an emergency [all monitoring equipment, safety and emergency equipment, security devices, and operating and :] **plan as required by N.J.A.C. 7:14A-3.12.**

2.-6. (No change.)

7. The owner or operator must record inspections in an inspection log. He or she must [make a recording of the observations made, and the date and nature of any repairs or other remedial] **keep these records for at least three years from the date of inspection. At a minimum**, these records must include the date and time of each inspection, the name of the inspector, a recording of the observations made, and the date and nature of any repairs or other remedial actions taken as a result of inspection observations.

(e) General operating requirements **are as follows:**

1. The emergency plan required [in] at N.J.A.C. 7:14A-3.12 for DSWs shall address the requirements of this [paragraph] **subsection.**

2-3. (No change.)

4. Wastewater treatment units must be designed, constructed and operated so as to prevent hazardous wastes from being discharged into or on any land or water during the operating life of the unit.

(f)-(h) (No change.)

7:14A-4.7 Standards for hazardous waste land treatment units

(a) The following applies to this section:

1. (No change.)

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

"Closure period" means [a hazardous waste or a hazardous waste constituent as defined in] **the period described at N.J.A.C. 7:26-9.8(i).**

"[Groundwater] **Ground water** pollutant" means a hazardous waste or a hazardous waste constituent as defined [in] at N.J.A.C. 7:26-8.16, those pollutants identified [in] at N.J.A.C. 7:9-6, pollutants that may adversely affect [groundwater] **ground water** quality or pose a threat to human health or safety, or pollutants that may be limited in a NJPDES permit.

(b) An owner or operator who has fully complied with the requirements for existing facilities as defined [in] at N.J.A.C. 7:26-1.4 and N.J.A.C. 7:26-12 shall comply with the regulations specified in 40 CFR Part 265, subpart M, in lieu of the standards and requirements of this section, until final disposition of the permit application is made.

[3.] 1. Hazardous wastes which are listed [in] at N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 must not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that

is approved by the Department pursuant to the standards set out in this paragraph, and in accordance with all other applicable requirements of this subchapter. The factors to be considered are:

i.-iv. (No change.)

[4.] 2. (No change in text.)

(c)-(o) (No change.)

7:14A-5.1 Policy and scope

(a) Policy: The purpose of the State Underground Injection Control (UIC) program is to establish a system of controls which will insure that underground injection practices do not endanger underground sources of drinking water (USDWs). The aim of this subchapter is clearly preventative. The Department's policy is to liberally interpret and enforce this subchapter to prevent the contamination of the State's [groundwater] **ground water** resources. Water, therefore, is not a prerequisite for the enforcement of this subchapter.

(b) Scope: "Underground injection" means the subsurface emplacement of fluids by well injection. Accordingly, the UIC program regulates not only the disposal of wastes by well injection, but also the underground storage of fluids (which includes gases) which have been emplaced by means of an injection well, and the injection of water. [Subsection (c)] **Paragraph (b)1** below contains further examples of underground injection activities regulated under this subchapter. The regulatory scheme divides all injection wells into five classifications, which are set forth [in] at N.J.A.C. 7:14A-5.2. The types of regulatory controls imposed on the different classes are contained in subsequent sections.

1. Specific inclusions: The following wells are included among those types of injection activities which are regulated under this subchapter. (This list is not intended to be exclusive but is for clarification only.)

i. Any injection well located on a drilling platform inside the State's territorial waters[.];

ii. Any well, including any dug hole, that is deeper than its largest surface dimension, where the principal function of the well is emplacement of fluids[.];

iii. Any septic tank, seepage pit, or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste[.]; **and**

iv. (No change.)

2. (No change.)

7:14A-5.2 Classification of injection wells

(a) Injection wells are classified as follows:

1.-3. (No change.)

4. Class IV: Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, by owners or operators of radioactive waste disposal sites, or by any other person:

i. To dispose of hazardous wastes or radioactive wastes into or above a formation which, within two miles of the well bore, contains an underground source of drinking water (USDW);

ii. To dispose of other municipal and industrial wastes into or above a formation which, within two miles of the well bore, contains an underground source of drinking water (USDW), and the injection fluid quality does not meet the primary drinking water standards under N.J.A.C. 7:10-5 or 7:10-16, or applicable ground water quality standards (including anti-degradation or non-degradation policies, where applicable), whichever are more stringent. Excluded from Class IV are disposal systems regulated under "Standards for the Construction of Individual Subsurface Sewerage Disposal Systems", N.J.A.C. 7:9-2; these are regulated as Class V wells.

5. Class V: Injection wells not included in Class I, II, III, or IV. Some examples of Class V wells include:

i.-viii. (No change.)

ix. Geothermal wells and [groundwater] **ground water** heat pumps used in heating and aquaculture.

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7:14A-5.4 Prohibition of movement of fluid into underground sources of drinking water

(a) No UIC authorization by permit or by rule shall be allowed in the following circumstances:

1. (No change.)
2. Where a Class IV or V well causes or allows movement of fluid containing any contaminant into underground sources of drinking water, and the presence of that contaminant may cause a violation of any primary drinking water [regulation] **rule** under N.J.A.C. 7:10-5 or 7:10-16, any [groundwater] **ground water** quality standards under N.J.A.C. 7:9-6, or which may adversely affect the health of persons.

(b) For Class I, II, and III wells, and any Class IV well allowed under N.J.A.C. 7:14A-5.7(a)[(5)(i)]**Si** or (b), if any monitoring indicates the movement of injection or formation fluids into underground sources of drinking water, the Department shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. These additional requirements shall be imposed by modifying the permit in accordance with N.J.A.C. 7:14A-2.12, or the permit may be terminated under N.J.A.C. 7:14A-2.13 if cause [existing]**exists**, or appropriate [enforcement] **enforcement** action may be taken if the permit has been violated.

(c) For Class V wells, if at any time the Department learns that a Class V well may cause a violation of primary drinking water [regulations] **rules** under N.J.A.C. 7:10-5 or 7:10-16, or any ground water quality standards under N.J.A.C. 7:9-6, it shall:

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

7:14A-5.14 Criteria and standards applicable to Class I wells

(a) (No change.)

(b) This section establishes the criteria and standards for Class I wells disposing of municipal and/or industrial wastes (other than hazardous wastes or radioactive wastes), where the injection stream quality meets primary drinking water standards or applicable [groundwater] **ground water** quality standards (including anti-degradation or non-degradation policies, where applicable), whichever are more stringent.

- 1.-2. (No change.)
- (c) Construction requirements **are as follows**:
 1. (No change.)
 2. All Class I wells shall be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:
 - i. Depth to the [injection] **injection**;
 - ii.-vii. (No change.)
 - 3.-5. (No change.)

(d) Operating, monitoring and reporting requirements **are as follows**:

- 1.-3. (No change.)

7:14A-6.1 General requirements

(a) [Scope] **The scope of this subchapter is as follows**:

1. This subchapter describes the requirements for [ground-water] **ground water** monitoring programs for all discharges, past or present, actual or potential, of pollutants, including hazardous and non-hazardous waste as defined [in] **at** N.J.A.C. 7:14A-1.9, to [groundwater] **ground water** or onto land which might flow or drain into the waters of the State. A new source shall not discharge to [groundwater] **ground water** prior to installing a [groundwater] **ground water** monitoring system which satisfies the requirements of this subchapter and has been approved by the Department. All permits for a DGW shall include requirements for [groundwater] **ground water** monitoring programs.

- 2.-3. (No change.)
4. N.J.A.C. 7:14-6.3 through 6.6 shall be applicable to:
 - i. (No change.)
 - ii. IWMF["]s which are existing facilities under N.J.A.C. 7:14A-4.3; and

iii. (No change.)

5. N.J.A.C. 7:14A-6.15 shall be applicable to:

- i. (No change.)
- ii. IWMF["]s which have been issued a permit pursuant to N.J.A.C. 7:14A-4.4(a).
- iii. (No change.)

6. N.J.A.C. 7:14A-6.15 may also be applicable to any activity, process or operation where current or past practices have resulted in an actual or potential discharge of hazardous waste, hazardous waste constituents or other [groundwater] **ground water** pollutants onto the land or into the [groundwater] **ground water** [mined] **as determined** by the Department based on the criteria set forth in N.J.A.C. 7:14-6.15(d)2. The Department may require the discharger to obtain a NJPDES permit in order to satisfy the requirements of this section.

7. (No change.)

(b) (No change.)

7:14A-6.2 Hazardous waste monitoring

(a) As specified in N.J.A.C. 7:14A-6.1(a)4, the owner or operator of a surface impoundment, landfill, overland flow disposal system or infiltration-percolation system, land treatment facility or other means of land disposal or solid or liquid hazardous waste must implement a [groundwater] **ground water** monitoring program approved by the Department [and] **which is capable of determining** the facility's impact on the quality of [groundwater] **ground water**. The owner or operator must install, operate and maintain a [groundwater] **ground water** monitoring system which meets the requirements of N.J.A.C. 7:14A-6.3, and must comply with N.J.A.C. 7:14A-6.4 through 6.6. This monitoring program must be carried out during the active life of the facility, and, for disposal facilities, during the post-closure care period. An owner or operator may install, operate and maintain an alternate [groundwater] **ground water** monitoring system other than the one described in N.J.A.C. 7:14A-6.3 and 6.4. If the owner or operator decides to use an alternate [groundwater] **ground water** monitoring system, the owner or operator must:

1. Submit to the Department a specific plan certified by a qualified geologist or geohydrologist which satisfies the requirements of N.J.A.C. 7:14A-6.5(d)3 for an alternate [ground-water] **ground water** monitoring system and initiate the determinations specified in N.J.A.C. 7:14A-6.5(d)4.
2. (No change.)

7:14A-6.7 Applicability of non-hazardous waste monitoring

The owner or operator of a surface impoundment, landfill, overland flow disposal system, infiltration-percolation system or other land treatment facility that is used to manage non-hazardous waste must implement a ground water monitoring program capable of determining the facility's impact on the quality of ground water in the site vicinity. This ground water monitoring program must be carried out during the active life of the facility, and for disposal facilities, [during the active life of the facility, and for disposal facilities,] during the post-closure care period as well. [Subchapter 10] [(N.J.A.C. 7:14A-10.7 through 10.12)] present[s] filing requirements for applications for NJPDES permits for land disposal and treatment facilities. These include requirements as to any [ground-water] **ground water** monitoring plans and proposals which must be submitted as part of the application. The application and the ground water monitoring program subsequently implemented must conform with these requirements and the following requirements of this [section] **subchapter**.

7:14A-6.8 [Ground-water] **Ground water** monitoring system for DGW of non-hazardous waste
(No change in text.)

7:14A-6.9 Sampling and analysis for DGW of non-hazardous waste
(a) (No change.)

(b) In addition to ground water sampling and analysis of parameters specified in N.J.A.C. 7:14A-10.7 through 10.12 and approved by the Department, elevations of the [ground-water] **ground water** surface at each monitoring well must be determined each time a sample is obtained. The Department shall determine, based on the

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type of facility, type of waste and site specific characteristics whether to expand the list of parameters to be monitored. In addition, the Department may require that annually a gas chromatograph or a gas chromatograph/mass spectrometer (GC/MS) scan for volatile organics, acid extractables, base-neutral extractables and pesticides/PCB's be performed.

(c) (No change.)

7:14A-6.10 Preparation, evaluation and response for non-hazardous waste

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

(c) Within 15 days after the notification under (b) above, if any of the parameters have increased (or pH decreased) such that they do not conform with allowable levels under the specific terms and conditions of the facility's NJPDES permit, the owner or operator must develop and submit to the Department a specific plan certified by a geologist or geohydrologist for a [ground-water] **ground water** quality monitoring program that is more comprehensive than that described in N.J.A.C. 7:14A-6.8 and 6.9 for the initial ground water monitoring program employed prior to any occurrence of significant increase (or pH decrease) for concentrations or values of parameters required under N.J.A.C. 7:14A-6.9(b). This more comprehensive plan must be capable of determining:

1.-7. (No change.)

(d) The owner or operator must implement the [ground-water] **ground water** quality assessment plan which satisfies the requirements of [N.J.A.C. 7:14A-6.10]c **above** and, at a minimum, make the determinations related to [ground-water] **ground water** impact and specified in [N.J.A.C. 7:14A-6.10](c)2 and 3 **above**. The owner or operator must make his or her first determination under this paragraph as soon as technically feasible, and within 15 days after that determination, submit to the Department a written report containing an assessment of the ground water quality.

(e) If the owner or operator demonstrates and the Department concurs that the facility has not contaminated ground water, he or she may reinstate the initial [ground-water] **ground water** monitoring program described in N.J.A.C. 7:14A-6.7 through 6.9 and [6.10](a) **above**. He or she must so notify the Department in the report submitted under (d) **above**.

(f) (No change.)

(g) Unless the [ground-water] **ground water** is monitored to satisfy the requirements of (d) **above**, the owner or operator must, at least annually, evaluate the data on ground water surface elevations obtained under N.J.A.C. 7:14A-6.9(b) to determine whether the number, location and depth of upgradient monitoring wells continues to be sufficient to yield [ground-water] **ground water** samples that are:

1. Representative of background [ground-water] **ground water** quality near the facility; and

2. (No change.)

(h) The evaluation must also determine whether downgradient monitoring wells continue to be sufficient in number, location and depth that they are able to immediately detect any statistically significant amount of [ground-water] **ground water** contamination migrating from the facility to the ground water. If the evaluation shows that monitoring wells are no longer adequate to fulfill the requirements of this [paragraph] **subsection**, the owner or operator must immediately modify the number, location and depth of the ground water monitoring wells to bring the [ground-water] **ground water** monitoring system into conformance with these requirements.

7:14A-6.11 Recordkeeping and reporting for DGW of non-hazardous waste

(a) Unless the ground water is monitored to satisfy the requirements of N.J.A.C. 7:14A-6.10(d), the owner or operator must keep records of the analyses and ground water surface elevations required in N.J.A.C. 7:14A-6.9(b) for all monitoring wells and the evaluations required in N.J.A.C. 7:14A-6.10(g) and (h) throughout the active life of the facility, and for disposal facilities, throughout the post-closure care period as well; and report the following ground water monitoring information to the Department:

1. (No change.)

2. Annually concentrations or values of the parameters specified in N.J.A.C. 7:14A-6.9(b) for each [ground-water] **ground water**

monitoring well, along with the required evaluations, under N.J.A.C. 7:14A-6.10(a) and (g). Results of the evaluations of ground water surface elevations under N.J.A.C. 7:14A-6.10(g) and (h) and a description of the response to that evaluation, where applicable, must be reported annually.

(b) (No change.)

7:14A-6.12 [Ground-water] **Ground water** sampling procedures (No change in text.)

7:14A-6.15 Criteria for [groundwater] **ground water** protection and response

(a) The following apply to this section:

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

"Groundwater pollutant" means the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting and the closure period.)

"[Groundwater] **Ground water** pollutant" means a hazardous waste or hazardous waste constituent as defined [in] at N.J.A.C. 7:26-8.16, those pollutants identified in N.J.A.C. 7:9-6, pollutants that may adversely affect [groundwater] **ground water** [equality] **quality** or pose a threat to human health or safety, or pollutants that may be limited in a NJPDES permit.

"Point of compliance" means a vertical surface located at the hydraulically downgradient limit of the waste management area that extend[eds] down into the uppermost aquifer, uppermost zone of [groundwater] **ground water** or any other [groundwater] **ground water** or aquifer that may be impacted by the discharge underlying the regulated units.

"Regulated unit" means any surface impoundment, waste pile, land treatment unit or landfill, or part thereof, that receives hazardous waste or other potential [groundwater] **ground water** pollutants after January 26, 1983.

2.-3. (No change.)

4. After closure of the regulated unit, this section:

i. Does not apply if all [groundwater] **ground water** pollutants, waste, waste residues, contaminated containment system components contaminated [groundwater] **ground water** and contaminated soils and subsoils are removed or decontaminated at closure;

ii.-iii. (No change.)

(b) The required programs are as follows:

1. Owners and operators subject to this section shall conduct a monitoring and response program as follows:

i. Whenever hazardous constituents under (d)[.] below, from a regulated unit are detected at the compliance point under (f)[.] below, the owner or operator shall institute a compliance monitoring program under (j)[.] below. Further, the Department may require the compliance program to be implemented when the [groundwater] **ground water** quality standards, N.J.A.C. 7:9-6, or a permit-specified limitation is exceeded.

ii. Whenever the [groundwater] **ground water** protection standard for a hazardous constituent under (c)[.] below is exceeded, the owner or operator shall institute a corrective action program under (k)[.] below. For [nonhazardous] **non-hazardous** constituents the Department may require the owner or operator to institute either a compliance monitoring program or a corrective action program based on the criteria identified in (d)2[.] below.

iii. Whenever hazardous constituents under (d)[.] below, from a regulated unit exceed concentration limits under (e)[.] below, in [groundwater] **ground water** between the point of compliance under (f)[.] below, and the downgradient facility property boundary, the owner or operator shall institute a corrective action program under (k)[.] below. For [nonhazardous] **non-hazardous** constituents the Department may require the owner or operator to institute either a compliance monitoring program or a corrective action program based on the criteria identified in (d)2[.] below.

iv. In all other cases, the owner or operator shall institute a detection monitoring program under (i)[.] below.

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v. The Department may require additional monitoring wells to be installed within 30 days of the notification to the Department that the [groundwater] **ground water** protection standard in (c)[,] below, is exceeded in order to make the determination under (b)liii[,], above.

vi. Any [groundwater] **ground water** pollutants migrating beyond the waste management area are assumed to originate from a regulated unit unless the owner or operator can prove to the satisfaction of the Department that such waste, waste constituent or other [groundwater] **ground water** pollutant originated from another source.

2. (No change.)

(c) The owner or operator shall comply with conditions specified in the permit that are designed to ensure that hazardous constituents or other [groundwater] **ground water** pollutants under (d)[,] below, entering the [groundwater] **ground water** from a regulated unit do not exceed the concentration limits under (e)[,] below, in the uppermost aquifer, uppermost zone of ground water or any other [groundwater] **ground water** or aquifer that may be impacted by the discharge underlying the waste management area beyond the point of compliance under (f) below, during the compliance period under (g)[,]below. The Department will establish this [groundwater] **ground water** protection standard in the permit. When hazardous constituents of other [groundwater] **ground water** pollutants have entered the [groundwater] **ground water** from a regulated unit the Department will modify the permit to include a new [groundwater] **ground water** protection standard if it is necessary.

(d) The [groundwater] **ground water** pollutant identification is as follows:

1. The Department will specify in the permit the hazardous constituents or other [groundwater] **ground water** pollutants to which the [groundwater] **ground water** protection standard of (c)[,] above[,], applies.

2. The Department may exclude a hazardous waste constituent identified in N.J.A.C. 7:26-8.16 from the list of hazardous constituents specified in the permit if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the Department will consider the following:

i. Potential adverse effects on [groundwater] **ground water** quality in an aquifer where the discharge is occurring or that may be hydraulically connected to the aquifer where the discharge is occurring, considering:

(1) The physical and chemical characteristics of the hazardous waste or other [groundwater] **ground water** pollutants in the regulated unit, including its potential for migration;

(2) (No change.)

(3) The quantity of [groundwater] **ground water** and the rate and direction of [groundwater] **ground water** flow;

(4) The proximity and withdrawal rates of [groundwater] **ground water** users;

(5) The current and future uses of [groundwater] **ground water** [is] in the area;

(6) The existing quality of [groundwater] **ground water**, including other sources of contamination and their cumulative impact on the [groundwater] **ground water** quality insofar as this is consistent with the State [groundwater] **ground water** quality standards, N.J.A.C. 7:9-6;

(7) The potential for health risks caused by human exposure to hazardous waste constituents [of] or other [groundwater] **ground water** pollutants.

(8) The potential damage to wildlife, domestic animals, aquatic life, crops, vegetation, and physical structures caused by exposure to hazardous waste constituents or other [groundwater] **ground water** pollutants.

(9) (No change.)

ii. Potential adverse effects on [hydraulically-connected] **hydraulically connected** surface water quality, considering:

(1) The volume and physical and chemical characteristics of the hazardous waste and other [ground-water] **ground water** pollutants in the regulated unit[;];

(2) The hydrogeological characteristics of the facility and surrounding land[;];

(3) The quantity and quality of [groundwater] **ground water**, and the rate and direction of [groundwater] **ground water** flow;

(4)-(7) (No change.)

(8) The potential for health risks caused by human exposure to hazardous waste constituents or other [groundwater] **ground water** pollutants;

(9) The potential damage to wildlife, domestic animals, aquatic life, crops, vegetation, and physical structures caused by exposure to hazardous waste constituents or other [groundwater] **ground water** pollutants; and

(10) (No change.)

3. In making any determination under (d)2[,], above[,], about the use of [groundwater] **ground water** in the area around the facility, the Department will consider any identification of underground sources of drinking water and State [groundwater] **ground water** quality standards, N.J.A.C. 7:9-6.

(e) The Department will specify in the permit the concentration limits in the [groundwater] **ground water** for hazardous constituents established under (d)[,], above,

1. The concentration of a hazardous constituent:

i. Shall not exceed the natural background level for individual hazardous constituents as identified in N.J.A.C. 7:26-8.16 in the [ground-water] **ground water**;

ii. For parameters not included in (e)li[,], above, shall not exceed the concentration limit specified in the State [groundwater] **ground water** quality standards, N.J.A.C. 7:9-6, or State surface water quality standards, N.J.A.C. 7:9-4;

iii. For any of the constituents listed in Table 1, shall not exceed the respective value given in that table if the background level of the constituent is below the value given in Table 1. Where the maximum concentrations specified in Table 1 conflict with the [groundwater] **ground water** quality criteria in N.J.A.C. 7:9-6, the more stringent concentration limit will be applied;

iv. (No change.)

2. (No change.)

TABLE 1 (No change.)

3. In making any determination under (e)2[,], above[,], about the use of [groundwater] **ground water** in the area around the facility the Department will consider any identification of underground sources of drinking water and State [groundwater] **ground water** quality standards.

4. (No change.)

(f) The Department will specify in the permit the point of compliance at which the [groundwater] **ground water** protection standard of (c)[,] above applies and at which monitoring shall be conducted.

(g) The compliance period is as follows:

1. (No change.)

2. If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in (g)1 above, the compliance period is extended until the owner or operator can demonstrate that the [groundwater] **ground water** protection standard of (c)[,] above [,], has not been exceeded for a period of three consecutive years.

(h) The owner or operator shall comply with the following requirements for any [groundwater] **ground water** monitoring program developed to satisfy (i), (j), or (k)[,], below:

1. The [groundwater] **ground water** monitoring system shall consist of a sufficient number of satisfactory wells installed at appropriate locations and depths to yield [groundwater] **ground water** samples that:

i. (No change.)

ii. Represent the quality of [groundwater] **ground water** passing under the regulated unit and through the point of compliance.

2. If a facility contains more than one regulated unit, separate [groundwater] **ground water** monitoring systems may not be required for each regulated unit provided that provisions for sampling the [groundwater] **ground water** in the uppermost aquifer, uppermost zone of [groundwater] **ground water** or any other [groundwater] **ground water** or aquifer that may be impacted by the discharge will enable detection and measurement at the compliance point of hazardous constituents or other [groundwater] **ground water** pollutants from

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the regulated units that have entered the [groundwater] **ground water**.

3. All [groundwater] **ground water** monitoring wells shall be constructed pursuant to N.J.A.C. 7:14A-6.13. In cases where the [groundwater] **ground water** monitoring wells do not meet the requirements of the Department, they shall be replaced within 30 days of receipt of notification from the Department that they are not satisfactory. The replacement wells shall be subject to Departmental approval.

4. The [groundwater] **ground water** monitoring program shall also be consistent with N.J.A.C. 7:14A-6.12. Sampling and analysis procedures shall be designed to ensure monitoring results that provide a reliable indication of [groundwater] **ground water** quality below the waste management area. At a minimum, the program shall include procedures and techniques for:

i.-iv. (No change.)

5. The [groundwater] **ground water** monitoring program shall include Department approved sampling and analytical methods that are appropriate for [groundwater] **ground water** sampling in order to accurately measure hazardous constituents or other [groundwater] **ground water** pollutants in [groundwater] **ground water** samples.

6. The [groundwater] **ground water** monitoring program shall include a determination of the [groundwater] **ground water** surface elevation made prior to flushing, pumping or evacuating the well or sampling each time [groundwater] **ground water** is sampled.

7. When required by the Department, the [groundwater] **ground water** monitoring program shall establish background [groundwater] **ground water** quality for any or all of the hazardous constituents or other [groundwater] **ground water** pollutants specified in the permit.

i. In the detection monitoring program under [subsection] (i)[.] below, background [groundwater] **ground water** quality shall be based on data from quarterly sampling of wells upgradient from the waste management area for one year.

ii. In the compliance monitoring program under (j)[.] below, background [groundwater] **ground water** quality for a hazardous constituent shall be based on data from upgradient wells that:

(1)-(2) (No change.)

(3) Accounts, to the extent possible, for seasonal fluctuations in background [groundwater] **ground water** quality if such fluctuations are expected to affect the concentration of the hazardous constituent.

iii. With Department approval, background quality may be based on sampling of wells that are not upgradient from the waste management area where:

(1) (No change.)

(2) Sampling at other wells will provide an accurate indication of background [groundwater] **ground water** quality that is as representative or more representative than that provided by the upgradient wells.

iv. In developing the data base used to determine a background value for each [groundwater] **ground water** pollutant or hazardous waste constituent, the owner or operator shall take a minimum of one sample for each well and a minimum of four samples from the entire system used to determine background [groundwater] **ground water** quality, each time the [groundwater] **ground water** monitoring system is sampled.

8. (No change.)

(i) The owner or operator required to establish a detection monitoring program under this section shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall monitor for indicator parameters (such as[.] pH, specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in [groundwater] **ground water**. The Department shall specify the parameters or constituents to be monitored in the permit, after considering the following factors:

i.-iii. (No change.)

iv. The concentrations or values and coefficients of variation of proposed monitoring parameters of constituents in the background [groundwater] **ground water**.

2. The owner or operator shall install a [groundwater] **ground water** monitoring system at the compliance point as specified in (f)[.]

above. The [groundwater] **ground water** monitoring system shall comply with (h)iii, 2 and 3[.] above.

3. The owner or operator shall establish a background value for each monitoring parameter or constituent specified in the permit pursuant to (i)1[.] above. The permit shall specify the statistical values for each parameter or specify the procedures to be used to calculate the background values.

i.-ii. (No change.)

iii. In taking samples used in the determination of background values, the owner or operator shall use a [groundwater] **ground water** monitoring system that complies with (h)ii, 2 and 3[.] above.

4. The owner or operator shall determine [groundwater] **ground water** quality at each [groundwater] **ground water** monitoring well at the compliance point as specified in the permit, but at least semi-annually during the active life of a regulated unit (including the closure period) at the post-closure care period. The owner or operator shall express the [groundwater] **ground water** quality at each [groundwater] **ground water** monitoring well in a form necessary for the determination of statistically significant increases under (i)7[.] above.

5. At least annually or on a more frequent basis as specified in the facility's NJPDES permit, the owner or operator shall determine the [groundwater] **ground water** flow gradients, rates and directions for all geologic formations or zones monitored.

6. (No change.)

7. The owner or operator shall determine whether there is a statistically significant increase over background values for any parameter or constituent specified in the permit pursuant to (i)4[.] above, each time he or she determines [groundwater] **ground water** quality at the compliance point under (i)4[.] above.

i. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the [groundwater] **ground water** quality at each [groundwater] **ground water** monitoring well at the compliance point for each parameter or constituent, according to the statistical procedure specified in the permit under (h)8[.] above.

ii. The owner or operator shall determine whether there has been a statistically significant increase at each [groundwater] **ground water** monitoring well at the compliance point within a reasonable time period after completion of sampling. The Department will specify that time period in the permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of [groundwater] **ground water** samples.

8. If the owner or operator determines, pursuant to (i)7[.] above, that there is a statistically significant increase for parameter or constituents specified pursuant to (i)1[.] above [.] in any [groundwater] **ground water** monitoring well at the compliance point, the owner or operator shall:

i. (No change.)

ii. Immediately sample the ground water in all monitoring wells and determine the concentration of all constituents identified in N.J.A.C. 7:26-8.16 and other permit-limited pollutants that are present in [groundwater] **ground water**;

iii. (No change.)

iv. Within 45 days, submit to the Department an application for a permit modification to establish a compliance monitoring program meeting the requirements of (j)[.] below. The application shall include the following information:

(1) An identification of the concentration of any N.J.A.C. 7:26-8.16 constituents found in the [groundwater] **ground water** at each [groundwater] **ground water** monitoring well at the compliance point;

(2) Any proposed changes to the [groundwater] **ground water** monitoring system at the facility necessary to meet the requirements of (j)[.] below;

(3) (No change.)

v. (No change.)

9. If the owner or operator determines, pursuant to (i)7 above, that there is a statistically significant increase of parameters or constituents specified pursuant to (i)1 above, a violation of State [groundwater] **ground water** quality standards, N.J.A.C. 7:9-6.1, or a violation of permit conditions at any [groundwater] **ground water**

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monitoring well at the compliance point, the owner or operator may demonstrate to the satisfaction of the Department that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under (i)8iv above, the owner or operator is not relieved of the requirement to submit a permit modification application within the same time specified in (i)8iv above unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator shall:

i. Notify the Department in writing within seven days of determining a statistically significant increase at the compliance point a violation of State [groundwater] **ground water** quality standards, N.J.A.C. 7:9-6, or a violation of permit conditions that the owner or operator intends to make a demonstration under (i)9 [of this section] above;

ii-iv. (No change.)

10. (No change.)

11. The owner or operator shall assure that monitoring and corrective action measures necessary to achieve compliance with the [groundwater] **ground water** protection standard under (c)[,] above[,] are taken during the term of the permit.

(j) An owner or operator required to establish a compliance monitoring program under this subsection shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall monitor the [groundwater] **ground water** to determine whether regulated units are in compliance with the [groundwater] **ground water** protection standard under (c)[,] above. The Department will specify the [groundwater] **ground water** protection standard in the permit, including:

i. A list of hazardous constituents identified under (d)[,] above[,] and other [groundwater] **ground water** pollutants;

ii. Concentration limits under (e)[,] above[,] for each of the hazardous constituents. The Department may also set concentration limits for the other [groundwater] **ground water** pollutants;

iii. [the]The compliance point under (f)[,] above; and

iv. The compliance period under (g)[,] above.

2. The owner or operator shall install a [groundwater] **ground water** monitoring system at the compliance point as required by (f) [,] above. The [groundwater] **ground water** monitoring system shall comply with (h)1i, [(h)2 and 3 above].

3. Where a concentration limit established under [paragraph] (h)1i above is based on background [groundwater] **ground water** quality, the Department will specify the concentration limit in the permit as follows:

i. If there is a high temporal correlation between upgradient and compliance point concentrations of the hazardous constituents, the Department may establish the concentration limit through sampling at upgradient wells each time [groundwater] **ground water** is sampled at the compliance point. In all other cases, the concentration limit will be the mean of the pooled data on the concentration of the hazardous constituent.

ii. (No change.)

iii. The owner or operator shall:

(1) Comply with (h)7 above in developing the data base used to determine background values;

(2) Express background values in a form necessary for the determination of statistically significant increases under (h)8 above; and

(3) Use a [groundwater] **ground water** monitoring system that complies with (h)1i, 2 and 3 above.

4. (No change.)

5. The owner or operator shall determine the [groundwater] **ground water** flow rate annually and determine the ground water flow direction in all affected geologic formations or zones at each sampling event specified in the permit but, in any case, at least quarterly.

6. The owner or operator shall analyze samples from all [groundwater] **ground water** monitoring wells at the compliance point for all constituents contained in N.J.A.C. 7:26-8.16 at least annually to determine whether additional hazardous constituents are present

in the uppermost aquifer, uppermost zone of ground water or any other ground water aquifer that may be impacted by the discharge. If the owner or operator finds N.J.A.C. 7:26-8.16 constituents in the [groundwater] **ground water** that are not identified in the permit as hazardous constituents, the owner or operator shall report the concentrations of these additional constituents to the Department within seven days after completion of the analysis.

7. (No change.)

8. The owner or operator shall determine whether there is a statistically significant increase over the concentration limits for any hazardous constituents specified in the permit pursuant to (j)1[,] above, each time the owner or operator determines the concentration of hazardous constituents in [groundwater] **ground water** at the compliance point.

i. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the [groundwater] **ground water** quality at each [groundwater] **ground water** monitoring well at the compliance point for each hazardous constituent as to the concentration limit for that constituent according to the statistical procedures specified in the permit under (h)8 above.

ii. The owner or operator shall determine whether there has been a statistically significant increase at each [groundwater] **ground water** monitoring well at the compliance point, within a reasonable time period after completion of sampling. The Department will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of [groundwater] **ground water** samples.

9. If the owner or operator determines, pursuant to (j)8[,] above, that the [groundwater] **ground water** protection standard in (j)1[,] above[,] is being exceeded at any [groundwater] **ground water** monitoring well at the point of compliance, the owner or operator shall.

i. (No change.)

ii. Submit to the Department an application for a permit modification to establish a corrective action program meeting the requirements of (k)[,] below[,] within 60 days, or within 45 days if an engineering feasibility study previously has been submitted to the Department under (i)8v above. The application shall at a minimum include the following information:

(1) A detailed description of corrective actions that will achieve compliance with the [groundwater] **ground water** protection standard specified in the permit under (j)1[,] above; and

(2) A plan for a [groundwater] **ground water** monitoring program that will demonstrate the effectiveness of the corrective action. Such a [groundwater] **ground water** monitoring program may be based on a compliance monitoring program developed to meet the requirements of this subsection.

10. If the owner or operator determines, pursuant to (j)8 above, that the [groundwater] **ground water** protection standard is being exceeded at any [groundwater] **ground water** monitoring well at the point of compliance, the owner or operator may demonstrate to the satisfaction of the Department that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit application under (j)9ii above, the owner or operator is not relieved of the requirement to submit a permit modification application within the time period specified in (j)1[(9)]9ii above unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator shall:

i. Notify the Department within seven days that the owner or operator intends to make a demonstration under (j)10 [of this section:] above;

ii. Within 30 days, submit a report to the Department which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent non-compliance with the standards resulted from error in sampling, analysis[,] or evaluation;

iii. (No change in text.)

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iv. Continue to monitor in accordance with the compliance monitoring program established under this subsection.

11. (No change.)

12. The owner or operator shall assure that monitoring and corrective action measures necessary to achieve compliance with the [groundwater] **ground water** protection standard under (c)[.] above[.] are taken during the term of the permit.

13. In those cases where the owner or operator demonstrates in accordance with (j)10 **above**, that the source is other than a regulated unit but the source is under the control of the owner or operator, the Department may require the owner or operator to undertake [groundwater] **ground water** monitoring which is equivalent to that specified in [(j)] **this subsection**, and corrective action which is equivalent to that specified in (k)[.] below.

(k) An owner or operator required to establish a corrective action program under this section shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall take corrective action to ensure that regulated units are in compliance with the [groundwater] **ground water** protection standard under (c)[.] above. The Department will specify the [groundwater] **ground water** protection standard in the permit, including:

i. A list of the hazardous constituents identified under (d)[.] above[.];

ii. Concentration limits under (e)[.] above[.] for each of those hazardous constituents[.];

iii. The compliance point under (f)[.] above[.]; and

iv. The compliance period under (g)[.] above.

2. (No change.)

3. The owner or operator shall begin corrective action within a reasonable time period after the [groundwater] **ground water** protection standard is exceeded. The Department will specify that time period in the permit. If a permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action will begin and such a requirement will operate in lieu of (j)9ii **above**.

4. In conjunction with a corrective action program, the owner or operator shall establish and implement a [groundwater] **ground water** monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under (j) above, and shall be as effective as that program in determining compliance with the [groundwater] **ground water** protection standard under (c) above, and in determining the success of a corrective action program under (k)5 **below**, where appropriate.

5. In addition to the other requirements of this subsection, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under (d) above, that exceed concentration limits under (e) above, in [groundwater] **ground water** between the compliance point under (f) above, and the furthest extent of [groundwater] **ground water** contamination which is either statistically significant as defined in (h)8 **above**, or exceeds the State [groundwater] **ground water** quality standards in N.J.A.C. 7:9-6[.1] or exceeds permit limits. The permit will specify the measures to be taken.

i.-ii. (No change.)

6. The owner or operator shall continue corrective action measures during the compliance period to the extent necessary to ensure that the [groundwater] **ground water** protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, the owner or operator shall continue that corrective action for as long as necessary to achieve compliance with the [groundwater] **ground water** protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the water management area (including the closure period) if the owner or operator can demonstrate to the Department's satisfaction, based on data from the [groundwater] **ground water** monitoring program under (k)4 **above**, that the [groundwater] **ground water** protection standard of (c) above, has not been exceeded for a period of three consecutive years.

7.-8. (No change.)

7:14A-7.2 Procedures for decision[-]making

(a) Initial issuance of a new source NJPDES permit (except a DSW new source which shall comply with N.J.A.C. 7:14A-3.3 and (b) below) includes the following procedural stages:

1. No person shall build, install, or substantially modify a facility for the collection or treatment of any pollutant prior to the issuance of a final [draft] NJPDES permit. The final [draft] NJPDES permit shall serve as approval for such action in accordance with Section 6(b) of the State Act, unless the Department specifically requires the applicant to apply for a treatment works approval in accordance with [subchapter 12 of this chapter] N.J.A.C. 7:14A-12. All treatment works shall conform with the requirements of [subchapter 12] N.J.A.C. 7:14A-12, even though not specifically required to obtain Departmental approval.

2.-3. (No change.)

4. Where the Department issues a draft permit, after consideration of any comments submitted during the public comment period, the Department shall issue a final [draft] permit in accordance with N.J.A.C. 7:14A-8.6. Where a person is required to obtain a treatment works approval, a final [draft] permit shall not be issued until a Stage 2 approval is obtained by the applicant.

5. (No change.)

6. The Office of Administrative Law shall hold hearings in accordance with the "Administrative Procedure Act", N.J.A.C. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The Office of Administrative Law shall make the initial decisions concerning the final [draft] NJPDES permit.

7. The Commissioner shall make all final decisions concerning the final [draft] NJPDES permit.

8. A [final draft NJPDES permit] **DAC** shall be issued for a fixed term of 18 months for non-POTW[']s and minor industrial and publicly owned facilities, and 30 months for major industrial and other publicly owned facilities.

9. A [final draft NJPDES permit] **DAC** may be extended for one additional period of 18 months for non-POTWs and minor industrial and publicly owned facilities and 30 months for major industrial and publicly owned facilities provided.

i. [The applicant has demonstrated commencement of building, installing or substantially modifying a facility for the collection or treatment of any pollutant] **The applicant has demonstrated completion of final engineering designs, specifications and plans of the treatment works; and**

ii. The applicant submits a certification from a Licensed Professional Engineer that the [facility] **treatment works** has been designed to meet the [requirements of the final draft NJPDES permit.] **applicable conditions in the DAC and submits a copy of the final engineering design; and**

iii. **The applicant has submitted a written request for the extension 30 days prior to the expiration date of the DAC.**

10. When a final [draft] NJPDES permit expires [an applicant], **a permittee must reapply for a new [draft] NJPDES permit where the [applicant] permittee intends to discharge. An application for a renewal NJPDES permit shall be made in proper form in accordance with N.J.A.C. 7:14A-2 and 7:14A-10.**

11. No person shall discharge any pollutant prior to the issuance of a **final** NJPDES permit.

12. All holders of a final [draft permit] **DAC** shall submit a request for a NJPDES discharge to surface water permit and where applicable, Stage 3 approval, at least [60] **180** days prior to a planned discharge.

13. [Within 60 days of planned discharge, the] **The Department shall inspect the facility or site and shall issue a NJPDES discharge permit provided the applicant submits certifications from a Licensed Professional Engineer that:**

i. The treatment works has been designed to meet the applicable conditions in the final [draft permit] **DAC; and**

ii. The treatment works has been constructed in accordance with the original design specifications or with any modifications which were approved by a Licensed Professional Engineer **and the Department.**

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14. The NJPDES discharge permit shall contain the same terms and conditions as the valid [final draft NJPDES permit or] final DAC.

(b) (No change.)

7:14A-7.3 Application review by the Department

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

(c) The Department shall determine whether a site visit[(s)] and inspection are necessary requirements and part of the application in order to [evaluste] **evaluate** the discharge completely and accurately. If the Department decides that a site visit [is] **and inspection** are necessary for any reason in conjunction with the processing of an application, the applicant shall be notified and a date shall be scheduled.

(d) The Department [shall] **may** require any applicant who discharges or who proposes to discharge pollutants to the land or to the ground water to install monitoring wells in order to determine background ground water quality. The installation of monitoring wells and any information obtained from said monitoring wells shall be a necessary part of the application. The location and number of monitoring wells shall be approved by the Department. All monitoring wells shall be installed in accordance with applicable Department procedures.

(e)-(f) (No change.)

7:14A-7.6 Draft permits and draft DAC[']s

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

(e) If the Department decides to prepare a draft permit or draft DAC, the permits shall contain the following information:

1. All conditions under N.J.A.C. 7:14A-2.5 and 2.6[.];
2. All compliance schedules under N.J.A.C. 7:14A-2.8[.];
3. All monitoring requirements under N.J.A.C. 7:14A-2.9[.];
4. For[. i.] IWMF permits, standards for treatment storage, or disposal and other permit conditions under N.J.A.C. 7:14A-4.4[.];
- [ii.]5. For UIC permits, permit conditions under N.J.A.C. 7:14A-5.10[.];and
- [iii.]6. For DSW permits, effluent limitations, standards, prohibitions and conditions under N.J.A.C. 7:14A-3.10 and 3.11 and all variances that are to be included under N.J.A.C. 7:14A-[9.8]9.6.

(f) (No change.)

7:14A-7.8 Fact [Sheet] sheet

(a) A fact sheet shall be prepared for every draft permit or draft DAC for a major facility or activity, for every general permit (40 CFR Section 123.95 and N.J.A.C. 7:14A-3.9), for every draft DAC or draft permit that incorporates a variance or requires an explanation under N.J.A.C. 7:14A-[9.2(b)]9.6, and for every draft DAC or draft permit which the Department finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit or draft DAC. The Department shall send this fact sheet to the applicant and, on request, to any other person.

(b) (No change.)

7:14A-8.1 Public notice of permit actions and public comment period

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

(f) The Department shall include the following information in all public notices provided pursuant to this subchapter:

1.-4. (No change.)

5. Name and address of the Bureau within the [Water Quality Management Element] **Division of Water Resources** to which interested persons can make a written request for a copy of the administrative record and the times and place at which the record will be open for public inspection;

6.-7. (No change.)

(g)-(h) (No change.)

7:14A-9.6 Variances under the State and Federal Acts

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

(d) [Modifications to water quality based effluent limitations for POTWs and Non-POTWs] Applications for a modification to [a] water quality based effluent limitations **for POTWs and non-POTWs**

shall be made in accordance with N.J.A.C. 7:9-[5.12]4.8 and 4.9 prior to the close of the public comment period under N.J.A.C. 7:14A-8[.1].

7:14A-10.1 Schedule for submission of applications

(a) (No change.)

(b) Any facility which requires a permit covered by this chapter shall apply for a permit in accordance with the requirements of N.J.A.C. 7:14A-2.1, 3.2(DSW), 4.4(IWMF), 5.8(UIC), [subchapter 6 (DCW)] N.J.A.C. 7:14A-6(DGW), and the applicable sections of this subchapter.

(c)-(g) (No change.)

(h) Except as described in N.J.A.C. 7:14A-2.1(g)[.], and N.J.A.C. 7:14A-10.2, existing dischargers shall apply for a NJPDES permit in compliance with the following schedule except where the Department determines that an application should be submitted in furtherance of a consolidated permit system (see N.J.A.C. 7:14A-1.4) or where the Department makes a determination that certain dischargers shall file sooner because of potential environmental hazards, [or] threats to the public health or safety or other factors consistent with the intent of the State Act:

1. Land application of sludge and septage **as follows:**

i. Any person who[se] land applies hazardous waste shall submit a Part B application within six months of request by the Department.

ii.-v. (No change.)

2.-5. (No change.)

(i)-(j) (No change.)

7:14A-10.3 Discharges to surface waters (DSW)

(a) Any person planning to discharge pollutants to surface waters of the State must apply for a Discharge Allocation Certificate (DAC) prior to applying for a NJPDES permit. Any person who is currently discharging pollutants to the surface waters of the State, and who does not have a NJPDES or NPDES permit, shall apply for a NJPDES permit within 30 days of the effective date of this chapter. Any person with a valid NPDES or NJPDES permit shall apply for a NJPDES permit in accordance with the schedules in N.J.A.C. 7:14A-2[.1] and 10[.1]. [In addition to the general requirements of N.J.A.C. 7:14A-2.1 the following information, where applicable, shall be submitted.] Pre-application conferences with the Department are strongly recommended. [Information] **The following information, in addition to the requirements of N.J.A.C. 7:14A-2, shall be required for a DAC or NJPDES permit:**

1. [State name] **Name** and location of facility, and type of waste to be discharged.

2. [State expiration] **Expiration** date of existing permit or proposed start up date for new source. Applications must be received at least 180 days prior to expiration of existing permits or 180 days before proposed start up for new sources.

3.-6. (No change.)

7. Maximum production. If an effluent guideline promulgated under Section 304 of the Federal Act applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline **must be given**. The reported measure must reflect the actual production of the facility as required by N.J.A.C. 7:14A-3.14(b)2.

8. (No change.)

9. Effluent characteristics. [Information on the discharge of pollutants specified in this paragraph.] When "quantitative data" for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved, the applicant must comply with N.J.A.C. 7:14A-2.5(a)10iii. The requirements in (a)9iv and v below that an applicant must provide quantitative [date] **data** for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used unless otherwise specified by the Department. An applicant is expected to "know or

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have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.) **Each applicant shall report as follows:**

i. Every applicant must report quantitative data for every outfall for the following pollutants:

(1)-(7) (No change.)

ii. (No change.)

iii. Each applicant with processes in one or more primary industry category (see Appendix E) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(1)-(2) (No change.)

iv. Each applicant must report for each outfall, quantitative data for the following pollutants, if the applicant knows or has reason to believe that the pollutant is discharged from the outfall:

(1) All pollutants listed in Table II or Table III of Appendix B (the toxic pollutants) for which quantitative data is not otherwise required under (a)9iii above except that an applicant qualifying as a small business under (a)10 below is not required to analyze for the pollutants listed in Table II of Appendix B (the organic toxic pollutants).

(2) (No change.)

v. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Appendix B, Tables V (certain hazardous substances and asbestos) and VI (Miscellaneous Toxic Pollutants) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

vi. (No change.)

10.-16. (No change.)

(b) (No change.)

(c) NJPDES Permit [-]: Upon receipt of a Discharge Allocation Certificate, the applicant may design and construct a treatment works to meet the limits stated unless the Department determines that a [Treatment Works Approval] **treatment works approval** is also required in accordance with [subchapter 12 of this chapter] N.J.A.C. 7:14A-12. At least 60 days prior to planned discharge, the applicant shall apply for NJPDES permit to discharge in accordance with N.J.A.C. 7:14A-2.1 and 7.2. The following items and the information required for a DAC must be submitted for the NJPDES permit[.]:

1.-7. (No change.)

(d) (No change.)

7:14A-10.4 Environmental Assessment for a Discharge Allocation Certificate (DAC)

(a) Applications for proposals which will disturb 10,000 square feet or less of surface area of land to accommodate construction in the project area will be exempt from the following environmental assessment requirements.

1.-2. (No change.)

3. The body of the assessment document shall be kept to less than 100 pages. The degree of informational detail required will depend

on the size, type, and location of the proposed facility. The assessment requirements have been written attempting to cover all project types. Therefore, preapplication meetings are strongly recommended to assure an understanding of the degree of detail required for the particular project proposal. The information specified in [Attachment] **Appendix B** of this section **incorporated herein by reference** may be required on a case-by-case basis.

(b) (No change.)

(c) The description of the existing environmental conditions, both built and natural, must be developed with sufficient detail so that all environmental impacts attributable to the proposal may be identified as follows:

1. Natural resources:

i.-vi. (No change.)

vii. Environmentally sensitive areas:

(1) (No change.)

(2) Sensitive areas shall be defined to include the following:

(A) (No change.)

(B) Wetlands (swamps, marshes, bogs, wet meadows, inland wetlands [and] as defined[,] in the "Wetlands Act of 1970", N.J.S.A. 13:9A-1 et seq.[]) **and the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:1B-1 et seq.** and the U.S. Fish and Wildlife Service's National Wetlands Inventory[.];

(C)-(K) (No change.)

viii. Air quality: Discuss the ambient air quality in conjunction with the specific findings and requirements of the State Implementation Plan, and Federal Clean Air Act. Consult with the Department's [Bureau of Air Pollution] **Division of Environmental Quality**.

2. Social factors:

i. Land uses: Describe Federal, State, Regional and local plans, laws, ordinances and/or regulations that may affect the project[(See Attachment A of this section)] **see Appendix A to this section, incorporated herein by reference**.

ii. (No change.)

(d) Impacts on the existing environment as described in (c) above shall be identified, evaluated and described by analyzing each project component requirement and operation, including site preparation and construction. Sources of data and methods of analysis used to identify impacts shall be documented.

1.-3. (No change.)

4. Site development impacts:

i. (No change.)

ii. Demonstrate conformance with any Federal, State, Regional and local plans, laws, ordinances, standards of performance and/or regulation that may affect the project. (See [Attachment] **Appendix A**)

5.-6. (No change.)

7. Secondary impacts: Describe those impacts resulting from an indirect demand of the project upon the environment, society, or economy which may occur at some future time or place. Examples, of secondary impacts include[d] increased water supply treatment costs to users downstream of [wastewater] **effluent** discharge or increased demand on the natural resources of the area resulting from labor in-flow.

(e) (No change.)

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[ATTACHMENT] APPENDIX A PLANS AND STATUTES AND RESPONSIBLE AGENCY WHICH MAY AFFECT THE PROJECT

Wetlands Act of 1970 N.J.S.A. 13:9A-1 et seq.	Department of Environmental Protection Division of Coastal Resources
Waterfront Development Act N.J.S.A. 12:5-[3]1 et seq.	Department of Environmental Protection Division of Coastal Resources
Coastal Area Facilities Review Act N.J.S.A. 13:19-1 et seq.	Department of Environmental Protection Division of Coastal Resources
State Development Guide Plan Pursuant to P.L. 1961 Chapter 47	Department of Community Affairs
201 Wastewater Facilities Plans Pursuant to P.L. 95-217, Clean Water Act	Department of Environmental Protection Division of Water Resources
208 Water Quality Management Plans Pursuant to P.L. 95-217, Clean Water Act	Department of Environmental Protection Division of Water Resources
[Stream and Floodplain Protection Act] State Flood Control Facilities Act N.J.S.A. 58:[1-26] 16A-1 et seq.	Department of Environmental Protection Bureau of Floodplain Management and Corps of Engineers
Endangered and Nongame Species Conservation Act N.J.S.A. 23:2A-1 et seq.	Department of Environmental Protection Division of Fish, Game and Wildlife Endangered Species and Nongame Project
Solid Waste Management Plan Pursuant to N.J.S.A. 13:1[e]E-1 through 37	Department of Environmental Protection [Bureau of Solid Waste] Division of Solid Waste Management
Pinelands Comprehensive Management Plan Pursuant to P.L. 95-625 and N.J.S.A. 13:18A-1 through 29	Pinelands Environmental Commission
Water Supply [Master] Plan [Pursuant to L. 1969, Chap. 127] N.J.S.A. 58:1A-13	Department of Environmental Protection Bureau of Water Supply Planning
Hackensack Meadowlands Development Plan [N.J.A.C.] N.J.S.A. 13:17-1 et seq.	Hackensack Meadowlands Development Commission
Freshwater Wetlands Protection Act N.J.S.A. 13:9B-1 et seq.	Department of Environmental Protection Division of Coastal Resources

[ATTACHMENT] APPENDIX B

The following detailed information may be required of the applicant depending on the size, type and location of the proposed facility.
A.-D. (No change.)

E. Hydrology

(1) Describe the existing [groundwater] **ground water** quality using physical, chemical and biological parameters.

(2) Describe [groundwater] **ground water** movement (Direction and velocity).

(3) Describe [groundwater] **ground water** recharge area, rate of recharge[,] and depletion and storage volume.

(4)-(5) (No change.)

F.-G. (No change.)

7:14A-10.5 [Indirect discharges] **Discharges into a domestic treatment works (DTW)**

(a) **Discharges into a DTW are indirect discharges.** An individual NJPDES **significant indirect user (SIU)** permit is required for an indirect discharger when:

1. The indirect discharger is one of the following types of SIUs and does not meet the requirements of (g) below:

i. (No change.)

ii. The user is determined to be an Industrial Waste Management Facility (IWMF) under N.J.A.C. 7:14A-4 and discharges to a DTW that does not have a pretreatment program approved, or is not in the process of being approved pursuant to 40 CFR Part 403 and N.J.A.C. 7:14A-13. IWMFs subject to the permit-by-rule provisions of N.J.A.C. 7:14A-4.5 discharging to a DTW that has an approved pretreatment program shall obtain a SIU permit where permit-by-rule status has been terminated pursuant to N.J.A.C. 7:14A-4.5(a)3ii;

iii. (No change.)

iv. The discharge consists of landfill leachate, either pure or diluted by [groundwater] **ground water** or surface runoff;

v. The discharge consists of [significant quantities of polluted groundwater] **ground water** which on any one day exceeds 25,000 gallons per day and is pumped from the ground in order to decontaminate an aquifer;

vi.-vii. (No change.)

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2. (No change.)
3. The indirect discharger is a[n] SIU and [discharges] **discharges** to a DTW that does not have a Pretreatment Program approved, or is not in the process of being approved pursuant to 40 CFR Part 403 and N.J.A.C. 7:14A-13.1.

(b) When to apply for a NJPDES permit:

1. Significant [industrial] **indirect** users [who exist as of the effective date of these regulations] shall file an application in accordance with the schedule in N.J.A.C. 7:14A-10.1(h)4.

2. (No change.)

3. An indirect discharger who discharges into a privately owned treatment works [(as per (a)2 above shall apply for a permit as required in N.J.A.C. 7:14A-3.13(a)13.

4. (No change.)

(c) An indirect discharger required to apply for a NJPDES permit in accordance with (a) above shall submit the following information on forms available from the Department:

1.-2. (No change.)

3. Name, address of all owner(s) [or] **and the** DTW being utilized.

4.-16. (No change.)

17. For new discharges only, notification from the affected DTW[E] and owner of applicable wastewater conveyance systems stating that the discharge is acceptable.

18. (No change.)

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

(g) The Department may allow a NJPDES/SIU permit for SIUs enumerated by (a)1iii, vi or vii above to expire after the initial term of the permit is over without reissuing the individual permit. After expiration of the permit, the discharger shall comply with (f) above and the permit-by-rule provisions in N.J.A.C. 7:14A-13.5. The individual permit will be allowed to expire provided that:

1.-2. (No change.)

7:14A-10.7 Surface [Impoundments] **impoundments**

(a) In addition to the information required in N.J.A.C. 7:14A-2.1, an applicant for a NJPDES permit for a surface impoundment shall submit information to the Department as follows:

1. Existing dischargers shall submit the information in (c), (d), and (e) [and (g)] below in accordance with the schedule in N.J.A.C. 7:14A-10.1;

2. New source discharges shall submit:

i. The information in [(e)] (c) and [(f)] (d) below to apply for a [final] draft NJPDES permit in accordance with N.J.A.C. 7:14A-7.2; and

ii. The information in [(g)] (e) below to apply for a final NJPDES permit in accordance with N.J.A.C. 7:14A-7.2.

3. (No change.)

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

(d) A request for endorsement shall be submitted in accordance with N.J.A.C. 7:14A-2.1[(j)] (new source dischargers only).

(e) (No change.)

7:14A-10.8 Land application of [sludge and septage] **residuals**

(a) In addition to the information required in N.J.A.C. 7:14A-2.1, an applicant for a NJPDES permit for land application of [sludge or septage except as provided below] **residuals** shall submit information to the Department as follows:

1.-3. (No change.)

(b) (No change.)

(c) Submission of information required in this section shall not exempt the applicant from compliance with any other filing requirements which apply to [that sludge or septage] **the residuals** application site, to any treatment system of which the [sludge or septage] **residuals** application site is a component, or to any other existing or proposed discharges at the facility.

(d) (No change.)

(e) The following information shall be submitted for land application [and septage] **of residuals**:

1. (No change.)

2. Waste characteristics **as follows**:

i. The origin and volume of the waste [must be described in the application];

ii. (No change.)

iii. A dated analysis of the sludge [shall be submitted as] **on a** mg/kg dry solids basis [unless otherwise noted and shall include] **including** the following parameters:

(1) [Sludge] **Residual** Constituents and Characteristics:

Total Solids (TS) %[,];
Volatile Solids (VS % of TS)[,];
pH (units)[,];
Total Kjeldahl Nitrogen (TKN (%)[,];
Ammonium-Nitrogen (NH₄ -N) (%)[,];
Nitrate-Nitrogen (NO₃ -N) (%)[,];
Potassium (k)[,];
Phosphorus (P)[,];
[Calcium (Ca),
Magnesium (Mg),]
Iron (Fe)[,];
Sodium (Na).

(2) Heavy Metals:
Arsenic (AS)[,];
Beryllium;
Cadmium (Cd)[,];
Chromium (CR)[,];
Copper (Cu)[,];
Lead (Pb)[,];
Mercury (Hg)[,];
Molybdenum (Mo);
Nickel (Ni)[,];
Selenium (Se);
Zinc (Zn).

(3) Pesticides and Toxic Organics:

Aldrin[,];
Dieldrin[,];
[Endrin,]
Heptachlor[,];
[Heptachlor-epoxide,]
DDT[,];
[pp'-DDE,
pp'-TDE,]
Methoxychlor[,];
Chlordane[,];
Lindane[,];
[Mirex,]
Toxaphene.

(4) **Base/neutrals and Acids**:

Benzidine;
Benzo(a)pyrene;
Bis (2-ethylhexyl) phthalate;
Hexachlorobenzene;
Hexachlorobutadiene;
N-nitrosodimethylamine.

(5) **Purgeables**:

Benzene;
Carbontetrachloride;
Chloroform;
Methylene Chloride;
Tetrachloroethylene;
Trichloroethylene;
Vinyl Chloride.

[(4)] (6) Miscellaneous:

Cyanide[,];
Fluoride;
Oils and Grease (percent of TS)[,];
Phenols.

[(5)] (7) (No change in text.)

3. Site-related information **as follows**:

i.-ii. (No change.)

iii. An up-to-date plot plan [shall also be submitted] including the following information:

(1)-(7) (No change.)

iv.-v. (No change.)

vi. Soil sample results as recommended by the [Departments "Guidelines for the Utilization and Disposal of Municipal and Industrial Sludges and Septage."] **Statewide Sludge Management Plan and**

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Appendix thereto. In cases of unusual soil variability or uniformity, the number of soil samples and/or depth of a sampling required by the Department may be revised;

vii. Site evaluation with regard to permeability, pH, runoff class, erosion factor, soil drainage class, flooding, available water holding capacity, slope, depth to seasonally high water table and depth to mottling or bedrock as recommended in the ["Guidelines for the Utilization and Disposal of Municipal and Industrial Sludges and Septage;"] **Statewide Sludge Management Plan and Appendix thereto;**

viii. The results of soil borings taken in the proposed [sludge] **residuals** application area shall be provided in accordance with the following table:

Acreage	Minimum number of borings
1- 10	3
10- 50	6
50-100	12
100-200	18
over 200	minimum 24

(1)-(3) (No change.)

4. Application [Rates] **rates as follows:**

i. The methods for determining the annual and cumulative [sludge and sepage] **residual** application rates shall be specified. This shall include the residual effect of previously applied sludge, [or] sepage, or other residuals. ["Guidelines for the Utilization and Disposal of Municipal and Industrial Sludges and Septage"] **Procedures given in the Statewide Sludge Management Plan and Appendix thereto** should be used for determining these rates. Where the above application rate criteria are not appropriate, additional application rates and criteria shall be developed by the applicant and submitted to the Department for review.

ii. If the [sludge/septage] **residual** is in liquid form, the volume to be applied at any one time shall be specified.

iii. For compost application, annual and cumulative rates shall be specified. ["Guidelines for the Utilization and Disposal of Municipal and Industrial Sludges and Septage"] **Procedures given in the Statewide Sludge Management Plan and Appendix thereto** should be used for determining these rates.

5. Operational considerations **as follows:**

i. The method and equipment proposed to be used for [sludge/septage] **residual** application shall be submitted.

ii. The crop management plan shall be submitted and shall include:

(1)-(2) (No change.)

(3) [Sludge/septage] **Residual** application rate using the most recent soil and sludge/septage quality data;

(4) (No change.)

(5) Provisions for soil testing to determine the [sludge/septage] **residual** application rate and the amount of lime necessary to adjust soil pH to 6.5; and

(6) (No change.)

iii. Provisions for odor control and restriction of public access to [sludge/septage] **residual** application site shall be specified.

6. Procedures Manual **as follows:**

i. (No change.)

(f) For the final NJPDES Permit, the following additional information must be submitted:

1.-3. (No change.)

4. A final Procedures Manual which shall include:

i.-vi. (No change.)

vii. [Sludge/septage] **Residual** quality monitoring provisions;

viii. A statement as to the ability to transfer to other disposal areas or options if [sludge/septage] **residual** applications must cease;

ix. (No change.)

x. Mode of transportation of [sludge/septage] **residual** to application site(s).

7:14A-10.9 Land application of effluents by spray irrigation

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

(c) Submission of information required in this section shall not exempt the applicant from compliance with any [othe ;] **other** filing requirements which apply to any treatment system of which the spray irrigation is a component, or to any other existing or proposed discharges at the facility.

(d) (No change.)

(e) The following information shall be submitted.

1. (No change.)

2. Wastewater Characteristics [— The origin and volume of the waste water must be described in the application.] **as follows:**

i. **The origin and volume of the waste water.**

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

[ii.] iii. (No change in text.)

[iii.] iv. The compatibility of the effluent for land disposal shall be substantiated by the applicant.

3. Site related information **as follows:**

i.-iii. (No change.)

iv. A water table map showing [groundwater] **ground water** flow conditions beneath the disposal site and surrounding area, based on synoptic well data, as defined in [these regulations] **this chapter**, collected within 18 months prior to the date of application.

v. (No change.)

vi. Soils evaluation **as follows:**

(1) A soil log described by a geologist or soil scientist prepared from each boring or backhoe pit at the existing or proposed site. Borings or pits shall reach a depth of 20 feet or to bedrock. A sufficient number of borings [necessary] **shall be drilled in order** to determine soil characteristics, depth to bedrock (where applicable), permeabilities and ground water elevations [shall be drilled]. Where, in the judgment of the Department, submitted information is insufficient to adequately evaluate the site, additional and/or deeper borings, supplemented by evacuations, test pits or geophysical methods may be required.

(2)-(3) (No change.)

4. (No change.)

5. Engineering Considerations **as follows:**

i.-iii. (No change.)

6. Operational and Monitoring Considerations **as follows:**

i.-ii. (No change.)

iii. Monitoring wells and sites:

(1)-(7) (No change.)

(8) Each monitoring well casing shall be permanently marked with a number to be assigned by the Department.

(9)-(12) (No change.)

(13) In no case shall less than three monitoring wells be located at a facility. The number of wells, their design and location shall remain subject to Departmental approval, and must be of sufficient number to define the ground water hydrology of the site.

(f)-(g) (No change.)

7:14A-10.10 Land application of effluents by overland flow

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

(e) The following information shall be submitted for land application of effluents by overland flow:

1. (No change.)

2. Wastewater Characteristics [— The origin and volume of the wastewater shall be described in the application.] **as follows:**

i. **The origin and volume of the wastewater.**

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

[ii.] iii. For existing facilities a sufficient number of dated analyses of the raw and treated effluent [shall be submitted] to accurately characterize the composition and variability. For proposed facilities, estimates of the quantity and quality of the effluent, the treatment processes, and the anticipated load to the system shall be provided. This shall include a justification for all estimates.

(1)-(2) (No change.)

[iii.] iv. (No change in text.)

3. Site Related Information **as follows:**

i.-vi. (No change.)

4. (No change.)

5. Engineering Considerations **as follows:**

i.-iii. (No change.)

6. Operational and Monitoring Considerations **as follows:**

i. (No change.)

ii. Monitoring wells:

(1)-(7) (No change.)

(8) Each monitoring well casing shall be permanently marked with a number to be assigned by the Department.

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(9) The monitoring plan shall include at least one monitoring well located up-flow of the overland flow area to define and monitor prevailing background [groundwater] **ground water** quality. In no case shall less than three monitoring wells be located at a facility. The number of wells, their design and location shall remain subject to Departmental approval and must be of sufficient number to define the [groundwater] **ground water** hydrology of the site.

(10)-(12) (No change.)

iii. A description of the overland flow system operation shall be submitted:

(1) (No change.)

(2) An operations manual and maintenance schedule shall be submitted. "Guidelines for Land Disposal of Effluents by Overland Flow" should be used as a reference.

(f) (No change.)

(g) The following information shall also be submitted:

1.-2. (No change.)

3. Final [groundwater] **ground water** monitoring provisions, parameters[,], and schedules.

4.-6. (No change.)

7:14A-10.11 Land [disposal] **discharge** by infiltration-percolation lagoons

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

(e) The following information shall be submitted for land disposal by infiltration-percolation lagoons:

1. (No change.)

2. Wastewater Characteristics [- The origin and volume of the waste water shall be described in the application] **as follows:**

i. **The origin and volume of the wastewater.**

[i.] ii.-[iii.] iv. (No change in text.)

3. Site Related Information **as follows:**

i.-ii. (No change.)

iii. Topographic (contour interval two feet), geologic and soil (USDA) maps of the land disposal site and surrounding area sufficient to define conditions and evaluate the probable impact of the infiltration-percolation lagoon [or] on ground and/or surface waters.

iv. (No change.)

v. A plot plan to scale showing the infiltration-percolation lagoon, storage facility[ies], all piping and discharge points, buffer zones, monitoring wells, buildings and all attendant equipment.

vi. (No change.)

4. Application rates **as follows:**

5. Engineering considerations **as follows:**

i. (No change.)

ii. [A] **Design** calculations [of across] for infiltration-percolation lagoon sites shall be prepared using a 25-year design storm, with estimates of the effect of such runoff on treatment capacity, storage capacity, erosion, flooding and related details.

iii. A description of existing and proposed storage facilities including discharge rates to the infiltration-percolation lagoon, operating[, and] schedules, construction details, capacity[ies], estimates of bottom and sides permeabilities and leakage calculations and a description of liner material, and installation details shall be submitted.

6. Operational and monitoring considerations **as follows:**

i. (No change.)

ii. Monitoring wells:

(1)-(7) (No change.)

(8) Each monitoring well casing shall be permanently marked with a number to be assigned by the Department.

(9) The monitoring plan shall include at least one monitoring well located up-flow of the infiltration-percolation lagoon to define and monitor prevailing background [groundwater] **ground water** quality. In no case shall less than three monitoring wells be located at a facility. The number of wells, their design and location shall remain subject to Departmental approval and must be of sufficient number to define the [groundwater] **ground water** hydrology of the site.

(10) Water sample parameters shall be proposed by the applicant and approved by the Department. Background sample analyses shall be submitted prior to any utilization of the infiltration-percolation lagoon and shall be required prior to final design approval.

(11)-(12) (No change.)

iii. A description of the infiltration-percolation lagoon operation shall be submitted.

(1) (No change.)

(2) An operations manual and maintenance schedule shall be submitted. "Guidelines for Land Disposal Infiltration-Percolation Lagooning" should be used as a reference.

(f)-(g) (No change.)

7:14A-10.12 Discharges from sanitary landfills

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

(e) The following information shall be submitted for sanitary landfills[.]:

1. (No change.)

2. Maps, cross sections and reports. Some of the maps may be combined if all required features are clearly shown.

i.-vii. (No change.)

viii. Monitoring: Ground water monitoring wells are required for detection of ground water contamination from landfill leachate.

(1)-(6) (No change.)

(7) Each monitoring well casing shall be permanently marked with a number to be assigned by the Department.

ix. Water Quality:

(1) All sanitary landfills shall have a ground water monitoring system constructed and located in accordance with instructions furnished by this Department. The registrant shall notify the [Solid Waste Administration] **Division of Water Resources**, in writing, seven days prior to the commencement of the installation of the approved ground water monitoring system.

(2) No sanitary landfill shall operate without installing a ground water monitoring system as approved by this Department and obtaining ground water samples, and analyses thereof, for the purpose of establishing existing ground water quality data. The initial sampling of each monitoring well shall include analyses for the following parameters:

Presence [or] of organisms [of] in the Coliform Group;

Turbidity;

Color;

Odor;

Mercury (Hg);

Arsenic (As);

Barium (Ba);

Cadmium (Cd);

Chromium (hexavalent Cr +6);

Cyanide (CN);

Fluoride (F);

Lead (Pb);

Selenium (Se);

Silver (Ag);

A.B.S./L.A.S. (Alkyl-Benzene-Sulfonate

and Linear-Alkyl-Sulfonate or similar

methylene blue reactive substances

contained in synthetic detergents[.]);

Chloride (Cl);

Copper (Cu);

Hardness (s CaCO₃);

Iron (Fe);

Manganese (Mn);

Nitrogen (including NO₃-N and NH₄-N;

Phenolic Compounds (as phenol);

Sodium (Na);

Sulfate (SO₄);

Total Dissolved Solids;

Zinc (Zn);

Chemical Oxygen Demand (COD);

Biochemical Oxygen Demand (BOD);

Total Organic Carbon (TOC).

(3) (No change.)

(4) All sanitary landfills shall submit an annual analysis from each ground water monitoring well[s] for the parameters listed in (e)2ix(2) above. Organic scans shall be accomplished as required by the Department.

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(5)-(8) (No change.)

x.-xii. (No change.)

7:14A-10.13 Underground injection control

(a) Class I wells: [(a) of this section] **This subsection** sets forth the information which must be considered by the Department in authorizing Class I wells. Certain maps, cross-sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Department (for example, in the Department's files) and sufficiently identified to be retrievable.

1. Prior to the issuance of a permit for an existing Class I well to operate or the construction or conversion of a new Class I well, the Department shall consider the following:

i.-vi. (No change.)

vii. Proposed operating data **as follows**:

(1)-(2) (No change.)

(3) Source [and] and analysis of the chemical, physical, radiological and biological characteristics of injection fluids;

viii.-xvi. (No change.)

2.-3. (No change.)

(b) Class II wells: [(b) of this section] **This subsection** sets forth the information which must be considered by the Department in authorizing Class II wells. Certain maps, cross-sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Department (for example, in the Department's files) and sufficiently identified to be retrievable.

1. Prior to the issuance of a permit for an existing Class II well to operate or the construction or conversion of a new Class II well, the Department shall consider the following:

i. (No change.)

ii. A map showing the injection well(s) for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, or wells, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features including residences and roads. All wells, reservoirs, and other bodies of water used for public water supply that are within a five mile radius of the injection well must be indicated on the map. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map. The Department, however, may request additional information as it becomes necessary. Additional information may be eligible for treatment as confidential information if it meets the criteria in [subchapter 11 of this chapter] N.J.A.C. 7:14A-11. [subchapter 11 of this chapter.]

iii.-xiv. (No change.)

2.-3. (No change.)

(c) Class III wells: this subsection sets forth the information which must be considered by the Department in authorizing Class III wells. Certain maps, cross-sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Department (for example, in the Department's files) and sufficiently identified to be retrievable.

1. Prior to the issuance of a permit for an existing Class III well or area to operate, or the construction of a new Class III well, the Department shall consider the following:

i. (No change.)

ii. A map showing the injection well(s) for which the permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes[,] or wells, surface bodies of water, mines (surface and subsurface), quarries, public water systems, water wells and other pertinent surface features including residences and roads. All wells, reservoirs, and other bodies of water used for public water supply that are within a five mile radius of the injection well must be indicated on the map. The map should also show faults if known or suspected. Only information of public record is required to be included on this map. However, the Department may request additional information as needed. Additional in-

formation may be eligible for treatment as confidential information if it meets the criteria in [subchapter 11 of this chapter] N.J.A.C. 7:14A-11.

iii. A tabulation of data on all wells within the area of review which [penetrate] **penetrate** the proposed injection zone. Such data shall include a description of each well's type construction, date drilled, location, depth, record of plugging and completion, geological and geophysical logs, and any additional information the Department may require;

iv.-xvi. (No change.)

2.-3. (No change.)

7:14A-11.2 Confidentiality

(a) (No change.)

(b) Included among those items for which claims of confidentiality will be denied are the following:

1.-4. (No change.)

5. Information required by NJPDES application forms provided by the Department under N.J.A.C. 7:14A-2.1 and required in application forms pursuant to N.J.A.C. 7:26-12. This includes information submitted on the forms [themsevels] **themselves** and any [attache-ments] **attachments** used to supply information required by the forms.

7:14A-11.5 Procedure for confidentiality determinations

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment[, unless the Department determines that the information is not entitled to confidential treatment] unless:

1. (No change.)

2. A claim of confidentiality has been made in an IWMF permit application or an application required pursuant to N.J.A.C. 7:26-12[.], in which case the following procedures apply:

[i. The following procedures apply to such a claim:]

[(1)] i. Claims of confidentiality for permit application information must be substantiated at the time the application is submitted and in the manner prescribed in the application instructions.

[(2)] ii. If a submitter does not provide substantiation, the Department will notify it by certified mail of the requirements to do so. If the Department does not receive the substantiation within 10 days after the submitter receives the notice, the Department shall place the unsubstantiated information in the public file.

(b) (No change.)

(c) The initial determination of entitlement to confidential treatment is as follows:

1. If, in connection with any person's claim, the Department determines that the information may be entitled to confidential treatment, the Department shall:

i. (No change.)

ii. Furnish, to any person whose request for release of the information is pending under N.J.S.A. 47:1A-1 et seq., a [determination:] **notification** that the information may be entitled to confidential treatment under this [subpart] **subchapter**, that further inquiry by the Department pursuant to this subsection is required before a final determination on the request can be issued, that the person's request is therefore initially denied, and that after further inquiry a final determination will be issued by the Department.

2. (No change.)

(d)-(g) (No change.)

(h) Emergency situation: If the Department finds that disclosure of information covered by a confidentiality claim would serve to alleviate a situation posing an imminent and substantial danger to public health or safety, it may:

1. Prescribe and make known to interested persons such shorter comment period pursuant to (d)1 above, post determination waiting period pursuant to [(j)g)2 above ()], or both, as it finds necessary under the circumstances; or

2.-3. (No change.)

(i.) (No change.)

7:14A-11.8 Access to and safeguarding of confidential information

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

(c) No Department officer or employee may disclose, or use for his or her private gain or advantage, any confidential information

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which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment, except as authorized by [(c) of this section] N.J.A.C. 7:14A-11.10.

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

7:14A-11.10 Disclosure of confidential information to authorized agents

[(a) The Department may disclose information which has been determined to be entitled to confidential treatment to an authorized agent of the Department: if the Department determines that such disclosure is necessary in order for the agent to carry out the work required by the contract, if the Department notifies the affected person, and, if the affected person so requests, the agent contracts with the affected person to protect the confidentiality of the information.]

(a) The Department may disclose information which has been determined to be entitled to confidential treatment to an authorized agent of the Department if:

1. The Department determines that such disclosure is necessary in order for the agent to carry out the work required by the contract;
2. The Department notifies the affected person; and
3. The affected person so requests, the agent contracts with the affected person to protect the confidentiality of the information.

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

7:14A-11.13 Use of confidential information in rulemaking, permitting, and enforcement proceedings

(a) (No change.)

(b) Where the Department determines that there shall be an adjudicatory hearing, information determined to be eligible for confidential treatment pursuant to N.J.A.C. 7:14A-11.5 and 11.6 may be used in any enforcement and permitting proceeding subject to the protection from making the information available to the public as provided in N.J.A.C. 1:1-1.

(c) (No change.)

7:14A-12.4 Activities for which a treatment works approval is not required

(a) The Department[,] shall not require a treatment works approval [from the Department] for the following activities:

1.-3. (No change.)

7:14A-13.1 Purpose and scope

(a) The Department herein provides notice that it adopts the "General Pretreatment Regulations for Existing and New Sources of Pollution,"[,], 40 CFR Part 403 [upon the effective date of these regulations]. All users shall comply with the requirements of 40 CFR Part 403.

(b) (No change.)

(c) This subchapter also provides the specific NJPDES permit requirements for a significant [industrial] indirect user (SIU), as defined in N.J.A.C. 7:14A-1.9.

(d) (No change.)

7:14A-13.5 Permit-by-rule

(a) (No change.)

(b) Termination of eligibility for a permit-by-rule shall be as follows:[,]

1. (No change.)

2. Whenever a DTW's [-] Pretreatment Program approval has been withdrawn based upon the criteria set forth in N.J.A.C. 7:14A-13.8, all SIUs discharging to the DTW will lose their eligibility for a permit-by-rule and will be required to obtain an individual NJPDES/SIU permit in accordance with N.J.A.C. 7:14A-10.1(h).

(c) (No change.)

7:14A-13.6 Water quality violations

(a) (No change.)

(b) The following limitations shall apply in order to control gross pollution of surface waters by any of the pollutants listed in Appendix F. The amount of any substance, listed in Appendix F, which is discharged by any user shall not exceed the amount W determined by the equations listed below:

1. For dischargers into DTWs which discharge into surface waters of the State with essentially one dimensional flow (stream discharge):

i.-iii. (No change.)

iv. Q = The seven day, 10 year[,] low flow in cubic meters/second (M^3/sec) of the receiving stream immediately downstream of the [treatment works] DTW outfall.

v. R = Efficiency of a DTW to remove a toxic pollutant from the influent, [computer] computed according to the procedure in (c) below.

2. For discharges into DTWs which discharge into surface waters of the State with essentially multi-dimensional flow:

i.-ii. (No change.)

iii. C = The values for determination of NJPDES permit toxic effluent limitations in micrograms per liter (ug/l) of any pollutant listed in Appendix F. This concentration cannot be exceeded at the water surface at the point indicated as S (see [N.J.A.C. 7:14A-3.14(1)3iii] Figure 1 in Appendix F).

iv. Q = The effluent discharge flow rate of the [treatment works] DTW in cubic meters per second (m^3/sec).

v.-vi. (No change.)

(c) (No change.)

7:14A-13.7 Sludge quality violation

(a) No indirect discharger shall discharge into a DTW any pollutant in such quantities or concentration such that the discharge alone causes the DTW to exceed the State's criteria or standards for the [disposal] management of sludge.

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

7:14A-13.8 Criteria for withdrawal of Pretreatment Program approval

(a) The Department may withdraw Pretreatment Program approval when a DTW's program no longer complies with the requirements of this chapter and the DTW fails to take corrective action. Such circumstances include the following:

1. (No change.)

2. When the procedure of the DTW's program no longer complies with the requirements of the chapter, including but not limited to:

i. (No change.)

ii. Failure to comply with the public participation requirements of [ths] this chapter (N.J.A.C. 7:14A-8[0]);

iii. (No change.)

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

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Air Civil Administrative Penalties and Adjudicatory Hearings

Proposed New Rules: N.J.A.C. 7:27A-3

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

Authority: N.J.S.A. 26:2C-1 et seq., specifically N.J.S.A.
26:2C-19.

DEP Docket Number: 010-89-02.

Proposal Number: PRN 1989-134.

A public hearing concerning these proposed new rules will be held on:

May 3, 1989 at 10 A.M.

Herman Lewis Labor Education Center Auditorium

Ryderson Lane

Cook College Campus

Rutgers University

New Brunswick, New Jersey 08903

Submit comments by May 5, 1989 to:

Roger S. Haase, Esq.

Division of Regulatory Affairs

New Jersey Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

ENVIRONMENTAL PROTECTION

PROPOSALS

The agency proposal follows:

Summary

Pursuant to the Air Pollution Control Act (1954), N.J.S.A. 26:2C-1 et seq., as amended by P.L. 1985, c. 12, (hereinafter "the Act"), the Department of Environmental Protection (hereinafter "the Department") is empowered to assess civil administrative penalties for each violation of the Act or of any rule promulgated or administrative order, operating certificate, registration requirement or permit issued pursuant thereto of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense. The Act further provides that each day during which a violation continues shall "constitute an additional, separate, and distinct offense". Therefore, each violation of the Act, or of any rule promulgated, or of an administrative order, operating certificate, registration requirement or permit issued pursuant thereto, may subject the violator to a civil administrative penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense of that violation and for each day that the violation continues.

The Department proposes new rules at N.J.A.C. 7:27A-3 to implement the 1985 amendment to the Act and to clarify the procedures governing assessment of civil administrative penalties for violations of the Act. The Department is proposing to assess civil administrative penalties under the Act in accordance with a schedule proposed in N.J.A.C. 7:27A-3.10. Additionally, N.J.A.C. 7:27A-3.10(e) and (f) indicate when the Department may exercise its authority to revoke certificates to operate or variances. The penalty amounts for violations of the specific rule provisions in N.J.A.C. 7:27 were developed by considering the following factors:

1. Potential or actual health and environmental impact, including consideration of the characteristics of pollutants involved, the quantity of pollutants involved, the magnitude of area affected, and remedial actions taken by the violator;
2. The deterrent effect of the penalty, including making penalties a disincentive to discourage future violations, ensuring that penalties exceed any savings achieved by noncompliance, and removing any competitive advantages gained by noncompliance; and
3. Consistency with other environmental program penalties. Comparisons were made with other Department civil administrative penalty rules as well as with the United States Environmental Protection Agency's guidance documents.

Specific civil administrative penalty formulae are also proposed for falsification of information, N.J.A.C. 7:27A-3.6; failure to allow lawful entry and inspection, N.J.A.C. 7:27A-3.7; failure to pay a fee, N.J.A.C. 7:27A-3.8; and failure to provide information or test data, N.J.A.C. 7:27A-3.9.

In all cases, civil administrative penalties for second, third and subsequent offenses are higher than the penalty for the first offense. In most cases, penalties for second offenses are two times the penalties for the first offenses. Penalties for third offenses are in most cases two and a half times the penalties for the second offenses, and penalties for the fourth and each subsequent offense are in most cases three times the penalties for the third offense. In no cases are the statutory maximums exceeded (\$10,000 for the first offense, \$25,000 for the second offense, and \$50,000 for the third and each subsequent offense).

Maximum civil administrative penalties (\$10,000) are proposed for first offenses of such serious magnitude as significant emission offenses as determined by emission stack tests; major air pollution offenses (N.J.A.C. 7:27-5.2(a)); offenses involving failure to implement Standby Orders issued during air pollution emergencies (N.J.A.C. 7:27-12); and failure to immediately notify the Department of major releases of air pollution (N.J.S.A. 26:2C-19(e)).

Social Impact

The Department's proposed new rules concerning the civil administrative penalties which may be assessed under the Act will have a positive social impact by encouraging compliance and discouraging non-compliance with the State's air pollution control rules. Reduction in air pollution will significantly reduce damage to property and the environment as well as reducing potential for illness, injury and death.

These proposed new rules will implement the amendments to the Air Pollution Control Act enacted in January, 1985. Those amendments increased the maximum penalties for offenses under the Act or rules, as well as provided a more expeditious and effective method of enforcing N.J.A.C. 7:27-5.2(a), which in general governs air pollution. The general public will benefit from the improved air quality which is expected to result from better compliance with New Jersey air pollution control rules.

The proposed new rules provide a disincentive to emit excess quantities of volatile organic substances (VOS). VOS emissions are precursors of ozone, a respiratory irritant. Ozone levels in New Jersey frequently exceed National Ambient Air Quality Standards which were established to protect the health and welfare of our citizens. Clearly established penalties and procedures will result in improved enforcement and improved compliance. This improved protection will especially benefit persons with respiratory problems.

Economic Impact

These rules will have little economic impact upon persons complying with air pollution control rules. Some slight improvement in the complying person's competitive status may occur in that any savings realized by non-complying sources by not implementing appropriate air pollution controls will be offset by the cost of paying penalties for noncompliance. The extent of the economic impact on violators will depend on factors such as the potential or actual health, welfare and environmental impacts of the offense, the environmental history of the violator, and the nature, frequency and duration of the offense.

In general, the penalties in the proposed new rules are equal to, or slightly higher than, penalties currently assessed by the Department for corresponding offenses. It is difficult to provide direct comparison since the proposed penalty schedule at N.J.A.C. 7:27A-3.10 is substantially more detailed than the assessment practice currently in use. For example, the Department currently assesses a penalty for a first offense of an emission standard established in a permit issued pursuant to N.J.A.C. 7:27-8 as determined by a stack emission test at \$5,000 (in addition to revocation of the certificate). Under the proposed new rules, the penalty would range from \$2,000 to \$10,000 for a first offense of an emission standard depending on the amount of the pollutant as well as the percentage above the standard (in addition to revocation of the certificate).

Another important difference between the Department's current penalty assessment practice and the proposed new rules concerns penalties for sources of "air pollution" as defined in N.J.A.C. 7:27-5.2(a). The penalty that is currently assessed for a first offense ranges from \$2,000 to \$5,000. The proposed new rules establish penalties ranging from \$500.00 to \$10,000. The factors which determine the specific penalty amount in the proposed rules include population affected, nature of air contaminant, amount of the air contaminant, size of the area affected, and remedial measures taken to abate the air pollution release.

Environmental Impact

This rulemaking is intended to serve as a strong deterrent to those who would violate the Act. The Department anticipates that the proposed new rules will, by establishing extensive civil administrative penalties for the violation of the State's air pollution control statute, provide the regulated community with a strong incentive to conduct their activities in conformance with the Department's rules, thereby protecting public health, welfare and the natural resources of this State. The Department's action is consistent with the recent decision of the Appellate Division of the New Jersey Superior Court in *State of New Jersey, Department of Environmental Protection and the New Jersey Pinelands Commission v. John Lewis*, 215 N.J. Super. 564 (App. Div. 1987). Penalties will, upon adoption of these rules, be assessed in an amount which will "effectively strip [violators] not only of profits made in connection with their illegal [activities], but also in a sufficient amount to deter others from polluting the environment. The penalty imposed must be large enough so as not to become the equivalent of a permit fee or a mere cost of doing business [in this State]." *Id.* 215 N.J. Super. at 576. Those who violate a State statute should neither profit by their action nor escape responsibility for such action.

Regulatory Flexibility Statement

These proposed new rules will not impose reporting, record-keeping, or other compliance requirements on small businesses; therefore, no regulatory flexibility analysis is required. The purpose of these proposed new rules is to supplement the enforcement authority for existing compliance requirements. The Department, in accordance with its mandate to protect human health, welfare and the environment, has determined that in assessing a penalty it would not be appropriate to take into consideration the size of the business. It has been the Department's experience that violations of the Act and the threat to human health, welfare, and the environment caused thereby have no correlation to business size.

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Full text of the proposed new rules follows.

CHAPTER 27A

AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

SUBCHAPTERS 1 AND 2. (RESERVED)

SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:27A-3.1 Scope and purpose

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., including violation of any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant to the Act. This subchapter shall also govern the procedures for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

(b) The Department may assess a civil administrative penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense for each violation of each provision of the Act, or of any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant to the Act.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct offense.

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

7:27A-3.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. Unless otherwise specified below, all words and terms shall be as defined in N.J.S.A. 26:2C-2 and in N.J.A.C. 7:27.

"Act" means the Air Pollution Control Act (1954), as amended, N.J.S.A. 26:2C-1 et seq.

"AAQS" means Ambient Air Quality Standards, as defined in N.J.A.C. 7:27-13.

"EHS" means Extraordinarily Hazardous Substance, as defined in N.J.A.C. 7:31-1.

"EOR" means Emission Offset Rule, as set forth in N.J.A.C. 7:27-18.

"NESHAPS" means National Emission Standards for Hazardous Air Pollutants, as set forth in 40 CFR 61.

"NSPS" means New Source Performance Standards, as set forth in 40 CFR 60.

"Offense" means each individual violation of the Act or of any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto. Subsequent offenses are not conditioned upon a prior conviction, final order, or entry of judgment. In addition, a single administrative order and notice of civil administrative penalty assessment may relate to more than one offense.

"PSDAQ" means Prevention of Significant Deterioration of Air Quality, as set forth in 40 CFR 51.

"TVOS" means Total Volatile Organic Substances, as defined in N.J.A.C. 7:27-17.

"VOS" means Volatile Organic Substances, as defined in N.J.A.C. 7:27-16.

7:27A-3.3 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty under the Act, for violation of the Act or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant to the Act, the Department shall, by means of an administrative order and notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by

personal service. The Department may, in its discretion, assess a civil administrative penalty for more than one offense in a single administrative order and notice of civil administrative penalty assessment or in multiple administrative orders and notices of civil administrative penalty assessment. This Administrative Order and Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the Act, rule, administrative order, operating certificate, registration requirement or permit violated;
2. Concisely state the facts which constitute the violation;
3. Order such violation to cease;
4. Specify the amount of the civil administrative penalty to be imposed; and

5. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:27A-3.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case or when a Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:27A-3.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;

2. If the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of notice of such denial; or

3. If an adjudicatory hearing is conducted, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of a Final Order in a contested case.

7:27A-3.4 Procedures to request an adjudicatory hearing to contest an administrative order and notice of civil administrative penalty assessment and procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order and notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit the following information in writing to the Department:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the Department's findings of fact in the administrative order and notice of civil administrative penalty assessment stated in short and plain terms;

3. An admission or denial of each of the Department's findings of fact in the administrative order and notice of civil administrative penalty assessment. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the hearing request within 20 days after receipt by the violator of an administrative order and notice of civil administrative penalty assessment being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings shall be conducted 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.

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7:27A-3.5 Civil administrative penalty determination-general

(a) The Department may assess a civil administrative penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense against each violator who fails to comply with the Act, or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto.

(b) Each violation of any provision of the Act, or any rule promulgated, or administrative order, operating certificate, registration requirement or permit issued pursuant thereto shall constitute a separate and distinct offense.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(d) Notwithstanding the provisions of N.J.A.C. 7:27A-3.6 through 3.10, the Department may assess a civil administrative penalty for offenses described in this section at the midpoint of the following ranges:

1. \$3,000 to \$10,000 for the first offense;
2. \$15,000 to \$25,000 for the second offense; and
3. \$30,000 to \$50,000 for the third and each subsequent offense.

(e) The Department may, in its discretion, adjust the amount determined pursuant to (d) above to assess a civil administrative penalty in an amount no greater than the maximum nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the offense;
3. The measures taken by the violator to mitigate the effects of the current offense and to prevent future offenses;
4. The deterrent effect of the penalty; or
5. Other specific circumstances of the violator or offense.

(f) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

7:27A-3.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, registration, record, or other document submitted or maintained, or who falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto.

(b) Each day from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator shall be an additional, separate and distinct offense.

(c) The Department shall determine the amount of the civil administrative penalty for offenses described in this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty, per act or omission, shall be in an amount of \$10,000 for the first offense, \$25,000 for the second offense, and \$50,000 for the third and each subsequent offense; and
2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of \$2,000 for the first offense, \$4,000 for the second offense, and \$10,000 for the third and each subsequent offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

7:27A-3.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty against each violator who refuses, inhibits or prohibits immediate

lawful entry and inspection of any premises, building, or place, except private residences, by any authorized Department representative.

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building, or place, except private residences, by any authorized Department representative, shall be an additional, separate and distinct offense.

(c) The amount of the civil administrative penalty for offenses described in this section shall be \$8,000 for the first offense, \$16,000 for the second offense, and \$40,000 for the third and each subsequent offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

7:27A-3.8 Civil administrative penalty for failure to pay a fee

(a) The Department may assess a civil administrative penalty against each violator who fails to pay a fee when due.

(b) Each day a fee is not paid after it is due shall constitute an additional, separate and distinct offense.

(c) The amount of the civil administrative penalty for offenses described in this section shall be in an amount equal to the unpaid fee, up to a maximum of \$10,000 for the first offense, two times the unpaid fee up to a maximum of \$25,000 for the second offense, and three times the unpaid fee up to a maximum of \$50,000 for the third and each subsequent offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

7:27A-3.9 Civil administrative penalty for failure to provide information or test data or to maintain a permanent record of information or test data

(a) The Department may assess a civil administrative penalty against each violator who fails to provide the Department with smoke, emission, stack or any other information or test data requested by the Department pursuant to the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto or who fails to maintain a permanent record of smoke, emission, stack or any other information or test data required to be kept pursuant to the Act or any rule, administrative order, operating certificate, registration requirement or permit issued pursuant thereto.

(b) Each day information or test data is not provided after it is due shall constitute an additional, separate and distinct offense. Each permanent record that is not maintained as required shall constitute an additional, separate and distinct offense.

(c) Notwithstanding N.J.A.C. 7:27A-3.10, the amount of the civil administrative penalty for offenses described in this section shall be \$5,000 for the first offense, \$10,000 for the second offense, \$30,000 for the third offense, and \$50,000 for the fourth and each subsequent offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) The Department may assess a civil administrative penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense for each violation of the Act or of any rule promulgated pursuant to the Act listed in (e) or (f) below.

(b) Each violation of each provision of the Act, or any rule promulgated pursuant thereto, shall constitute a separate and distinct offense.

(c) Each day during which the violation continues shall constitute an additional, separate, and distinct offense.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination

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purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(e) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection and (f) below are intended solely to put violators on notice that in addition to any civil adminis-

trative penalty assessed the Department may also revoke the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1. (Reserved)

2. The violations of N.J.A.C. 7:27-2, Control and Prohibition of Open Burning, and the civil administrative penalty amounts for each violation are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-2.2	Small scale (up to 55 gallon drum or equivalent)	\$300	\$600	\$1,500	\$4,500
	Large Scale	\$2,000	\$4,000	\$10,000	\$30,000
	Material containing pesticides, dangerous materials and solvents	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-2.3(a)	Small scale (up to 55 gallon drum or equivalent)	\$200	\$400	\$1,000	\$3,000
	Large scale	\$2,000	\$4,000	\$10,000	\$30,000
	Material containing pesticides, dangerous materials and solvents	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-2.3(b)	Residential	\$100	\$200	\$500	\$1,500
	Commercial	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-2.3(c)	Residential	\$100	\$200	\$500	\$1,500
	Commercial	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-2.4	Not acting in accordance with permit	\$1,000	\$2,000	\$5,000	\$15,000

3. The violations of N.J.A.C. 7:27-3, Control and Prohibition of Smoke from Combustion of Fuel, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-3.2	Boiler capacity less than 200 x 10 ⁶ BTU	\$300 ¹	\$600 ¹	\$1,500 ¹	\$4,500 ¹
	Boiler capacity 200 x 10 ⁶ BTU or greater	\$1,000 ²	\$2,000 ²	\$5,000 ²	\$15,000 ²
N.J.A.C. 7:27-3.3	Marine Installations	\$400 ²	\$800 ²	\$2,000 ²	\$6,000 ²
N.J.A.C. 7:27-3.4	Mobile Sources	\$400	\$800	\$2,000	\$6,000
N.J.A.C. 7:27-3.5	Stationary Engines	\$400 ²	\$800 ²	\$2,000 ²	\$6,000 ²
N.J.A.C. 7:27-3.6	Facilities and Equipment	\$1,000	\$2,000	\$5,000	\$15,000
	Records	\$400	\$800	\$2,000	\$6,000

¹Double Penalty If Over One Ringlemann or 20% Opacity

²Double Penalty If Over Two Ringlemann or 40% Opacity

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4. The violations of N.J.A.C. 7:27-4, Control and Prohibition of Particles from the Combustion of Fuel, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION		1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-4.2					
CLASS					
Maximum Actual Emissions					
For less than 10 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$2,000 ³	\$4,000 ³	\$10,000 ³	\$30,000 ³
2. From 25 through 50 percent over the allowable standard		\$4,000 ³	\$8,000 ³	\$20,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard		\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
From 10 pounds through 22.8 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$6,000 ³	\$12,000 ³	\$30,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard		\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard		\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³
For greater than 22.8 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard		\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard		\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-4.4	Sampling & Testing Facilities	\$2,000	\$4,000	\$10,000	\$30,000
	Operation	\$2,000	\$4,000	\$10,000	\$30,000

³Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

5. The violations of N.J.A.C. 7:27-5, Prohibition of Air Pollution, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION		1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-5.2(a)					
	Maximum Penalty Per Violation	\$10,000 ⁷	\$25,000 ⁷	\$50,000 ⁷	\$50,000 ⁷
	The Maximum penalty may be reduced by applying the following factors:				
	(1) Remedial Measures Taken:				
	(a) Yes	—15% Reduction from Maximum			
	(b) Partial	—10% Reduction from Maximum			
	(c) None	— 0% Reduction from Maximum			
	(2) Magnitude of Problem				
	(a) Population Affected				
	Less than three complainants	—20% Reduction from Maximum			
	Three to five complainants	—15% Reduction from Maximum			
	Six to ten complainants	— 5% Reduction from Maximum			
	Greater than 10 complainants	— 0% Reduction from Maximum			
	(b) Nature of Air Contaminant: ⁹				
	Particulates & other air contaminants	—15% Reduction from Maximum			
	VOS or AAQS	— 5% Reduction from Maximum			
	EHS, TVOS or NESHAPS	— 0% Reduction from Maximum			

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- (c) Amount of Air Contaminant Emitted in Any One Hour
- | | |
|------------------------|-----------------------------|
| Less than 22.8 pounds | —15% Reduction from Maximum |
| 22.8 pounds or greater | — 0% Reduction from Maximum |
- (d) Area Covered (Air contaminant)
- | | |
|----------------------------|-----------------------------|
| Less than 1/2 square mile | —15% Reduction from Maximum |
| 1/2 square mile or greater | — 0% Reduction from Maximum |
- (e) Off-site Property Damage
- | | |
|-----|-----------------------------|
| No | —15% Reduction from Maximum |
| Yes | — 0% Reduction from Maximum |

⁷For instance, for the first offense, if the violator takes remedial measures to reduce or eliminate the violation, the Department may reduce \$1,500 (15%) from the maximum penalty. Further, if there are less than three complainants related to the violation the Department may reduce an additional \$2,000 (20%) from the maximum penalty. Further, if an air contaminant emitted is not a VOS, AAQS, EHS, TVOS, or NESHAPS the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted is less than 22.8 pounds in any one hour to the atmosphere the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted into the atmosphere covers an area of less than 1/2 square mile, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if there is no off-site property damage from the air contaminant the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Therefore, the maximum reduction for the first offense penalty of \$10,000 would be \$9,500 (95%) resulting in an assessed penalty of \$500.00.

⁹VOS (N.J.A.C. 7:27-16)
EHS (N.J.A.C. 7:31-1)
AAQS (N.J.A.C. 7:27-13)

TVOS (N.J.A.C. 7:27-17)
NESHAPS (40 CFR 61)

6. The violations of N.J.A.C. 7:27-6, Control and Prohibition of Particles from Manufacturing Processes, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION		1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-6.2(a)					
CLASS					
Maximum Actual Emissions					
For less than 10 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$2,000 ³	\$4,000 ³	\$10,000 ³	\$30,000 ³
2. From 25 through 50 percent over the allowable standard		\$4,000 ³	\$8,000 ³	\$20,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard		\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
From 10 pounds through 22.8 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$6,000 ³	\$12,000 ³	\$30,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard		\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard		\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³
For greater than 22.8 pounds per hour:					
1. Less than 25 percent over the allowable standard		\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard		\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard		\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³
CITATION		1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-6.2(d)	All	\$500 ²	\$1,000 ²	\$2,500 ²	\$7,500 ²
N.J.A.C. 7:27-6.4	Monitoring	\$2,000	\$4,000	\$10,000	\$30,000
	Records	\$500	\$1,000	\$2,500	\$7,500
	Sampling and Testing Facilities	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-6.5(a)	Variance	\$2,000 ⁴	\$4,000 ⁴	\$10,000 ⁴	\$30,000 ⁴

³Double Penalty If Over Two Ringlemann or 40% Opacity

³Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

⁴Revoke Variance Under N.J.A.C. 7:27-6.5

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7. The violations of N.J.A.C. 7:27-7, Control and Prohibition of Air Pollution from Sulfur Compounds, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-7.2(a)				
CLASS				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$2,000 ⁴	\$4,000 ⁴	\$10,000 ⁴	\$30,000 ⁴
2. From 25 through 50 percent over the allowable standard	\$4,000 ⁴	\$8,000 ⁴	\$20,000 ⁴	\$50,000 ⁴
3. Greater than 50 percent over the allowable standard	\$8,000 ⁴	\$16,000 ⁴	\$40,000 ⁴	\$50,000 ⁴
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 ⁴	\$12,000 ⁴	\$30,000 ⁴	\$50,000 ⁴
2. From 25 through 50 percent over the allowable standard	\$8,000 ⁴	\$16,000 ⁴	\$40,000 ⁴	\$50,000 ⁴
3. Greater than 50 percent over the allowable standard	\$10,000 ⁴	\$20,000 ⁴	\$50,000 ⁴	\$50,000 ⁴
For greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$8,000 ⁴	\$16,000 ⁴	\$40,000 ⁴	\$50,000 ⁴
2. From 25 through 50 percent over the allowable standard	\$10,000 ⁴	\$20,000 ⁴	\$50,000 ⁴	\$50,000 ⁴
3. Greater than 50 percent over the allowable standard	\$10,000 ⁴	\$20,000 ⁴	\$50,000 ⁴	\$50,000 ⁴

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-7.2(d), (h) and (j)	Records	\$500	\$1,000	\$2,500	\$7,500
	Monitoring	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-7.2(n)	Sampling and Testing Facilities	\$2,000	\$4,000	\$10,000	\$30,000

⁴Per Air Contaminant Exceeding Allowable Standard Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

8. The violations of N.J.A.C. 7:27-8, Permits and Certificates, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-8.3(a)				
CLASS				
Estimated Potential Emission Rate				
1. Less than 10 pounds per hour	\$200 ⁵	\$400 ⁵	\$1,000 ⁵	\$3,000 ⁵
2. Ten through 22.8 pounds per hour	\$600 ⁵	\$1,200 ⁵	\$3,000 ⁵	\$9,000 ⁵
3. Greater than 22.8 pounds per hour	\$1,000 ⁵	\$2,000 ⁵	\$5,000 ⁵	\$15,000 ⁵
4. Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, EHS, and TVOS ⁶	\$2,000	\$4,000	\$10,000	\$30,000

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CITATION		1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-8.3(b)					
CLASS					
Estimated Potential Emission Rate					
1.	Less than 10 pounds per hour	\$200 ^s	\$400 ^s	\$1,000 ^s	\$3,000 ^s
2.	Ten through 22.8 pounds per hour	\$600 ^s	\$1,200 ^s	\$3,000 ^s	\$9,000 ^s
3.	Greater than 22.8 pounds per hour	\$1,000 ^s	\$2,000 ^s	\$5,000 ^s	\$15,000 ^s
4.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, EHS, and TVOS ^e	\$2,000	\$4,000	\$10,000	\$30,000
CITATION		1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-8.3(d)	All	\$100	\$200	\$500	\$1,500
CITATION		1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-8.3(e)1					
CLASS					
Maximum Actual Emissions:					
For less than 10 pounds per hour:					
1.	Less than 25 percent over the allowable standard	\$2,000 ^a	\$4,000 ^a	\$10,000 ^a	\$30,000 ^a
2.	From 25 through 50 percent over the allowable standard	\$4,000 ^a	\$8,000 ^a	\$20,000 ^a	\$50,000 ^a
3.	Greater than 50 percent over the allowable standard	\$8,000 ^a	\$16,000 ^a	\$40,000 ^a	\$50,000 ^a
From 10 pounds through 22.8 pounds per hour:					
1.	Less than 25 percent over the allowable standard	\$6,000 ^a	\$12,000 ^a	\$30,000 ^a	\$50,000 ^a
2.	From 25 through 50 percent over the allowable standard	\$8,000 ^a	\$16,000 ^a	\$40,000 ^a	\$50,000 ^a
3.	Greater than 50 percent over the allowable standard	\$10,000 ^a	\$20,000 ^a	\$50,000 ^a	\$50,000 ^a
For greater than 22.8 pounds per hour:					
1.	Less than 25 percent over the allowable standard	\$8,000 ^a	\$16,000 ^a	\$40,000 ^a	\$50,000 ^a
2.	From 25 through 50 percent over the allowable standard	\$10,000 ^a	\$20,000 ^a	\$50,000 ^a	\$50,000 ^a
3.	Greater than 50 percent over the allowable standard	\$10,000 ^a	\$20,000 ^a	\$50,000 ^a	\$50,000 ^a
CITATION		1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-8.3(e)1 or (e)2					
CLASS					
Emissions					
1.	Less than 10 pounds per hour	\$800 ^s	\$1,600 ^s	\$4,000 ^s	\$12,000 ^s
2.	From 10 through 22.8 pounds per hour	\$1,200 ^s	\$2,400 ^s	\$6,000 ^s	\$18,000 ^s
3.	Greater than 22.8 pounds per hour	\$2,000 ^s	\$4,000 ^s	\$10,000 ^s	\$30,000 ^s
4.	Regulated pursuant to NSPS, NESHAPS, PSDAQ, EOR, EHS, and TVOS ^e	\$3,000	\$6,000	\$15,000	\$45,000

^aPer Air Contaminant Exceeding Allowable Standard—Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

^sBased on Permit, if Applicable, or if Not, Estimate of Air Contaminant with Greatest Emission Rate Without Controls

^eNSPS (40 CFR 60) EOR (N.J.A.C. 7:27-18)
NESHAPS (40 CFR 61) TVOS (N.J.A.C. 7:27-17)
PSDAQ (40 CFR 51) EHS (N.J.A.C. 7:31-1)

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9. The violations of N.J.A.C. 7:27-9, Control and Prohibition of Air Pollution from Sulfur Dioxide caused by the Combustion of Fuel, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-9.2(a)	Storage/Sale by User	\$500	\$1,000	\$2,500	\$7,500
	Supplier	\$5,000	\$10,000 ¹	\$25,000 ¹	\$50,000 ¹
N.J.A.C. 7:27-9.2(b)	User less than 20 x 10 ⁶ BTU	\$500	\$1,000	\$2,500 ¹	\$7,500 ¹
	User 20 x 10 ⁶ BTU or more	\$2,000	\$4,000 ¹	\$10,000 ¹	\$30,000 ¹
N.J.A.C. 7:27-9.2(d)	Mathematical Combination	\$2,000	\$4,000	\$10,000	\$30,000 ¹
N.J.A.C. 7:27-9.2(e)	Facility By-Products	\$2,000	\$4,000	\$10,000	\$30,000 ¹

¹Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

10. The violations of N.J.A.C. 7:27-10, Sulfur in Solid Fuels, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-10.2(a)	Storage/Sale by User	\$500	\$1,000	\$2,500	\$7,500
	Supplier	\$5,000	\$10,000 ¹	\$25,000 ¹	\$50,000 ¹
N.J.A.C. 7:27-10.2(b)	User less than 200 x 10 ⁶ BTU	\$500	\$1,000	\$2,500 ¹	\$7,500 ¹
	User 200 x 10 ⁶ BTU or greater	\$2,000	\$4,000 ¹	\$10,000 ¹	\$30,000 ¹
N.J.A.C. 7:27-10.2(c)	User less than 200 x 10 ⁶ BTU	\$500	\$1,000	\$2,500 ¹	\$7,500 ¹
	User 200 x 10 ⁶ BTU or greater	\$2,000	\$4,000 ¹	\$10,000 ¹	\$30,000 ¹
N.J.A.C. 7:27-10.2(f)	User less than 200 x 10 ⁶ BTU	\$500	\$1,000	\$2,500 ¹	\$7,500 ¹
	User 200 x 10 ⁶ BTU or greater	\$2,000	\$4,000 ¹	\$10,000 ¹	\$30,000 ¹

¹Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

11. The violations of N.J.A.C. 7:27-11, Incinerators, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-11.2(a)	Multiple Chamber	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-11.2(c)	Single Fuel-Fed	\$1,000	\$2,000	\$5,000	\$15,000

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CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-11.3(a)1				
CLASS				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$2,000 ¹	\$4,000 ¹	\$10,000 ¹	\$30,000 ¹
2. From 25 through 50 percent over the allowable standard	\$4,000 ¹	\$8,000 ¹	\$20,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$8,000 ¹	\$16,000 ¹	\$40,000 ¹	\$50,000 ¹
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 ¹	\$12,000 ¹	\$30,000 ¹	\$50,000 ¹
2. From 25 through 50 percent over the allowable standard	\$8,000 ¹	\$16,000 ¹	\$40,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹
For greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$8,000 ¹	\$16,000 ¹	\$40,000 ¹	\$50,000 ¹
2. From 25 through 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-11.3(a)2				
CLASS				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$4,000 ¹	\$8,000 ¹	\$20,000 ¹	\$50,000 ¹
2. From 25 through 50 percent over the allowable standard	\$8,000 ¹	\$16,000 ¹	\$40,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹
2. From 25 through 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹
For greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹
2. From 25 through 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-11.3(b)	Smoke	\$1,000 ²	\$2,000 ²	\$5,000 ²	\$15,000 ²
N.J.A.C. 7:27-11.3(c)	Unburned Waste or Ash	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-11.3(d)	Odors	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-11.3(e)1	Monitoring (Density of Smoke)	\$2,000	\$4,000	\$10,000	\$30,000
	Records	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-11.3(e)2	Sampling and Testing Facilities	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-11.5(b)	Certificate	\$50	\$100	\$250	\$750
	Operating Procedures	\$100	\$200	\$500	\$1,500

¹Double Penalty If Over Two Ringelmann or 40% Opacity²Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

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12. The violations of N.J.A.C. 7:27-12, Prevention and Control of Air Pollution Emergencies, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-12.4(a) and (b)	Standby Plan	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-12.4(d)	Availability	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-12.4(e)	Failure to Submit	\$3,000	\$6,000	\$15,000	\$45,000
N.J.A.C. 7:27-12.5(a)1	Alert	\$10,000	\$25,000	\$50,000	\$50,000
N.J.A.C. 7:27-12.5(a)2	Warning	\$10,000	\$25,000	\$50,000	\$50,000
N.J.A.C. 7:27-12.5(a)3	Emergency	\$10,000	\$25,000	\$50,000	\$50,000

13. The violations of N.J.A.C. 7:27-13, Ambient Air Quality Standards, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-13.3(a)1 or 2	Primary	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-13.3(b)1 or 2	Secondary	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-13.4(a)1 or 2	Primary	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-13.4(b)1, 2 or 3	Secondary	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-13.5(a)1 or 2	Primary	\$5,000	\$10,000	\$25,000	\$50,000
	Secondary	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-13.6(a)	Primary	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-13.6(b)	Secondary	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-13.7	Primary	\$5,000	\$10,000	\$25,000	\$50,000
	Secondary	\$5,000	\$10,000	\$25,000	\$50,000
N.J.A.C. 7:27-13.8	Primary	\$5,000	\$10,000	\$25,000	\$50,000
	Secondary	\$5,000	\$10,000	\$25,000	\$50,000

14. The violations of N.J.A.C. 7:27-14, Control and Prohibition of Air Pollution from Diesel-Powered Motor Vehicles, and the civil administrative penalty amounts for each violation, per vehicle, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-14.3(a)	Passenger Vehicle Registration	\$100	\$200	\$500	\$1,500
	Commercial Vehicle Registration	\$200	\$400	\$1,000	\$3,000
	Property Owner	\$200	\$400	\$1,000	\$3,000

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15. The violations of N.J.A.C. 7:27-15, Control and Prohibition of Air Pollution from Gasoline-fueled Motor Vehicles, and the civil administrative penalty amounts for each violation, per vehicle, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-15.5(a)	Owner of less than three vehicles	\$400	\$800	\$2,000	\$6,000
	All others (e.g. Fleet, Motor Vehicle Dealer & Repair/Service Center)	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-15.5(b)	Passenger Vehicle Registration	\$500	\$1,000	\$2,500	\$7,500
	Commercial Vehicle Registration	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-15.5(c)	Sale	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-15.6(a)	Passenger Vehicle Registration	\$100	\$200	\$500	\$1,500
	Commercial Vehicle Registration	\$200	\$400	\$1,000	\$3,000
	Property Owner	\$200	\$400	\$1,000	\$3,000

16. The violations of N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Substances (VOS), and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.2(a)	External Surface	\$1,000	\$2,000	\$5,000 ³	\$15,000 ³
N.J.A.C. 7:27-16.2(b)	Control Apparatus	\$1,000	\$2,000	\$5,000 ³	\$15,000 ³
N.J.A.C. 7:27-16.2(c)	Vapor Control System	\$1,000	\$2,000	\$5,000 ³	\$15,000 ³
N.J.A.C. 7:27-16.2(d)	Gauging/Sampling	\$500	\$1,000	\$2,500 ³	\$7,500 ³
N.J.A.C. 7:27-16.2(g)	Floating Roof	\$2,000	\$4,000	\$10,000 ³	\$30,000 ³
N.J.A.C. 7:27-16.2(h)	Seal-Envelope	\$2,000	\$4,000	\$10,000 ³	\$30,000 ³
N.J.A.C. 7:27-16.2(i)	Second Seal	\$2,000	\$4,000	\$10,000 ³	\$30,000 ³
N.J.A.C. 7:27-16.2(k)	Retrofit Notification	\$500	\$1,000	\$2,500 ³	\$7,500 ³
N.J.A.C. 7:27-16.2(l)	Roof Openings	\$600	\$1,200	\$3,000 ³	\$9,000 ³
N.J.A.C. 7:27-16.3(a)	Submerged Fill	\$600	\$1,200	\$3,000 ³	\$9,000 ³
N.J.A.C. 7:27-16.3(c)	Transfer of Gasoline	\$600	\$1,200	\$3,000 ³	\$9,000 ³
N.J.A.C. 7:27-16.3(d)	Transfer of Gasoline (Delivery)	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(e)1	15,000 gallons or less per day	\$1,000	\$2,000	\$5,000 ³	\$15,000 ³
N.J.A.C. 7:27-16.3(e)2	Greater than 15,000 gallons per day	\$5,000	\$10,000	\$25,000 ³	\$50,000 ³
N.J.A.C. 7:27-16.3(f)1	VOS Emission	\$600	\$1,200	\$3,000 ³	\$9,000 ³
N.J.A.C. 7:27-16.3(f)2	Overfill and Spillage	\$1,000	\$2,000	\$5,000 ³	\$15,000 ³
N.J.A.C. 7:27-16.3(h)2	Records Availability	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.3(i)1	Pressure Testing	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.3(i)2 and (3)	Certification Display	\$100	\$200	\$500	\$1,500
N.J.A.C. 7:27-16.3(j)	Transfer Pressure	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(k)	Leaking Components	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(m)	Vapor-Tight Delivery Vessel	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(q)	Transfer/Loading	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.3(r)1	Permit	\$400	\$800	\$2,000	\$6,000
N.J.A.C. 7:27-16.3(r)2	Construction	\$800	\$1,600	\$4,000	\$12,000
N.J.A.C. 7:27-16.3(s)1	Permit	\$200	\$400	\$1,000	\$3,000
N.J.A.C. 7:27-16.3(s)2	Construction	\$400	\$800	\$2,000	\$6,000
N.J.A.C. 7:27-16.4(a)	Tank Lids	\$500	\$1,000	\$2,500	\$7,500 ³

ENVIRONMENTAL PROTECTION

PROPOSALS

N.J.A.C. 7:27-16.4(b)	Unheated Surface Cleaner 25 square feet or less	\$500	\$1,000	\$2,500 ³	\$7,500 ³
N.J.A.C. 7:27-16.4(c)	Unheated Surface Cleaner greater than 25 square feet	\$1,000	\$2,000	\$5,000 ³	\$15,000 ³
N.J.A.C. 7:27-16.4(d)	Heated Tank	\$1,000	\$2,000	\$5,000 ³	\$15,000 ³
N.J.A.C. 7:27-16.4(e)	Vapor Surface Cleaner	\$1,500	\$3,000	\$7,500 ³	\$22,500 ³
N.J.A.C. 7:27-16.4(f)	Unheated Conveyorized Surface Cleaner	\$1,000	\$2,000	\$5,000 ³	\$15,000 ³
N.J.A.C. 7:27-16.4(g)	Heated Conveyorized Surface Cleaner	\$1,500	\$3,000	\$7,500 ³	\$22,500 ³
N.J.A.C. 7:27-16.4(h)	Conveyorized Vapor Surface Cleaner	\$2,000	\$4,000	\$10,000 ³	\$30,000 ³
N.J.A.C. 7:27-16.4(i)	Oil-Water Separator	\$500	\$1,000	\$2,500 ³	\$7,500 ³
N.J.A.C. 7:27-16.4(j)	Written Instructions	\$200	\$400	\$1,000	\$3,000 ³
N.J.A.C. 7:27-16.4(k)	Training Program	\$500	\$1,000	\$2,500	\$7,500 ³
N.J.A.C. 7:27-16.4(l)	Copies of Instructions	\$300	\$600	\$1,500	\$4,500 ³
N.J.A.C. 7:27-16.4(m)	Submittal	\$300	\$600	\$1,500	\$4,500 ³
N.J.A.C. 7:27-16.4(n)	Notification	\$200	\$400	\$1,000	\$3,000 ³

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.5(a)				
CLASS				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$2,000 ³	\$4,000 ³	\$10,000 ³	\$30,000 ³
2. From 25 through 50 percent over the allowable standard	\$4,000 ³	\$8,000 ³	\$20,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
For 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 ³	\$12,000 ³	\$30,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³
For greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.5(b)				
CLASS				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$2,000 ³	\$4,000 ³	\$10,000 ³	\$30,000 ³
2. From 25 through 50 percent over the allowable standard	\$4,000 ³	\$8,000 ³	\$20,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
For 10 pounds to 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 ³	\$12,000 ³	\$30,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³

PROPOSALS

Interested Persons see Inside Front Cover

ENVIRONMENTAL PROTECTION

For greater than 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³

**4TH AND EACH
SUBSEQUENT
OFFENSE**

CITATION

N.J.A.C. 7:27-16.5(e)

CLASS

Maximum Actual Emissions

For less than 10 pounds per hour:

1. Less than 25 percent over the allowable standard	\$2,000 ³	\$4,000 ³	\$10,000 ³	\$30,000 ³
2. From 25 through 50 percent over the allowable standard	\$4,000 ³	\$8,000 ³	\$20,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³

From 10 pounds through 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$6,000 ³	\$12,000 ³	\$30,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³

For greater than 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³

**4TH AND EACH
SUBSEQUENT
OFFENSE**

CITATION

N.J.A.C. 7:27-16.5(f)

CLASS

Maximum Actual Emissions

For less than 10 pounds per hour:

1. Less than 25 percent over the allowable standard	\$2,000 ³	\$4,000 ³	\$10,000 ³	\$30,000 ³
2. From 25 through 50 percent over the allowable standard	\$4,000 ³	\$8,000 ³	\$20,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³

From 10 pounds through 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$6,000 ³	\$12,000 ³	\$30,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³

For greater than 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³

ENVIRONMENTAL PROTECTION

PROPOSALS

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.5(g)				
CLASS				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$2,000 ¹	\$4,000 ¹	\$10,000 ¹	\$30,000 ¹
2. From 25 through 50 percent over the allowable standard	\$4,000 ¹	\$8,000 ¹	\$20,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$8,000 ¹	\$16,000 ¹	\$40,000 ¹	\$50,000 ¹
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 ¹	\$12,000 ¹	\$30,000 ¹	\$50,000 ¹
2. From 25 through 50 percent over the allowable standard	\$8,000 ¹	\$16,000 ¹	\$40,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹
For greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$8,000 ¹	\$16,000 ¹	\$40,000 ¹	\$50,000 ¹
2. From 25 through 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.5(h)				
CLASS				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$2,000 ¹	\$4,000 ¹	\$10,000 ¹	\$30,000 ¹
2. From 25 through 50 percent over the allowable standard	\$4,000 ¹	\$8,000 ¹	\$20,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$8,000 ¹	\$16,000 ¹	\$40,000 ¹	\$50,000 ¹
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 ¹	\$12,000 ¹	\$30,000 ¹	\$50,000 ¹
2. From 25 through 50 percent over the allowable standard	\$8,000 ¹	\$16,000 ¹	\$40,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹
For greater than 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$8,000 ¹	\$16,000 ¹	\$40,000 ¹	\$50,000 ¹
2. From 25 through 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.6(a)				
CLASS				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$2,000 ¹	\$4,000 ¹	\$10,000 ¹	\$30,000 ¹
2. From 25 through 50 percent over the allowable standard	\$4,000 ¹	\$8,000 ¹	\$20,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$8,000 ¹	\$16,000 ¹	\$40,000 ¹	\$50,000 ¹
From 10 pounds through 22.8 pounds per hour:				
1. Less than 25 percent over the allowable standard	\$6,000 ¹	\$12,000 ¹	\$30,000 ¹	\$50,000 ¹
2. From 25 through 50 percent over the allowable standard	\$8,000 ¹	\$16,000 ¹	\$40,000 ¹	\$50,000 ¹
3. Greater than 50 percent over the allowable standard	\$10,000 ¹	\$20,000 ¹	\$50,000 ¹	\$50,000 ¹

PROPOSALS

Interested Persons see Inside Front Cover

ENVIRONMENTAL PROTECTION

For greater than 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.6(d)	Leaks (Per Leak)	\$300	\$600	\$1,500 ³	\$4,500 ³
N.J.A.C. 7:27-16.6(e)	Leaks (Per Leak)	\$300	\$600	\$1,500 ³	\$4,500 ³
N.J.A.C. 7:27-16.6(f)	Emission Testing Program	\$5,000	\$10,000	\$25,000 ³	\$50,000 ³
N.J.A.C. 7:27-16.6(g)	Emission Testing Program	\$3,000	\$6,000	\$15,000 ³	\$45,000 ³
N.J.A.C. 7:27-16.6(h)	Emission Testing Program	\$3,000	\$6,000	\$15,000 ³	\$45,000 ³
N.J.A.C. 7:27-16.6(i)1	Log	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.6(i)2	Reports	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-16.6(k)	Sealing Device	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.6(l)	Annual Monitoring	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-16.7	Cutback and Emulsified Asphalts	\$1,000	\$2,000	\$5,000	\$15,000

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
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N.J.A.C. 7:27-16.8(a)

CLASS**Maximum Actual Emissions**

For less than 10 pounds per hour:

1. Less than 25 percent over the allowable standard	\$2,000 ³	\$4,000 ³	\$10,000 ³	\$30,000 ³
2. From 25 through 50 percent over the allowable standard	\$4,000 ³	\$8,000 ³	\$20,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³

From 10 pounds through 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$6,000 ³	\$12,000 ³	\$30,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³

For greater than 22.8 pounds per hour:

1. Less than 25 percent over the allowable standard	\$8,000 ³	\$16,000 ³	\$40,000 ³	\$50,000 ³
2. From 25 through 50 percent over the allowable standard	\$10,000 ³	\$20,000 ³	\$50,000 ³	\$50,000 ³
3. Greater than 50 percent over the allowable standard	\$10,000	\$20,000 ³	\$50,000 ³	\$50,000 ³

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-16.8(b)	Filtration Emissions	\$600	\$1,200	\$3,000	\$9,000
N.J.A.C. 7:27-16.8(c)1	Leaking Equipment	\$500	\$1,000	\$2,500 ³	\$7,500 ³
N.J.A.C. 7:27-16.8(c)2	Open Containers	\$500	\$1,000	\$2,500 ³	\$7,500 ³
N.J.A.C. 7:27-16.9(a)	Information	\$300	\$600	\$1,500	\$4,500
N.J.A.C. 7:27-16.9(b)	Monitoring	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-16.9(c)	Sampling and Testing Facilities	\$2,000	\$4,000	\$10,000	\$30,000

³Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

17. The violations of N.J.A.C. 7:27-17, Control and Prohibition of Air Pollution by Toxic Substances, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

ENVIRONMENTAL PROTECTION

PROPOSALS

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-17.2	Asbestos Surface Coating	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-17.3(a)	Registration	\$500 ³	\$1,000 ³	\$2,500 ³	\$7,500 ³
N.J.A.C. 7:27-17.3(c)	Remedial Measures	\$500 ³	\$1,000 ³	\$2,500 ³	\$7,500 ³
N.J.A.C. 7:27-17.3(d)	Implementation	\$1,000 ³	\$2,000 ³	\$5,000 ³	\$15,000 ³
N.J.A.C. 7:27-17.3(e)	Resubmittal	\$1,000 ³	\$2,000 ³	\$5,000 ³	\$15,000 ³
N.J.A.C. 7:27-17.4(a)	Discharge Criteria	\$1,000	\$2,000	\$5,000 ³	\$15,000 ³
N.J.A.C. 7:27-17.4(b)	Aerodynamic Downwash	\$1,000	\$2,000	\$5,000 ³	\$15,000 ³
N.J.A.C. 7:27-17.5(a)	Written Instructions	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-17.5(b)	Training Program	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-17.5(c)	Copies of Instructions	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-17.5(d)	Submittal	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-17.5(e)	Notification	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-17.6(a)	Tests (Asbestos)	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-17.6(c)1	Information (TVOS)	\$300	\$600	\$1,500	\$4,500
N.J.A.C. 7:27-17.6(c)2	Monitoring (TVOS)	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-17.6(c)3	Sampling and Testing Facilities (TVOS)	\$2,000	\$4,000	\$10,000	\$30,000

³Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

18. through 22. (Reserved)

23. The violations of N.J.A.C. 7:27-23, Architectural Coatings, and the civil administrative penalty amounts for each violation are as set forth in the following table:

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-23.3(a)				
CLASS				
Per Gallon or any part thereof:				
1. Less than 25 percent over the allowable standard	\$300	\$600	\$1,500	\$4,500
2. From 25 through 50 percent over the allowable standard	\$600	\$1,200	\$3,000	\$9,000
3. Greater than 50 percent over the allowable standard	\$1,000	\$2,000	\$5,000	\$15,000

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-23.4(a)				
CLASS				
Per Unit—Eight pounds or any part thereof:				
1. Less than 25 percent over the allowable standard	\$300	\$600	\$1,500	\$4,500
2. From 25 through 50 percent over the allowable standard	\$600	\$1,200	\$3,000	\$9,000
3. Greater than 50 percent over the allowable standard	\$1,000	\$2,000	\$5,000	\$15,000

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-23.5	Manufacturer	\$10,000	\$25,000	\$50,000	\$50,000
N.J.A.C. 7:27-23.6(a)	Manufacturer	\$10,000	\$25,000	\$50,000	\$50,000
N.J.A.C. 7:27-23.6(b)	Distributor	\$4,000	\$8,000	\$20,000	\$50,000

24. (Reserved)

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

25. The violations of N.J.A.C. 7:27-25, Volatility, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

CITATION	CLASS	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.A.C. 7:27-25.3	Less than 15,000 gallon tank capacity	\$2,000	\$4,000	\$10,000	\$30,000
	From 15,000 up to 50,000 gallon tank capacity	\$4,000	\$8,000	\$20,000	\$50,000
	From 50,000 up to 500,000 gallon tank capacity	\$8,000	\$16,000	\$40,000	\$50,000
	Greater than 500,000 gallon tank capacity	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27-25.4(a)	Test/Document	\$1,000	\$2,000	\$5,000	\$15,000
	Records	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-25.4(b)	Records	\$500	\$1,000	\$2,500	\$7,500

(f) The Department shall determine the amount of the civil administrative penalty for violations described in this section on the basis of the provision violated and the frequency of the violation as follows:

CITATION	1ST OFFENSE	2ND OFFENSE	3RD OFFENSE	4TH AND EACH SUBSEQUENT OFFENSE
N.J.S.A. 26:2C-19(e)				
Maximum Penalty Per Violation	\$10,000 ⁷	\$25,000 ⁷	\$50,000 ⁷	\$50,000 ⁷
The Maximum penalty may be reduced by applying the following factors:				
1. Remedial Measures Taken:				
(a) Yes	—15% Reduction from Maximum			
(b) Partial	—10% Reduction from Maximum			
(c) None	— 0% Reduction from Maximum			
2. Magnitude of Problem				
(a) Population Affected				
Less than three complainants	—20% Reduction from Maximum			
Three to five complainants	—15% Reduction from Maximum			
Six to ten complainants	— 5% Reduction from Maximum			
Greater than 10 complaints	— 0% Reduction from Maximum			
(b) Nature of Air Contaminant ⁸				
Particulates & other air contaminants	—15% Reduction from Maximum			
VOS or AAQS	— 5% Reduction from Maximum			
EHS, TVOS or NESHAPS	— 0% Reduction from Maximum			
(c) Amount of Air Contaminant Emitted in Any One Hour				
Less than 22.8 pounds	—15% Reduction from Maximum			
22.8 pounds or greater	— 0% Reduction from Maximum			
(d) Area Covered (Air Contaminant)				
Less than 1/2 square mile	—15% Reduction from Maximum			
1/2 square mile or greater	— 0% Reduction from Maximum			
(e) Off-site Property Damage				
No	—15% Reduction from Maximum			
Yes	— 0% Reduction from Maximum			

⁷For instance, for the first offense, if the violator takes remedial measures to reduce or eliminate the violation, the Department may reduce \$1,500 (15%) from the maximum penalty. Further, if there are less than three complainants related to the violation the Department may reduce an additional \$2,000 (20%) from the maximum penalty. Further, if an air contaminant emitted is not a VOS, AAQS, EHS, TVOS, or NESHAPS the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted is less than 22.8 pounds in any one hour to the atmosphere the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if the air contaminant emitted into the atmosphere covers an area of less than 1/2 square mile, the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Further, if there is no off-site property damage from the air contaminant the Department may reduce an additional \$1,500 (15%) from the maximum penalty. Therefore, the maximum reduction for the first offense penalty of \$10,000 would be \$9,500 (95%) resulting in an assessed penalty of \$500.00.

⁸VOS (N.J.A.C. 7:27-16)

TVOS (N.J.A.C. 7:27-17)

EHS (N.J.A.C. 7:31-1)

NESHAPS (40 CFR 61)

AAQS (N.J.A.C. 7:27-13)

7:27A-3.11 Economic benefit component of a civil administrative penalty

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying with or by delaying compliance with the requirements of the Act, or any rule, administrative order, operating certificate or permit issued pursuant thereto. If the total economic benefit was derived from more than one offense, the total economic benefit amount may be apportioned among the offenses from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$10,000 for the first offense, no greater than \$25,000 for the second offense, and no greater than \$50,000 for the third offense and each subsequent offense.

RULE ADOPTIONS

ADMINISTRATIVE LAW

OFFICE OF ADMINISTRATIVE LAW

(a)

Uniform Administrative Procedure Rules Conduct of Non-Lawyer Representatives Adopted Amendment: N.J.A.C. 1:1-5.5

Proposed: November 21, 1988 at 20 N.J.R. 2845(a).

Adopted: February 24, 1989 by Jaynee LaVecchia, Director,
Office of Administrative Law.

Filed: February 24, 1989 as R.1989 d.158, **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. 52:14F-5(e), (f) and (g).

Effective Date: March 20, 1989.

Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:

No comments under N.J.S.A. 52:14B-4 were received in response to the proposal. However, in order to clarify the rule, the OAL decided to add language indicating that a non-lawyer representative, when signing a consent order or stipulation, must have been authorized to agree to the terms of a particular settlement.

Full text of the adoption follows (additions indicated in boldface with asterisks *thus*).

1:1-5.5 Conduct of non-lawyer representatives: limitations on practice

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

(f) In settlements, a non-lawyer may not sign a consent order or stipulation for a party, except that non-lawyer representatives of State agencies, county or municipal welfare agencies or close corporations who have been authorized ***to agree to the terms of a particular settlement*** by the represented entity may sign consent orders or stipulations.

(b)

Uniform Administrative Procedure Rules Interpreters; Payment

Adopted Amendment: N.J.A.C. 1:1-14.3

Preproposed: August 15, 1988 at 20 N.J.R. 1979(b).

Proposed: November 21, 1988 at 20 N.J.R. 2845(c).

Adopted: February 24, 1989 by Jaynee LaVecchia, Director,
Office of Administrative Law.

Filed: February 24, 1989 as R.1989 d.159, **without change**.

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

Effective Date: March 20, 1989.

Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

1:1-14.3 Interpreters; payment

(a) Except as provided in (d) below, any party at his or her own cost may obtain an interpreter if the judge determines that interpretation is necessary.

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

(d) In cases requiring the appointment of a qualified interpreter for a hearing impaired person pursuant to N.J.S.A. 34:1-69.7 et seq., the administrative law judge shall appoint an interpreter from the official registry of interpreters. The fee for the interpreter shall be paid by the transmitting agency.

(c)

Special Hearing Rules Public Welfare Hearings; Emergency Fair Hearings Adopted Amendment: N.J.A.C. 1:10-12.2

Proposed: December 19, 1988 at 20 N.J.R. 3049(a).

Adopted: February 24, 1989 by Jaynee LaVecchia, Director,
Office of Administrative Law.

Filed: February 24, 1989 as R.1989 d.160, **without change**.

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

Effective Date: March 20, 1989.

Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:

No comments under N.J.S.A. 52:14B-4 were received.

Full text of the adoption follows.

1:10-12.2 Emergency fair hearings in AFDC or General Assistance cases

(a) When DPW determines that a request for hearing should be scheduled as an emergency fair hearing:

1. DPW shall notify the Office of Administrative Law of the hearing request on the same day as the request is received. The Clerk of the Office of Administrative Law shall prepare the Office of Administrative Law transmittal form based upon the information provided by DPW.

2. The case shall be scheduled by the Office of Administrative Law for a hearing within three days after notification of the hearing request is received.

3. Notice of the time, date and place of the hearing shall be transmitted to DPW within one day after the Office of Administrative Law is notified of the hearing request. DPW shall notify the CWA or MWD, the petitioning applicant/recipient or the petitioner's representative of the scheduled hearing on the day that it receives notification of the hearing time and place.

4. The judge shall issue an initial decision no later than the day following the date of the hearing. A copy of the decision shall be transmitted to the Director of the DPW and the parties by an expeditious method designed to ensure receipt no later than the day following the date of the decision.

5. The petitioning applicant/recipient, his or her representative or the CWA or MWD may, by telephone, make exception or objection to the initial decision, to the DPW no later than the first day following the issuance of the initial decision.

6. The Director of the DPW shall issue a final decision no later than three days following the date the initial decision is received which shall accept, reject or modify the initial decision. On the date the final decision is issued, the DPW shall notify the CWA or MWD, the Office of Administrative Law and the petitioner or the petitioner's representative of the final decision and any relief ordered shall be provided on the date notice of the decision is received.

COMMUNITY AFFAIRS

ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT Neighborhood Preservation Balanced Housing Program

Eligible Applicants

Adopted Amendment: N.J.A.C. 5:14-1.2

Proposed: January 3, 1989 at 21 N.J.R. 3(a).

Adopted: February 17, 1989 by Anthony M. Villane, Jr., D.D.S.,
Commissioner, Department of Community Affairs.

Filed: February 22, 1989 as R.1989 d.143, **without change**.

Authority: N.J.S.A. 52:27D-320.

Effective Date: March 20, 1989.

Expiration Date: December 1, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

5:14-1.2 Eligible applicants

(a) Municipal governments shall be the only eligible applicants to the Neighborhood Preservation Balanced Housing Program; except that the municipality may designate other public, private and/or non-profit development entities as part of its application.

(b) Prior to July 1, 1989, any municipality shall be eligible to apply for funds so long as such funds are to be used to satisfy all or part of the municipality's low and moderate income housing obligation or indigenous need. On or after July 1, 1989, applications shall only be accepted from municipalities meeting at least one of the following criteria:

1. The municipality has petitioned the Council on Affordable Housing for substantive certification;
2. The municipality has received substantive certification from the Council on Affordable Housing;
3. The municipality has entered into a judicially-approved compliance agreement to settle its fair share housing obligation;
4. The municipality is subject to a court-ordered builder's remedy;
5. The municipality has been designated as a receiving municipality under a regional contribution agreement and project plan approved by the Council on Affordable Housing; or
6. The municipality is receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.).

(c) Prior to July 1, 1989, the Department shall grant absolute funding priority to municipalities meeting one or more of the criteria set forth in (b)1 through 6 above.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF COASTAL RESOURCES

Coastal Wetlands Maps in Salem County

Adopted Amendment: N.J.A.C. 7:7-2.2

Proposed: February 16, 1988 at 20 N.J.R. 349(b).

Adopted: February 15, 1989 by Christopher J. Daggett, Acting
Commissioner, Department of Environmental Protection.

Filed: February 15, 1989 as R.1989 d.137, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:9A-1 et seq. and 13:1D-1 et seq.

DEP Docket Number: 001-88-01.

Effective Date: March 20, 1989.

Expiration Date: May 7, 1989.

(CITE 21 N.J.R. 750)

Summary of Public Comments and Agency Responses:

A public hearing was held on March 16, 1988 in Salem, New Jersey. Two people testified at the hearing and one written comment was received during the comment period which closed on March 17, 1988. This written comment was an additional statement from one of the two witnesses who testified at the hearing.

COMMENT: The location of wetlands on wetlands map 294-1746 in the vicinity of Block 551, Lot 1891B, Township of Pennsville, has changed from the time of the 1982 delineation and should be verified before adoption.

RESPONSE: The area has been reexamined using more recent aerial photography acquired in 1986 and the Department has changed the line to reflect the updated information.

COMMENT: Has the State of Delaware been notified of these amendments and what effect, if any, do the amendments have on the State of Delaware.

RESPONSE: The amendments concern land which is wholly within the State of New Jersey and have no effect on property within the State of Delaware.

COMMENT: There are wetlands on wetlands map 231-1752 and wetlands along the Artificial Island access road that were permitted to be filled after the proposed delineation. This is not reflected in these proposed changes.

RESPONSE: The proposed amendment to map 231-1752 was based upon a 1981 source which was subsequently field checked and found to be incorrect. The areas which were proposed for removal from the wetland inventory were found to still be vegetated with typical wetlands species and should, therefore, be mapped as wetlands. Consequently, the proposed modifications to map 231-1752 will not be adopted.

AGENCY NOTE: Maps and associated wetlands delineations may be viewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey and at the Department of Environmental Protection, Division of Coastal Resources, Planning Group, 17 Ewing Street, Trenton, New Jersey. In addition, maps of the adopted delineations have been sent to the office of the clerk of the county in which the land is situated.

Full text of the adoption follows.

7:7-2.2 Wetlands

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

(c) The Wetlands Order promulgated by the Commissioner of Environmental Protection in April 1972, any amendments thereto, and these rules shall be applicable only in those areas shown waterward of the upper wetland boundary on the following maps:

1.-7. (No change.)

8. Salem County

AGENCY NOTE: The following maps have been adopted without change from proposal:

266-1770	294-1764	273-1764	329-1770
266-1776	315-1764	273-1776	329-1788

AGENCY NOTE: The following map has been adopted with changes in response to the comments presented to the Department:
294-1746

AGENCY NOTE: The modification to the following map has not been adopted; the map will remain as it is:

231-1752

9.-11. (No change.)

(c)

DIVISION OF WATER RESOURCES

Licensing of Operators of Industrial Wastewater Treatment Systems

Adopted Amendments: N.J.A.C. 7:10-13.2, 13.10 and 13.13

Proposed: June 6, 1988 at 20 N.J.R. 1141(b).

Adopted: February 26, 1989 by Christopher J. Daggett, Acting
Commissioner, Department of Environmental Protection.

Filed: February 27, 1989 as R.1989 d.170, **without change**.

ADOPTIONS

ENVIRONMENTAL PROTECTION

Authority: N.J.S.A. 58:11-64 et seq., particularly 58:11-66 and 67, and N.J.S.A. 58:10A-1 et seq.

DEP Docket Number: 018-88-05.

Effective Date: March 20, 1989.

Expiration Date: September 4, 1989.

Summary of Public Comments and Agency Responses:

The Department of Environmental Protection (Department) received four written comments on the proposed amendments to the licensing rules before the close of the comment period on July 6, 1988. They are summarized and responded to as follows:

COMMENT: One commenter suggested that the definition of an oil water separator be broadened to include, but not be limited to, dissolved air flotation, centrifugation, filtration, ultrafiltration, and froth flotation.

RESPONSE: The Department recognizes that there are means of treating wastewater containing petroleum hydrocarbons other than by gravity separation. However, the intent of the proposed amendments is to give permittees and applicants more flexibility in obtaining licensed operators specifically for passive, gravity-type oil water separators and sedimentation units. To redefine an oil water separator to include physical/mechanical and/or chemical means to remove oil and grease would be to defeat the purpose and intent of the amendments. Oil water separators which utilize means other than gravity will require a licensed operator with an N1 or higher classification, depending upon the wastewater system classification.

COMMENT: One commenter suggested that a corresponding training course and test must be developed for the NS license. As proposed, the requirements for the NS license and the N1 license would be the same, but the tests for each class would be different.

RESPONSE: The Department has been actively considering developing a training course for the new NS license, since the goal of the new license classification is to focus on the specific knowledge needed to operate these treatment systems properly. The Department will encourage Rutgers University and/or other institutions to develop a training course for operation of NS facilities. In conjunction with Rutgers University, the Department is arranging preparation of examination questions for the NS license test pursuant to an existing contract. This is expected to result in a test for the NS license covering material appropriate to that license.

COMMENT: One commenter suggested that, for NS licensees, the definition of "employed" be expanded to include contract or part-time employees specifically retained because of their license, as well as full-time employees of the company who may be assigned this additional responsibility.

RESPONSE: The Department's intent in proposing the amendments is to make it easier for companies that have industrial wastewater treatment systems consisting solely of a gravity oil water separator or a sedimentation unit to have greater flexibility in obtaining licensed operators. Pursuant to the amended rules, they may utilize existing employees who are qualified to become licensed operators or who possess any N class license, or they may hire an NS or N1 class operator. Full-time licensed operators are not required by these rules at NS or N1 class treatment systems. Full-time licensed operators are required at class 3 and class 4 treatment systems pursuant to N.J.A.C. 7:10-13.10(c). The Department's rules provide that those licensees desiring to be designated the licensed operator for more than one system shall apply for permission from the Department. If the Department grants permission, it shall specify the time period for which the permission is effective and the minimum number of hours the licensed operator shall spend at each system. The Department reserves the right to limit the number of systems a licensed operator may operate.

COMMENT: One commenter endorsed the proposed amendments.

RESPONSE: The Department appreciates the endorsement.

Full text of the adoption follows.

7:10-13.2 Definitions

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

"Oil water separator" means an industrial wastewater treatment system designed for the removal of insoluble oils or floating grease by gravity means.

"Sedimentation unit" means any industrial wastewater treatment system at which wastewater is only physically, not chemically, treated to reduce suspended solids including a clarifier, settling tank, lagoon, basin or pond, detention basin or pond, or sedimentation basin or pond.

7:10-13.10 Licensed operator required, penalties

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

(c) Each class 3 treatment system and class 4 treatment system shall have the appropriate full-time licensed operator. In addition, class 4 treatment systems should have a licensee possessing any valid treatment license within the appropriate system classification, physically present at the treatment system during that portion of each 24 hour period when the licensed operator is not present.

(d)-(g) (No change.)

7:10-13.13 Conversion of licenses

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

(c) (No change in text.)

(d) Any person eligible to apply for a N1 license, pursuant to N.J.A.C. 7:10-13.15(c), who is employed by an industrial wastewater treatment system consisting only of a gravity oil water separator or sedimentation unit may apply, pursuant to N.J.A.C. 7:10-13.6, to take an examination for a NS license instead of a N1 license.

(e) Any person who successfully passes the examination for a NS license may only become the licensed operator at a Class I industrial wastewater treatment system consisting only of a gravity oil-water separator or sedimentation unit.

Recodify existing (e) through (i) as (f) through (j) (No change in text.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

Notice of Administrative Correction Clam Relay Program

N.J.A.C. 7:25-15.1

Take notice that the Division of Regulatory Affairs, Department of Environmental Protection, has discovered errors in the text of N.J.A.C. 7:25-15.1(f)4 and (m)2 currently in the New Jersey Administrative Code. Language in paragraph (f)4 adopted and published in the May 7, 1984 New Jersey Register at 16 N.J.R. 1086(a) was inadvertently omitted from the 12-16-85 Code update. In paragraph (m)2, the word "not" in the third sentence, which was part of the rule text not deleted by the Department in the most recent amendment to this section (see 17 N.J.R. 2191(a) and 2976(a)), was omitted, in error, from the text of the proposal and adoption notices and the updated Code. This notice of administrative correction is made pursuant to N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (additions indicated in boldface thus).

7:25-15.1 Relay of hard clams

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

(f) Any person applying for a permit 5a must have acquired a special relay lease from the department for three one-half acre lots of shellfish cleansing grounds on which the relayed shellfish are to be planted by the means hereinafter set forth. No person shall hold more than one relay lease. Applications for leases must be made in person at the Nacote Creek Shellfish Office for the department. The lease shall be subject to the following additional conditions:

1.-3. (No change.)

4. This special relay lot shall be used for relay from the specified harvest areas only. No special relay lease will be renewed if the lessee did not actively participate in the previous year's program unless such inactivity was due to unusual hardship, as determined by the department, or was due to the department's failure to administer or operate a hard clam relay program during the previous year.

ENVIRONMENTAL PROTECTION

ADOPTIONS

- i. (No change.)
- 5.-10. (No change.)
- (g)-(l) (No change.)
- (m) Penalty:
- 1. (No change.)
- 2. Any lessee who is convicted of an offense which results in the revocation of a Shellfish Harvesting License or Special Permit mentioned in (e)2 above shall have this lease terminated by the department; provided, however, that upon lessee's giving notice to the division within 10 days of departmental notice of termination of said lease, the lessee shall be given the opportunity to show why his lease should not be terminated. Upon issuance of summons to lessee, any transfer of lease will be stayed pending final disposition of said summons. If notice is given within the aforementioned 10-day period, termination of the lease will **not** be effective until the next regularly scheduled meeting of the Atlantic Coast Section of the Shell Fisheries Council. The Atlantic Coast Section of the Shell Fisheries Council shall have the authority to permanently suspend such termination for good cause shown.
- 3. (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT Labeling and Storage Standards Applicable Both to Generators Who Offer Hazardous Waste to a Waste Reuse Facility and to Waste Reuse Facilities

Adopted Amendments: N.J.A.C. 7:26-7.4, 9.1, and 12.1

Proposed: June 20, 1988 at 20 N.J.R. 1329(a).
 Adopted: February 16, 1989 by Christopher J. Daggett, Acting
 Commissioner, Department of Environmental Protection.
 Filed: February 17, 1989 as R.1989 d.141, **without change**.
 Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.
 DEP Docket Number: 019-88-05.
 Effective Date: March 20, 1989.
 Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

This rule was proposed on June 20, 1988. **No comments were received** during the comment period which closed on July 20, 1988.

Full text of the adoption follows.

- 7:26-7.4 Hazardous waste generator responsibilities
 - (a)-(i) (No change.)
 - (j) A generator shall not offer hazardous waste to a waste reuse facility for use or reuse unless:
 - 1. The generator has registered with the Department's waste reuse facility program. To register, a generator shall submit the following information to: New Jersey Department of Environmental Protection, Division of Hazardous Waste Management, Waste Reuse Program, 401 East State Street, 5th Floor, CN 028, Trenton, N.J. 08625.
 - i.-viii. (No change.)
 - 2. The generator has complied with all applicable requirements for labeling and accumulation of hazardous waste as contained in N.J.A.C. 7:26.
 - 3.-5. (No change.)
- 7:26-9.1 Scope and applicability
 - (a)-(b) (No change.)
 - (c) The standards and requirements of this subchapter do not apply to:
 - 1.-12. (No change.)
 - 13. The owner or operator of a waste reuse facility provided the following conditions are met:
 - i.-ii. (No change.)

- iii. Wastes intended for use or reuse are stored no longer than 90 days, and the requirements set forth for accumulation of wastes for less than 90 days at N.J.A.C. 7:26-9.3(a)3 or (b)5 are also met;
- iv. (No change.)
- v. The owner or operator of the waste reuse facility maintains a written operating record at the facility in accordance with the applicable provisions of N.J.A.C. 7:26-9.4(i) and, for hazardous waste stored in tanks, records are maintained which list the date that each shipment of hazardous waste enters the tank, the volume of that shipment, the date that each quantity of hazardous waste exits the tank, and the volume of the hazardous waste exiting the tank;
- vi.-xi. (No change.)
- (d)-(e) (No change.)

7:26-12.1 Scope and applicability

- (a) (No change.)
- (b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct or operate the following hazardous waste facilities.
- 1.-10. (No change.)

11. The owner or operator of a waste reuse facility, provided all conditions and requirements of N.J.A.C. 7:26-9.1(c)13 are met, and the owner or operator submits the following information and documentation to the New Jersey Department of Environmental Protection, Division of Hazardous Waste Management, Waste Reuse Program, 401 East State Street, 5th Floor, CN 028, Trenton, N.J. 08625:

- i.-ii. (No change.)
- iii. A brief description of the waste reuse process including the waste to be reused, raw material to be substituted, and the end product of the industrial process;
- iv.-xi. (No change.)
- (c) (No change.)

HEALTH

(b)

HOSPITAL REIMBURSEMENT

Uniform Bill-Patient Summary (Inpatient)

Adopted Amendments: N.J.A.C. 8:31B-2.2 and 2.4

Proposed: December 19, 1988 at 20 N.J.R. 3057(a).
 Adopted: February 22, 1989 by Molly Joel Coye, M.D., M.P.H.,
 Commissioner, Department of Health (with approval of the
 Health Care Administration Board).
 Filed: February 24, 1989 as R.1989 d.154, **without change**.
 Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and
 26:2H-18d.

Effective Date: March 20, 1989.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: The New Jersey Hospital Association believes that these amendments are required to report birthweight for newborn patients which will enable the Department to establish rates under the New York Grouper Version 6, effective April 1, 1989. Severity of illness indicators would be effective upon implementation of a severity system.

RESPONSE: No response necessary.

COMMENT: The General Hospital Center at Passaic stated that a major change to the data elements required to collect the severity of illness indicators on the Uniform Bill-Patient Summary is not appropriate at this time. The programming time and dollars needed to accommodate this change are significant, especially when the decision to implement a severity of illness methodology has not been made.

RESPONSE: The intent of the Department is to allow the hospitals as much time as possible to prepare their computer systems to collect the severity of illness indicators, pending the possible implementation of the methodology. The Department recognizes that there will be some labor involved to make this change; however, given that other changes are also required at this time, the effort would be less than if it were to be done singularly.

ADOPTIONS

HEALTH

Full text of the adoption follows.

8:31B-2.2 Implementation

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

(c) The revision to N.J.A.C. 8:31B-2 provide for the submission of sufficient patient information for reconciliation of payments consistent with N.J.A.C. 8:31B-3.71 through 3.86.

1. "Sufficient patient information" shall consist of the following for all inpatients discharged and ambulatory same day surgery outpatients treated and shall be submitted in the format specified pursuant to N.J.A.C. 8:31B-2.5(g).

i.-x. (No change.)

xi. All billing information (items 51-56, 64);

xii. Birthweight (newborn inpatient) (effective for billing purposes upon implementation of the New York Grouper Version 6; effective for reporting purposes to the Department of Health on March 20, 1989); and

xiii. Severity of Illness (S.O.I.) indicators (inpatient) (effective upon implementation of methodology).

2. (No change.)

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

8:31B-2.4 Guidelines for completion of the patient billing and abstract form

(a) (No change.)

(b) Billing timelines requirements are as follows:

1. (No change.)

2. Where claims administration and cash flow considerations would dictate a more current billing than the 30 day requirement, a preliminary version of the UB-82 containing only those items required in (a) above for the particular payer need be utilized at the time of billing and such information is sufficient to adjudicate a claim for prompt payment discount. In interim billing cases, it is necessary that the completed patient billing and abstract information noted in N.J.A.C. 8:31B-2.2(c) must be submitted to the appropriate Data Intermediary in compliance with the Data Intermediary time limits and the Department of Health Data Requirements (see N.J.A.C. 8:31B-2.5(g)).

(a)

Procedural and Methodological Regulations

Adopted Amendments: N.J.A.C. 8:31B-3.19, 3.38 and 3.45

Proposed: December 19, 1988 at 20 N.J.R. 3057(b).

Adopted: February 22, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: February 24, 1989 as R.1989 d.153, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: March 20, 1989.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: The New Jersey Hospital Association believes that these amendments would be required to recognize separate newborn rates based on birthweight and for the possible adoption of a severity system in 1989. Inclusion of the outlier definitions with their respective payment methodologies is a welcome clarification of the rule.

RESPONSE: No response necessary.

COMMENT: Concerning N.J.A.C. 8:31B-3.38(c)2i and 2ii, the North Jersey Physicians Review commented that the definitions for length of stay outliers states that a patient would be assigned to a DRG but whose length of stay is longer than the high trim or shorter than the low trim. How will the length of stay be calculated?

RESPONSE: The length of stay is calculated on the discharge date minus the admission date for the total days of hospitalization.

COMMENT: Concerning N.J.A.C. 8:31B-3.38(c)2v, the same commenter stated that the rule defines transfers as "patients under medical advice requiring continued acute care . . ." Does this preclude patients

who are transferred to another acute care facility at his or the family's request?

RESPONSE: The patients in your questionable category are not precluded, since a physician's order for transfer is always required.

COMMENT: The same commenter observed that there is no provision in the rules for the Utilization Review Organization (URO) to be responsible for the verification of the severity of illness score for appropriate reimbursement.

RESPONSE: It is the intent of the Department, in future rulemaking, to propose a mechanism for the verification of the severity of illness (S.O.I.) score at such time that the S.O.I. methodology is prepared for implementation.

COMMENT: The General Hospital Center at Passaic stated that the proposal to add data elements for severity of illness indicators is inappropriate at this time, since a decision for implementation of the methodology has not been made. It is a further burden to hospitals facing other reimbursement changes.

RESPONSE: The Department's intent, in proposing the additional data elements at this time, is to allow the hospital as much time as possible to make the necessary programming changes. The collection of severity of illness data, however, will only begin upon the approval and implementation of a methodology for measuring the severity of the patient's illness.

Full text of the adoption follows.

8:31B-3.19 Patient care cost findings: Direct costs per case, physician and non-physician

(a) Hospital case-mix:

1. Uniform Bill-Patient Summary (UB-PS) data pursuant to N.J.A.C. 8:31B-2.1 are used for determination of hospital case-mix. The appropriate patient records for the reporting period corresponding with the Financial Elements Report are classified into Diagnosis Related Groups (DRGs) (see the DRG List in N.J.A.C. 8:31B-5) using the following items as defined in the UB-PS rule:

i.-v. (No change.)

vi. Discharge status;

vii. Birthweight (newborn) (effective for billing purposes upon implementation of the New York Grouper Version 6; effective for reporting purposes to the Department of Health on March 20, 1989);

viii. Severity of Illness (S.O.I.) indicators (effective upon implementation of methodology).

2.-4. (No change.)

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

8:31B-3.38 Derivation for Preliminary Cost Base

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

(c) Basic rate order:

1. (No change.)

2. The five outlier categories are defined below and will have rates and/or per diems included on the Schedule of Rates as follows:

i. High length of stay: Patients assigned to a DRG, but whose Length of Stay (LOS) is longer than the high LOS trim point.

(1) The rate is the inlier rate per case plus a per diem for each acute day from the date of admission to date of discharge. The DRG's with three or fewer high length of stay outlier cases in the base year, the standard high length of stay per diem is the rate.

ii. Low length of stay: Patients assigned to a DRG, but whose Length of Stay (LOS) is shorter than the low LOS trim point.

(1) The billing rate is limited to either the lower of the inlier rate per case or the sum of the acute days multiplied by the low per diem. For DRG's with three or fewer low length of stay outlier cases in the base year, the standard low length of stay per diem is the rate.

iii. Low volume: Patients assigned to a DRG with five or fewer merged cases in the base year.

(1) The rate is the standard rate per case and standard per diem if also a length of stay outlier (as described in (c)2i and ii above).

iv. Clinical outliers: Patients assigned to a DRG with poorly defined clinical characteristics precluding valid comparison of patients within the DRGs.

(1) The rate per case and per diems are based upon the hospital specific or "Historical" cost. Inlier or outlier status determines the use of the inlier rate or outlier per diem rates.

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v. Transfer patients: Patients under medical advice requiring continued acute care who are transferred from one Acute Care Facility to another Acute Care Facility.

(1) Where a patient's discharge status is that of a transfer to another acute care facility (inpatient), the rate is limited to the lower of the inlier rate per case or the sum of the acute days multiplied by the low outlier per diem. The hospital which received the transfer patient (and that patient is subsequently a non-transfer status discharge) will receive the appropriate rate per case or per diem based upon DRG assignment and trim point status.

3. (No change.)

(d) (No change.)

8:31B-3.45 Uniform Bill—Case Mix Determination—Financial Reports

(a) (No change.)

(b) Case mix and volume determinations for final reconciliation for the rate period pursuant to N.J.A.C. 8:31B-3.71 through 3.86 shall be based on the Uniform Bill-Patient Summaries using the same Grouper used to establish rates subject to audit adjustments, using the following:

1.-4. (No change.)

5. Sex;

6. (No change.)

7. Birthweight (newborn) (effective for billing purposes upon implementation of the New York Grouper Version 6: effective for reporting purposes to the Department of Health on March 20, 1989);

8. Severity of Illness (S.O.I) indicators (effective upon implementation of methodology).

(c) (No change.)

(a)

FINANCIAL ELEMENTS AND REPORTING

Uncompensated Care Audit Functions

Adopted New Rule: N.J.A.C. 8:31B-4.41

Proposed: December 5, 1988 at 20 N.J.R. 595(a).

Adopted: February 23, 1989 by Molly J. Coye, M.D., M.P.H.,

Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Filed: February 24, 1989 as R.1989 d.152, **without change**.

Authority: N.J.S.A. 26:2H et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: March 20, 1989.

Expiration Date: October 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: While dollar sampling may be a statistically valid method of auditing accounts, the result should produce a sufficient sample size. If the method results in a sample size of only five accounts, then there is a problem with the selection methodology. Commenter Jersey City Medical Center suggests a minimum and maximum sample size.

RESPONSE: The Department agrees that a sufficient sample size must be produced. Minimum sample size will be included in the audit methodology presented to the Hospital Rate Setting Commission.

COMMENT: While it does not appear that hospitals will have difficulty in supplying the ratio and trend analyses for current and prior years, hospitals will have difficulty listing bad debt and charity accounts in rank order by dollar amount prior to the 1989 rate year. There has been no requirement that hospitals keep such a listing in the past. The New Jersey Hospital Association, Touche Ross, therefore recommend that the Department not require the ranking of bad debt and charity accounts from smallest to largest prior to the 1989 year.

RESPONSE: The proposed rule does not require the ranking of bad debt and charity accounts for any year prior to the 1989 rate year.

COMMENT: In addition to these requirements, the Department of Human Services recommends that the hospitals, when preparing the ranking of all bad debt and charity care, include identification of the payer, the medical record number and the Health Services Program Number. This will assist the payers with identifying bad debt attributable

to their patients and to perform internal studies of the program. It is also recommended that a payer should have the right to report to the Department of Health (DOH) suspected violations by the hospitals and that DOH should investigate these allegations.

RESPONSE: This suggestion would constitute a substantive change requiring reproposal. The Department will consider this addition. Payers currently have the right to report suspected violations to the Department of Health. The Department of Health may investigate these allegations if warranted.

COMMENT: The Division of Medical Assistance and Health Services, Department of Human Services, supports this new rule. After utilizing a statistically invalid sample methodology, which prevented the establishment of satisfactory audit penalties, this proposed change to a dollar sampling will be beneficial. It will ensure attention to the high dollar accounts which is advantageous to the hospitals because it will eliminate a small balance account having the same weight as a high balance account in determining if a penalty should be levied. It is also beneficial to the payers because it will lead to more appropriate penalty recommendations which should make the hospitals more diligent in their credit and collection practices.

RESPONSE: No response necessary.

COMMENT: Valley Hospital is concerned that the rule does not state what effect this "sampling" method will have on the audit penalty calculation. Currently, for the purposes of the penalty calculation, each file is counted equally. The proposed rule alludes to a change in this policy.

The Hospital feels strongly that the Department should detail exactly how the penalty calculation would be affected by this proposed rule, prior to its adoption. To overlook this now will only lead to confusion and misunderstanding at the time of the audit.

RESPONSE: This rule only addresses the requirement of how hospitals shall maintain their uncompensated care listings. All methodological specifications, including the penalty calculation, will be presented to the Hospital Rate Setting Commission.

COMMENT: The rule also proposes to require hospitals to submit three ratios relating to the reserve, provision and write-offs of bad debts.

Again, Valley Hospital is concerned with the results of the rule rather than its requirement. The rule states only that "... the Department of Health finds it necessary to require further data to support a hospital's calculation". The industry should be made aware of the Department's intended use and analysis of this information.

RESPONSE: The Department intends to analyze the trends shown by the ratios reported. Hospitals whose figures are aberrant will be subject to further scrutiny. If the aberrations cannot be explained, it may be recommended that a hospital have its bad debt provision reduced. The Uncompensated Care Trust Fund is authorized to pay only for the reasonable amount of uncompensated care.

COMMENT: General Hospital Center at Passaic agrees that the current sampling method is flawed and should be changed. However, the requirement to have hospitals rank order all bad debt and charity care amounts would create a tremendous amount of manual effort on the part of many hospitals. While there are some software packages that would accommodate this, chances are that the entire listing of bad debt and charity care cases would have to be manually loaded into a personal computer for the rank ordering to be completed. This is due to the fact that most "shared" computer systems do not offer the storage capacity to access transactions for up to one year after an account is closed. A more workable solution would be to use a form of dollar sampling that would not require rank ordering.

RESPONSE: Currently, hospitals compile manual or computer lists of accounts that are written off as uncompensated care. The Department believes that this will be no more burdensome because the ranking would be done by computer.

COMMENT: Touche Ross stated that there appears to be some confusion in the wording as to the use of dollar sampling. Dollar sampling is a sample selection methodology which selects dollars in place of units. "Ranking order" relates to the mechanical aspect of the dollar selection process, not an all inclusive sampling methodology. In other words, before one can determine to use dollar sampling selection methodology, one must first design a detailed statistical sampling application methodology, which would include approach, definitions of errors, acceptable error rate, sample confidence level and the sample precision level. These factors are then applied to the population, which would calculate the sample size. The sample size would then be divided into the population to yield the sampling interval which would be stated in a dollars value. Dollar sampling is a method of selection that enhances audit efficiency

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by allowing a statistical sampling application to achieve higher precision and confidence level with a relatively smaller sample size.

RESPONSE: This rule only addresses the mechanical aspect of the dollar selection process. The sampling methodology, including all the factors listed above, will be developed for presentation to the Hospital Rate Setting Commission.

COMMENT: The Cost Containment Committee of the Steering Committee on Health Care for the Uninsured recommended experimenting with several sampling approach alternatives on actual hospital specific data to determine if the mechanics of a statistical approach were practical and/or efficient. The Committee's recommendation should be followed and the results made known, before the Department of Health proposes further rules on this topic.

RESPONSE: The Department understood the Committee's recommendation to be to test the dollar sampling mechanism with one or more hospitals and to use that testing to develop the methodology which will be presented to the Commission. The Department is seeking to arrange this with several hospitals.

COMMENT: Touche Ross commented that, to utilize dollar sampling, it is not necessary for the hospital to rank order accounts. All the hospital has to do is supply the Department of Health a machine readable tape or manual listing. Further, it is not clear why the hospitals are being required to run a cumulative balance, this cumulative balance will have to be redone once a sampling interval is selected by the Department of Health. The bad debts writeoffs and charity care costs need only be listed with a data identifier. Existing "off the shelf" sampling software can be used to select the dollar sampling accounts based on the given input variables, such as population, confidence and precision levels, reducing audit time and avoiding sample selection errors. The Department of Health or the hospital could utilize this software to make sample selection minimizing the required effort.

RESPONSE: Dollar sampling means selecting a sample based on dollars rather than the number of accounts. The Department will utilize a manual selection method which involves rank ordering all bad debt and charity care accounts. However, this rule does not include any methodological aspects of dollar sampling. It merely sets up the mechanism for hospitals to maintain their lists of accounts so that the Department can utilize dollar sampling.

Full text of the adoption follows.

8:31B-4.41 Uncompensated care audit functions

(a) Hospitals shall maintain their annual bad debt and charity care lists in a way that will allow the Department of Health to select accounts for dollar sampling. Hospitals will be required to rank order all bad debt and charity care accounts from the smallest to the largest and run a cumulative balance on the list. These lists must be available to the Department of Health by May 1 following the rate year.

(b) Hospitals shall submit, on a yearly basis, verifiable data in the following format:

1. The ratio of the provision for bad debt to patient services revenue;
2. The ratio of the reserve for bad debt to accounts receivable; and
3. The ratio of actual write-offs (net of recoveries) to patient services revenue.

(c) This procedure entails a comparative analysis of pertinent current year's ratios and the multiyear trend. These ratios shall include a three year trend for 1987, a four year trend for 1988, and a five year trend for 1989 and all subsequent years.

DRUG UTILIZATION REVIEW COUNCIL

(a)

List of Interchangeable Drug Products

Readoption: N.J.A.C. 8:71

Proposed: January 3, 1989 at 21 N.J.R. 7(a).

Adopted: February 16, 1989 by Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: February 17, 1989 as R.1989 d.142, **without change**.

Authority: N.J.S.A. 24:6E-1(a).

Effective Date: February 17, 1989.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: Ortho Pharmaceutical Corporation objected to the continued inclusion of oral contraceptive products in the List of Interchangeable Drug Products because such products are in a "critical dose" category. Ortho claims that such products are not suitable for generic interchange because patients receiving the substitutes may experience increased side effects and become confused by packaging changes, thus increasing their chances of becoming pregnant. Ortho thus opposed the readoption of N.J.A.C. 8:71.

RESPONSE: The Council does not agree that oral contraceptives are in a "critical dose" category; no data has been brought to the Council's attention that satisfactorily establishes oral contraceptives as possessing a narrow therapeutic range.

Further, purported side effects attributable to higher or lower blood levels from the generic substitute have not been credibly established. On the contrary, the Council has seen data stating that Ortho's brand of oral contraceptive produces more variable blood levels than some generics.

While conceding that package changes may be confusing, the Council believes that any increased possibility of pregnancy will be minimized by pharmacist counseling and the explicit instructions each patient receives with the patient package insert that must be given to each patient, as well as being offset by the economic benefits of the substituted generics. In any event, the Council notes that both the prescriber and the patient may refuse the substitute.

The Council finds Ortho's objection to be without merit and continues to include generic oral contraceptives in the List of Interchangeable Drug Products.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:71.

(b)

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: December 19, 1988 at 20 N.J.R. 3078(a).

Adopted: February 24, 1989, by the Drug Utilization Review Council, Robert Kowalski, Secretary.

Filed: February 27, 1989 as R.1989 d.163, **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: March 20, 1989.

Operative Date: March 20, 1989, for all products except cyclobenzaprine tabs 10 mg, which is adopted operative May 3, 1989, and prazosin caps, 1, 2, and 5 mg, which are adopted operative May 16, 1989.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their manufacturers were **adopted**:

Allopurinol tabs 100, 300 mg	Superpharm
Amoxicillin for susp. 125/5, 250/5 ml	Novopharm
Baclofen tabs, 10, 20 mg	Zenith
Benzotropine mesylate tabs 0.5, 1, 2 mg	Par
Betamethasone dipropionate lotion 0.05%	Thames
Butalbital, APAP, and caffeine tabs	Mikart
Carisoprodol tabs 350 mg	Vitarine
Cephalexin caps 250, 500 mg	Lab A
Chlordiazepoxide caps 5, 10, 25 mg	Superpharm
Chlorthalidone tabs 25, 50 mg	Danbury
Clindamycin HCl caps 75, 150 mg	Vitarine
Clonidine tabs 0.1, 0.2, 0.3 mg	Cord
Diazepam tabs 2, 5, 10 mg	Ferndale
Erythromycin base EC tabs 500 mg	Barr
Erythromycin ethylsuccinate tabs 400 mg	Mylan
Fenoprofen tabs 600 mg	Danbury
Fenoprofen tabs 600 mg	Lederle
Fluphenazine tabs 1, 2.5, 5, 10 mg	Mylan

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Flurazepam caps 15, 30 mg
 Haloperidol tabs 10, 20 mg
 Hydrocodone/APAP tabs 5/500
 Hydrocodone/APAP tabs 5/500
 Ibuprofen tabs 400, 600, 800 mg
 Indomethacin caps 25, 50 mg
 Isosorbide dinitrate tabs 20 mg
 Lithium carbonate caps 300 mg
 Lorazepam tabs 0.5, 1, 2 mg
 Maprotiline tabs 25, 50, 75 mg
 Meclofenamate caps 50, 100 mg
 Methocarbamol/Aspirin tabs 400/325
 Methylidopa/HCTZ tabs 250/15, 500/30
 Minoxidil tabs 2.5 mg
 Orphenadrine, ASA, caffeine tabs SS, DS
 Potassium bicarbonate efferv. tabs 25 mEq
 Quinine sulfate tabs 260 mg
 SMZ/TMP tabs 80/400, 160/800
 Sulfacetamide sodium ophth soln 10%
 Tolazamide tabs 100 mg

Superpharm
 Cord
 LuChem
 Mikart
 ALRA
 Vitarine
 Cord
 PharmBasics
 Cord
 Mylan
 Barr, Vitarine
 Par
 Danbury
 PharmBasics
 Vitarine
 CIMA
 Cord
 PharmBasics
 Steris
 Cord

The following product was **adopted** operative May 3, 1989:

Cyclobenzaprine tabs 10 mg Danbury

The following product was **adopted** operative May 16, 1989:

Prazosin caps 1, 2, 5 mg Zenith

The following products were **not adopted**:

CPM/pyrilamine/PE tannates 2/12.5/5 tabs LuChem
 Carbetapentane, CP, ephedrine, PE susp Mikart
 Carbetapentane/CP/ephedrine/PE tann. susp. LuChem
 Ethchlorvynol caps 500, 750 mg Banner
 Iodinated glycerol solution 50 mg/ml LuChem
 Naphazoline/antazoline 0.05%/0.5% ophth Steris
 Phenylephrine/pyrilamine/CP tannate soln Mikart
 Phenylephrine/pyrilamine/CPM tannate tab Mikart
 Thyroid tabs 32, 64, 120 mg LuChem
 Yohimbine HCl tabs 5.4 mg LuChem

The following products were **not adopted but are still pending**:

Amiloride HCl tabs 5 mg PharmBasics
 APAP/Codeine tabs 15, 30, 60 mg LuChem
 Amoxicillin caps 250, 500 mg TEVA
 Carisoprodol tabs 350 mg PharmBasics
 Cephalixin monohydrate tabs 250, 500, 1000 Vitarine
 Chlorpropamide tabs 100, 250 mg Charlotte
 Chlorzoxazone tabs 500 mg Par
 Clorazepate tabs 3.75, 7.5, 15 mg Danbury
 Imipramine tabs 25, 50 mg Vitarine
 Indomethacin caps 50 mg Watson
 Lithium carbonate caps 300 mg Par
 Lorazepam tabs 0.5, 1, 2 mg Mepha
 Meclofenamate caps 50, 100 mg Barr
 Methylidopa tabs 250, 500 mg Pharbita
 Nalidixic acid tabs 250, 500, 1000 mg Barr
 Norethindrone/ethinyl estradiol tabs 1/35 Gedeon-Richter
 Oxycodone/APAP caps 5/500 Halsey
 Prazosin caps 1, 2, 5 mg Cord, Par, Lederle
 Procainamide ER tabs 250, 750 mg Danbury
 Propranolol/HCTZ tabs 40/25, 80/25 Danbury
 Quinidine gluconate ER tabs 324 mg Par
 SMZ/TMP susp. 200/40/5 ml Barr
 Temazepam caps 15, 30 mg Danbury
 Thioridazine tabs 100 mg Mutual
 Timolol maleate tabs 5, 10, 20 mg Par, Lederle
 Trazodone tabs 150 mg Amer.Ther.
 Trazodone tabs 50, 100 mg Mylan

(a)

Interchangeable Drug Products**Adopted Amendments: N.J.A.C. 8:71**

Proposed: September 19, 1988 at 20 N.J.R. 2356(a).

Adopted: February 24, 1989 by the Drug Utilization Review Council, Robert Kowalski, Secretary.

Filed: February 27, 1989 as R.1989 d.164, with portions not adopted but still pending.

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

Effective Date: March 20, 1989.

Operative Date: March 20, 1989, for all products except prazosin caps 1, 2, 5 mg, which are adopted operative May 16, 1989.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their manufacturers were **adopted**:

Amitriptyline/CDP tabs 5/12.5, 10/25	Danbury
Meclofenamate caps 50, 100 mg	Cord
Methylidopa/HCTZ tabs 250/15, 250/25	Novopharm
Methylidopa/HCTZ tabs 500/30, 500/50	Novopharm
Methylidopa/HCTZ tabs 250/25, 500/50	Danbury
Methylprednisolone tabs 4 mg	Heather
Quinidine gluconate ER tabs 324 mg	Cord

The following product was **adopted** operative May 16, 1989:

Prazosin caps 1, 2, 5 mg Danbury

The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Amer.Ther.
Albuterol tabs 2, 4 mg	Cord
Allopurinol tabs 300 mg	Cord
Amitriptyline/perphenazine 2/10, 2/25	Danbury
Amitriptyline/perphenazine 4/10, 4/25, 4/50	Danbury
Amoxicillin caps 250, 500 mg	Lab A
Carisoprodol tabs 350 mg	Cord
Erythromycin ethylsucc/sulfisox 200/600	ALRA
Fenoprofen calcium tabs 600 mg	Lederle
Fluocinonide cream, oint 0.05%	Clay-Park
Haloperidol tabs 10, 20 mg	Danbury
Lithium carbonate caps 300 mg	Reid-Rowell
Metaproterenol tabs 10 mg	Quantum
Methyclothiazide tabs 2.5, 5 mg	Cord
Methylidopa/HCTZ tabs 250/15, 250/25	Novopharm
Metoclopramide tabs 10 mg	Cord
Prednisone tabs 10, 50 mg	Cord
Propoxyphene HCl/APAP tabs 65/650	Cord
Quinidine sulfate tabs 300 mg	Cord
Salsalate tabs 500, 750 mg	Upsher-Smith
Sulindac tabs 150, 200 mg	Mutual
Theophylline ER tabs 100, 200, 300 mg	Cord
Timolol maleate tabs 5, 10, 20 mg	Cord
Trazodone tabs 50, 100 mg	Cord
Triamcinolone acet. lotion 0.025, 0.1%	Clay-Park

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 21 N.J.R. 63(b).

(b)

Interchangeable Drug Products**Adopted Amendments: N.J.A.C. 8:71**

Proposed: August 1, 1988 at 20 N.J.R. 1766(a).

Adopted: February 24, 1989, by the Drug Utilization Review Council, Robert Kowalski, Secretary.

Filed: February 27, 1989 as R.1989 d.165, 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: March 20, 1989.

Expiration Date: February 17, 1994.

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Summary of Public Comments and Agency Responses:

COMMENT: Concerning norethindrone/mestranol, Watson Pharmaceuticals supported their application by providing dose proportionality data (1/80 vs 1/50) and dissolution data, and also by pointing out that the biodata showed no statistically significant differences, with acceptable confidence intervals. They ask that the Council concentrate on the data provided. Watson also emphasizes that, contrary to Ortho's statement, the specific product under consideration has not previously been rejected by the Drug Utilization Review Council and that market share will increase if the Drug Utilization Review Council accepts their product into the Formulary.

Ortho Pharmaceuticals objected to the Watson product, stating that oral contraceptives are not suitable for generic interchange because of loss of patient continuity and confusing switches in packaging, thereby causing an increased risk of pregnancy. Ortho feels that certain "critical categories" of drugs, including oral contraceptives, should not be considered suitable for generic interchange. Ortho also provided charts which showed that generic oral contraceptives have not been extensively accepted in the marketplace, having little market share despite a few years of availability.

Ortho also pointed out that Watson has provided no in vivo direct comparison of their oral contraceptive to Ortho's Ortho-Novum 1/50; the Watson study was a comparison of their 1/80 to Ortho-Novum 1/80. Ortho questions the assay validity and also points out that no individual data were given, only averages. They question whether the wide variability seen in other norethindrone/ethinyl estradiol products also exists in the norethindrone/mestranol product.

The New Jersey Pharmaceutical Association stated their continuing opposition to substitution for oral contraceptives, fearing that "switching" will confuse patients and burden pharmacists.

RESPONSE: The Drug Utilization Review Council has heard all these arguments in opposition to oral contraceptives several times previously and has rejected them, as again they do now for the following reasons: Market share is not pertinent to the Council's decision; the biodata are perfectly acceptable; possible patient confusion is a real concern, but one that pharmacist counseling and proper instruction will minimize; the Council has no special procedures for "critical category" drugs, but also believes that oral contraceptives are not a critical category; for the last decade, the Council has accepted products based on studies performed on one strength, acceptability then being extrapolated to other strengths based on dissolution and compositional proportionality.

In addition, the Council believes that increased availability of a considerably less expensive oral contraceptive will allow some additional women to have access to them, thus decreasing pregnancies, not increasing them. For all these reasons, the Council rejects the negative arguments and agrees with Watson that their product deserves addition to the List of Interchangeable Drug Products.

The following products and their manufacturers were **adopted**:

Dipyridamole tabs 25, 50, 75 mg	Lederle
Fluphenazine tabs 1, 2.5, 5, 10 mg	Par
Norethindrone/mestranol 1 mg/50 mcg tabs	Watson
Oxacillin for susp 250/5 ml	Biocraft
SMZ/TMP tabs 400/80, 800/160	Pharbita
Trazodone tabs 50, 100 mg	TEVA
Triamcinolone oint 0.5%	Naska

The following product and its manufacturer were **not adopted**:
Chlorthalidone tabs 25, 50 mg Superpharm

The following products were **not adopted but are still pending**:

APAP/codeine elix 120/12/5 ml	Naska
Amiloride/HCTZ tabs 5/50	Par
Amitriptyline/CDP tabs 5/12.5, 10/25	Par
Cyclobenzaprine tabs 10 mg	Par
Diazepam tabs 10 mg	Pharbita
Disopyramide ER caps 100, 150 mg	KV
Divalproex EC tabs 125, 250, 500 mg	Par
Doxepin caps 75, 150 mg	SKF
Erythromycin E.C. pellet caps 250 mg	Abbott
Erythromycin E.C. tabs 250, 333 mg	Abbott
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Chelsea
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Duramed
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Chelsea
Lidocaine viscous solution 2%	Naska

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Meclofenamate caps 50, 100 mg	Par
Metaproterenol tabs 20 mg	Quantum
Methocarbamol/Aspirin tabs 400/325	Par
Methylprednisolone tabs 2, 4, 8, 16, 24, 32 mg	Par
Norethindrone/ethin. estradiol 10/11-21	Watson
Sulindac tabs 150, 200 mg	Par
Triamcinolone cream 0.5%	Naska
Triamcinolone/nystatin oint 1 mg/100 MU	Naska

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 20 N.J.R. 2769(a) and 21 N.J.R. 63(c).

(a)

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: April 18, 1988 at 20 N.J.R. 871(a).

Adopted: February 24, 1989 by the Drug Utilization Review Council, Robert Kowalski, Secretary.

Filed: February 27, 1989 as R.1989 d.166, with portions of the proposal not adopted but still pending.

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

Effective Date: March 20, 1989.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

The following product and its manufacturer was **adopted**:

Perphenazine tabs 2, 4, 8, 16 mg	Cord
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The following products were **not adopted but are still pending**:

Amiloride HCTZ tabs 5 50	Barr
Carisoprodol tabs 350 mg	Mutual
Cortisone acetate tabs 25 mg	T-P
Diphenhydramine elixir 12.5 mg/5 ml	Cenci
Estrogen tabs 0.3, 0.625, 0.9, 1.25, 2.5 mg	Barr
Hydrochlorothiazide tabs 25, 50, 100 mg	T-P
Nystatin tabs 500,000 units	Mutual
Prednisolone acetate ophth soln 1%	Americal
Prednisolone tabs 5 mg	T-P
Prednisone tabs 2.5, 5, 20 mg	T-P
Stuartnatal 1+1 ^(R) substitute	Copley
Stuartnatal 1+1 ^(R) substitute	Amide
Tolazamide tabs 100 mg	PharmBasics
Trazodone tabs 50, 100 mg	Purepac
Verapamil tabs 80, 120 mg	Bolar

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 20 N.J.R. 1710(b), 2376(d), 2768(b) and 21 N.J.R. 63(a).

HUMAN SERVICES

(b)

DIVISION OF DEVELOPMENTAL DISABILITIES

Access to Client Records and Record Confidentiality

Adopted New Rules: N.J.A.C. 10:41-2

Proposed: October 3, 1988 at 20 N.J.R. 2435(a).

Adopted: February 9, 1989 by: Drew Altman, Commissioner, Department of Human Services.

Filed: February 14, 1989 as R.1989 d.134 with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 9:6-8, 10a, 30:1-12, 30:4-24.3, 30:6D-4(f).

Effective Date: March 20, 1989.

Expiration Date: March 20, 1994.

Summary of Public Comments and Agency Responses:

Comments were received from the Association for Retarded Citizens, Monmouth Unit Inc.; The Bancroft School; The Association for Retarded Citizens, Somerset County Unit and the Department of the Public

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Advocate, Division of Advocacy for the Developmentally Disabled. The comments and responses follow, grouped by commenter.

Association for Retarded Citizens, Monmouth Unit, Inc.

COMMENT: N.J.A.C. 10:41-2.4 requires that if the names of clients other than the client whose file is in question appear in the record, those other clients may be identified only by initials. It is felt that initials do not sufficiently protect confidentiality and should be deleted.

RESPONSE: Initials are used to protect confidentiality by the courts. Total elimination of client references in narratives and reports will lead to confusion in the client record. Therefore, no change in the proposed rule is indicated.

The Bancroft School

COMMENT: It was questioned if client records could be released if a staff member of a private provider agency was named in a tort claim.

RESPONSE: It is intended in the rules that client records are the property of the Division, whether the client resides in a public or private facility. Consequently, the appropriate Division component should be contacted for the release of client records. No change in the proposed rules is indicated.

COMMENT: Concern was expressed that N.J.A.C. 10:41-2.10(b)4 permitted information to be released concerning the client's current medical condition but not the entire record. It was felt that the current medical condition may not be understood without the complete record.

RESPONSE: The term "current" in this context should be construed to be the amount of information required to understand the client's medical condition. Therefore, there is some discretion intended in the rules concerning the information needed. No amendment to the rules has been made.

COMMENT: N.J.A.C. 10:41-2.10(b)6 should require that the client or his guardian be notified in writing when records have been released to medical staff outside the Department.

RESPONSE: N.J.A.C. 10:41-2.10(b)6 has been amended to require that such notification be made in writing.

COMMENT: N.J.A.C. 10:41-2.10(b)9 was challenged, in that it allows agencies, insurers, trustees and other persons through whom financial assistance is sought to obtain client records without the permission of the client or his guardian.

RESPONSE: The Department has evaluated this comment and agrees that it is not appropriate to release this information without the consent of the client or guardian; therefore, this requirement has been deleted.

COMMENT: N.J.A.C. 10:41-2.11(a) indicates that a subpoena is not sufficient to produce a client record and that legal advice should be sought when a subpoena is received. It was questioned if the attorney general would provide this advice or was the private provider to seek its own counsel.

RESPONSE: It is the intention of the rule that client records are the property of the Division, regardless of the client's placement. Requests for release of client records should be directed to the Division, in which case legal advice would be sought as appropriate.

COMMENT: Is the Executive Director of a private agency empowered by N.J.A.C. 10:41-2.14(b) to release a client record?

RESPONSE: The records are the property of the Division and only the Division may release them; therefore, the term "or provider agency" has been deleted.

COMMENT: N.J.A.C. 10:41-2.14(d) was questioned because it allowed the agency discretion in determining those client records to be released.

RESPONSE: The Department has determined that N.J.S.A. 30:4-24.3 does not, in fact, permit agency discretion; therefore, this subsection has been deleted on adoption.

Association for Retarded Citizens, Somerset County Unit

COMMENT: It was asked if private provider agencies would be required to pay for copies of client records for clients placed in their care.

RESPONSE: Client records will be provided to placing agencies without charge.

Division of Advocacy for the Developmentally Disabled

COMMENT: The rules do not take into account the authority of the Public Advocate to receive access to the records of any person who resides in a facility for the developmentally disabled, upon authorization by the person or the person's guardian, conservator or other legal representative or without such authorization if a complaint of abuse or neglect has been received and there is probable cause that an abuse or neglect has occurred. Such access is required by section 142(a)(2)(G) of the Federal "Developmental Disabilities Assistance and Bill of Rights Act of 1987", Pub. L. 100-146.

RESPONSE: The rules do allow access to the client record upon authorization by the client or guardian. Moreover, N.J.A.C. 10:41-2.10(b)10 permits records to be released to an agency authorized to investigate allegations of client abuse or neglect.

The Division recognizes, however, that there is currently a question in litigation as to the Public Advocate's authority to conduct such investigations without authorization from the client or guardian. No change to the proposed rule has been made, pending a judicial resolution of this issue.

COMMENT: It is contended that the Public Advocate should have access to the name and address of the guardian of clients to pursue investigations of problems relating to Division client, since that information is a matter of public record.

RESPONSE: The Division agrees that it is a matter of public record that a client has had a guardian appointed. The name and home address of that individual, however, is confidential information which the Division has a responsibility to protect. No change to the proposed rule is required.

COMMENT: It is suggested that clients and their families who demonstrated an inability to pay for copies of records should be excluded from the requirement. The Public Advocate should also be excluded from being charged for copying fees.

RESPONSE: N.J.A.C. 10:41-2.5 has been amended to allow the Division to waive fees if they prove to be a hardship to the client or their family. Agencies are required to comply with copying fees.

COMMENT: N.J.A.C. 10:41-2.10(a),(b)(1) and (d) are redundant.

RESPONSE: The Department agrees, and N.J.A.C. 10:41-2.10(b)(1) and (d) have been deleted.

COMMENT: N.J.A.C. 10:41-2.10(c) should be incorporated into N.J.A.C. 10:41-2.10(b).

RESPONSE: N.J.A.C. 10:41-2.10(c) addresses the requirement that written authorization is required in order to release information except for those provisions in N.J.A.C. 10:41-2.10(b). No change to the proposed rule is required.

COMMENT: N.J.A.C. 10:41-2.10(e) should be included under N.J.A.C. 10:41-2.10(b).

RESPONSE: N.J.A.C. 10:41-2.10(b) indicates those instances where a record may be released without the express written authorization of the client or his or her guardian. N.J.A.C. 10:41-2.10(e) allows the records to be open to inspection only by persons authorized by the client or his or her guardian.

COMMENT: There is no reason why N.J.A.C. 10:41-2.10(a)4 should permit the Division instead of the client or guardian to decide what information may be released to a relative, friend, personal physician or attorney for the benefit of the client.

RESPONSE: This rule cites a specific provision of N.J.S.A. 30:4-24.3 which allows disclosure, upon proper inquiry, as to a client's current medical condition to any relative or friend or to the client's personal physician or attorney if it appears that the information is to be used directly or indirectly for the benefit of the client. It does not apply to the entire client record. Therefore no change to the proposed rule is required.

COMMENT: The information to be released if a client is missing is too broad. It should be limited to life threatening conditions and should only be released to official agencies but not the general public.

RESPONSE: The Department agrees, and N.J.A.C. 10:41-2.10(a)8 has been amended to allow the information to be released only to official agencies.

COMMENT: Information should not be released to sources of financial assistance without the consent of the client or guardian.

RESPONSE: The Department has evaluated this comment and agrees that such consent is appropriate; therefore, N.J.A.C. 10:41-2.10(a)9 has been deleted.

COMMENT: The client or guardian should be notified of any subpoena ordering the release of client records.

RESPONSE: Subpoenas for client agencies are issued to the Division. Often, the Division is not aware of the reasons for the subpoena. Therefore, the Division could not answer vital questions which would be raised by the client or guardian if notified. The party issuing the subpoena may elect to issue a subpoena to the client or guardian. No change is necessary.

COMMENT: Express consent to release records should be obtained from the client or guardian for the release of records concerning the client's habilitation at the time the client is accepted for services provided by the Division.

RESPONSE: A general consent to release records is obtained from the client or guardian at the time of application. Further requirements would

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be an additional bureaucratic barrier to the provision of habilitative services. The client or guardian must request services from the Division prior to admission to services. In fact, the Division may only become involved if services are desired. No change to this proposed rule is required.

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

CHAPTER 41 ADMINISTRATION

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. ACCESS TO CLIENT RECORDS AND RECORD CONFIDENTIALITY

10:41-2.1 Purpose

The purpose of this subchapter is to provide a uniform approach to records management within the Division which safeguards the confidentiality of client records.

10:41-2.2 Scope

This subchapter applies to all service components of the Division and all providers contracted with or regulated by the Division.

10:41-2.3 Definitions

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

"Department" means the Department of Human Services.

"Division" means the Division of Developmental Disabilities.

"Agency records" means the organized compilation of documents that relate to the operation of a Division component or a provider agency under contract with or regulated by the Division.

"Client record" means the organized compilation of documents that relate to the provision of services to an individual client.

"Public record" means those records required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done to perform that function.

"Pupil record" means the organized compilation of documents that relate directly to the provision of educational services to an individual school-age client as required by New Jersey law or rule.

"Service component" means any developmental center, regional office, day training or adult activity center ***[of]*** ***or*** the Bureau of Special Residential Services.

10:41-2.4 Division policy

The Division recognizes its responsibility to protect the confidentiality of the records of clients in its care. Records may be released in accord with N.J.S.A. 30:4-24.3 mandates that all certificates, applications, records and reports that directly or indirectly identify an individual currently or formerly receiving services from the Division be kept confidential and not subject to public disclosure. Any records which may be released shall not contain the name of any client other than the client whose records have been requested. Other clients shall be identified by initials. Employees of the Division or agencies under contract with or regulated by the Division who violate confidentiality may be subject to disciplinary action.

10:41-2.5 Copying fees

Copies of records which may be released shall be provided in accordance with the provisions of this chapter and upon payment of the fees listed in N.J.S.A. 47:1A-2. ***Fees may be waived for a client or his or her family, if it is demonstrated that the payment is a financial hardship.***

10:41-2.6 Electronic records

Any client records which are maintained electronically shall be subject to the same requirements in this chapter as records which are maintained manually.

10:41-2.7 Security of records

All service providers, including those under contract with the Division, shall be responsible for securing records of clients in their

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care against loss, defacement and use or copying by unauthorized persons.

10:41-2.8 Public and non-public agency records

(a) Agency records which are public include:

1. The standard contract documents;
2. Appendices and supporting materials;
3. Programmatic and financial reports;
4. Monitoring and evaluation reports;
5. Auditing reports;
6. Licenses to operate; and
7. Inspection reports for licensure.

(b) Agency records which are not public include:

1. Investigation of unusual incidents;
2. Internal communication between agency personnel;
3. Memos to file which indicate informal agency action or which does not directly relate to the client's medical condition or IHP goal;
4. Internal procedures; and
5. Referrals to other agencies.

10:41-2.9 Client record

(a) The client record contains official information which is required by law. Only court commitments and payments of maintenance shall be considered to be public information. The client record includes but is not limited to:

1. Eligibility determinations;
2. Applications for services;
3. Medical examinations and reports;
4. Evaluations reports;
5. Individual Habilitation Plan (IHP);
6. Progress notes relating directly to the client's physical condition or IHP goals;
7. Communication to legal guardian;
8. Initial reports of unusual incidents; and
9. Social history.

10:41-2.10 Release of records

(a) A client currently or formerly receiving services from the Division, or a guardian, or, if a minor, a parent or guardian, is entitled to inspect or copy the client's records upon request.

(b) Client information shall be kept confidential and be released only under the following circumstances:

***[1.]** To a client, if a competent adult, and the guardian of incompetent adult or minor;*

[2.]**1. In response to the plaintiff in a tort claim (that is, a suit for damages to which the Commissioner, Department, Division or employee of the Division is named as a defendant), as directed by the Office of the Attorney General;

[3.]**2. To Department components, if directly related to their administration;

[4.]**3. Information concerning the client's current medical condition (not the entire record) may be released upon written inquiry to a client's relative, friend, personal physician, or attorney if the information appears directly or indirectly for the benefit of the client;

[5.]**4. When a client is transferred from one component of the Department/Division to another;

[6.]**5. When medical staff outside the Department have assumed temporary medical responsibility for a client, to the extent that such records or information are necessary for the treatment of the client provided that the client or guardian is given ***written*** notice of such access;

[7.]**6. When the information is already a matter of public record, such as court commitments or payments of maintenance;

[8.]**7. If a client is missing, the following information relating to the client may be released ***to official agencies***:

- i. Name;
- ii. Age;
- iii. Home address;
- iv. A physical description including a photograph, if available; and
- v. Other significant personal data, such as medical condition or dangerous to self or others; ***and***

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[9. To agencies, insurers, trustees and other persons through whom financial assistance is or may be available for the client's care, treatment, training or supervision; and]

*[10.]**8.* To an agency authorized to investigate allegation of client abuse or neglect (for example, the Division of Youth and Family Services (DYFS) in the case of children, the Ombudsman for the Institutionalized Elderly for persons over 60 years of age).

(c) Except as set forth in (b) above, client information shall not be released to third parties without written authorization from the client, if a competent adult, or the guardian of an incompetent adult or minor.

[(d) A competent client presently or formerly receiving services from the Division is entitled to inspect or copy his or her own records.]

*[(e)]***(d)* Records of a client shall be open to inspection by other persons upon receipt of written authorization by the client, if a competent adult, or the guardian of an incompetent adult or minor.

*[(f)]***(e)* Pursuant to the provisions of N.J.A.C. 6:3-2.3 et seq., private and public facilities shall permit local school district representative access, without client or guardian consent, to pupil records of students for whom they are responsible.

*[(g)]***(f)* In the case of guardianship actions, the Public Advocate shall be recognized as the attorney representing the client, unless another attorney is noted in the client's record.

*[(h)]***(g)* Copies of privileged information shall be transferred between components of the Division when the client is transferred.

*[(i)]***(h)* If it has been specifically indicated that a report is not to be shared except by the person or agency issuing the report, the Division shall not release that report, and

1. The individual requesting the release of the report shall be directed to the issuing entity; or

2. In the instance where the Division is referring the client for services, the Division shall be responsible to request the release of the report from the issuing entity.

*[(j)]***(i)* Any questions concerning access to records shall be referred to the Division's Administrative Practice Officer.

*[(k)]***(j)* Division components or agencies under contract with or regulated by the Division shall ensure that their record keeping practices conform to the provisions of this subchapter.

10:41-2.11 Court orders and subpoenas

(a) Records may be released upon proper judicial order. A subpoena is not sufficient to produce a client record. If a subpoena is received, legal advice shall be sought.

10:41-2.12 Staff assistance

The client, or parent or guardian of the client, as applicable, has the right to review the client record. Staff shall provide assistance in reviewing the record, if it is requested by the client or parent or guardian.

10:41-2.13 Release of records to further the client's habilitation

(a) Records shall be released to persons whose activities serve to further the habilitation of the client, including, but not limited to:

1. Program staff and associated professional personnel (including students completing professional internships or field placements) who provide habilitation services to the client; and

2. Persons authorized by the Department to monitor the quality of services being offered to the client.

(b) The persons specified in (a) above shall agree in writing to safeguard the confidentiality of records.

10:41-2.14 Safeguarding confidentiality of the record

(a) The chief executive officer or regional administrator or bureau chief has the responsibility for safeguarding the records of clients in their service component, including who may inspect or copy the record, how the record may be used, how long the record may be used, and other restrictions on access to the record, in accordance with this subchapter and N.J.S.A. 30:4-24.3.

(b) All requests for release of client, or agency information shall be made to the administrative head of the Division component *[or provider agency]*.

(c) All requests for the release of client information shall be made in writing and identify the specific information requested, as well as the intended uses of the information. The request for client records shall be accompanied by a written release of information by the client, if a competent adult, or the guardian of an incompetent adult or minor.

[(d) Only those records which are necessary to meet the legitimate purposes of the person requesting the record shall be released, and whenever possible, the name of the client(s) or other identifying information shall be removed from the records before their release.]

*[(e)]***(d)* A list shall be maintained of every person other than those identified at N.J.A.C. 10:41-2.11 who reviews, inspects or obtains copies of a client's record, the stated use to be made of the information, and the person authorizing the release of the record. That list shall be considered internal information and not filed in the client record.

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

(a)

Physician's Services Manual; Manual for Dental Services; Independent Laboratory Services Manual; Independent Clinic Services Manual HCPCS Procedure Codes

Adopted Amendments: N.J.A.C. 10:54-4.5; 10:56-3.7, 3.10; 10:61-3.2; 10:66-3.2

Proposed: October 17, 1988 at 20 N.J.R. 2558(a).

Adopted: Drew Altman, Commissioner, Department of Human Services.

Filed: February 14, 1989 as R.1989 d.135, **without change.**

Authority: N.J.S.A. 30:4D-6a(3), (5), b(3), (4); 30:4D-7, 7a, b, c; 30:4D-12.

Effective Date: March 20, 1989.

Expiration Date: N.J.A.C. 10:54, March 3, 1991; N.J.A.C. 10:56, August 26, 1991; N.J.A.C. 10:61, March 3, 1991; N.J.A.C. 10:66, December 15, 1993.

Summary of Public Comments and Agency Responses: No comments received.

Summary of Changes Between Proposal and Adoption:

There are no changes between proposal and adoption. However, there is a technical correction that should be mentioned. The correct fees for procedure Code 07110, extraction of a single tooth, are \$17.00 for a specialist and \$15.00 for a non-specialist. The fees were correctly printed in the public notices which appeared in the August 15, 1988 issue of the New Jersey Register at 20 N.J.R. 2101(a) and also in the September 19, 1988 Register at 20 N.J.R. 2400(f) and are correct in the New Jersey Administrative Code. The New Jersey Medicaid Program is paying providers in accordance with the fees specified above.

The figures (\$10.50 and \$9.00) listed on Register page 2559 of the proposal have been superseded and therefore do not require a correction.

CHAPTER 54 MANUAL FOR PHYSICIAN'S SERVICES

10:54-4 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

10:54-4.5 HCPCS CODE NUMBERS AND MAXIMUM FEE SCHEDULE PATHOLOGY/LABORATORY

HCPCS CODE	MAXIMUM FEE ALLOWANCE	
	EFFECTIVE DATE 8/1/88	5/1/89
...		
Cytopathology, smears, cervical or vaginal (e.g., Papanicolaou):		
88150	\$4.50	\$6.00
88151	\$4.50	\$6.00
88155	\$4.50	\$6.00

DENTAL SERVICES MANUAL

10:56-3 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

10:56-3.7 05000-05899 VI. PROSTHODONTICS (REMOVABLE)

		MAXIMUM FEE ALLOWANCE EFFECTIVE DATE 10/1/88		
HCPCS IND CODE	PROCEDURE DESCRIPTION	S	S	NS

(a) through (j) (No change.)

(k) Partial dentures (including routine post delivery care)

* 05211 Upper Partial—Acrylic Base 190.00 165.00
(Including Any Conventional
Clasps and Rests)

NOTE: Includes a minimum of
two (2) cast chrome clasps
with rests.

* 05211 52 Upper Partial—Acrylic Base— 101.00 88.00
Without Clasps (Flipper)

* 05212 Lower Partial—Acrylic Base— 190.00 165.00
(Including Any Conventional
Clasps and Rests)

NOTE: Includes a minimum of
two (2) cast chrome clasps
with rests.

* 05212 52 Lower Partial—Acrylic Base— 101.00 88.00
Without Clasps (Flipper)

* 05213 Upper Partial—Predominantly 250.00 217.00
Base Cast Base with Acrylic
Saddles (Including Any Conventional
Clasps and Rests)

NOTE: Includes a minimum of
two (2) cast chrome clasps
with rests.

* 05214 Lower Partial—Predominantly 237.00 206.00
Base Cast Base with Acrylic
Saddles (Including Any Conventional
Clasps and Rests)

NOTE: Includes a minimum of
two (2) cast chrome clasps
with rests.

(l) through (n) (No change.)

(o) Repairs to partial denture—includes adjustments for three (3) months. Prior
authorization is not normally necessary when Medicaid reimbursement for a repair
to a denture does not exceed \$53.00 specialist fee or \$48.00 non-specialist fee.
05610 YU through 05660 YL (No change.)

Y2510 Each Additional Clasp—For Repair 21.00 18.00

NOTE 1: List tooth code being clasped.

NOTE 2: Code Y2510 may be used in
addition to repair procedure(s).

(p) through (r) (No change.)

10:56-3.10 07000-07999 IX. ORAL SURGERY

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

(c) Extractions—includes local anesthesia and routine postoperative care:

		MAXIMUM FEE ALLOWANCE EFFECTIVE DATE 8/1/88		
HCPCS IND CODE	PROCEDURE DESCRIPTION	S	S	NS

07110 Single Tooth 10.50 9.00

** 07130 Root Removal—Exposed 15.00 13.00
Roots

NOTE 1: Per tooth.

NOTE 2: Root partially im-
bedded in bone.

07130 52 Root Removal—Exposed 10.50 9.00
Roots

NOTE 1: Per tooth.

NOTE 2: Root completely
located in soft tissue.

(d) Surgical extractions—includes local anesthesia and routine post-operative
care:

1.-2. (No change.)

3. In order to qualify for a surgical removal of a tooth with partial or complete
bone impaction, the following is required:

i. Incision of overlying soft tissue;

ii. Removal of bone; and/or

iii. Sectioning of tooth.

07210 Surgical Removal of Erupted Tooth
Requiring Elevation of Mucoperiosteal
Flap and Removal of Bone and/or
Section of Tooth 17.00 15.00

** 07220 Removal of Impacted Tooth— 21.00 18.00
Soft Tissue

** 07230 Removal of Impacted Tooth— 61.00 53.00
Partially Bony

** 07240 Removal of Impacted Tooth— 61.00 53.00
Completely Bony

** 07250 Surgical Removal of Residual 30.00 26.00
Tooth Roots (Cutting Procedure)

NOTE: Completely covered by bone.

(e) through (p) (No change.)

CHAPTER 61

INDEPENDENT LABORATORY SERVICES MANUAL

SUBCHAPTER 3. HCFA COMMON PROCEDURE CODING SYSTEM
(HCPCS)10:61-3.2 HCPCS CODE NUMBERS AND MAXIMUM FEE SCHEDULE
PATHOLOGY/LABORATORY

		MAXIMUM FEE ALLOWANCE EFFECTIVE DATE 8/1/88 5/1/89	
HCPCS CODE			
Cytopathology, smears, cervical or vaginal (e.g., Papanicolaou):			
88150		\$4.50	\$6.00
88151		\$4.50	\$6.00
88155		\$4.50	\$6.00

CHAPTER 66

INDEPENDENT CLINIC SERVICES MANUAL

SUBCHAPTER 3. HCFA COMMON PROCEDURE CODING SYSTEM
(HCPCS)10:66-3.2 HCPCS CODE NUMBERS AND MAXIMUM FEE SCHEDULE
FOR INDEPENDENT CLINIC SERVICES

		MAXIMUM FEE ALLOWANCE EFFECTIVE DATE 8/1/88 5/1/89	
HCPCS CODE			
Cytopathology, smears, cervical or vaginal (e.g., Papanicolaou):			
88150		\$4.50	\$6.00
88151		\$4.50	\$6.00
88155		\$4.50	\$6.00

(a)

**Manual for Physicians' Services, Nurse-Midwifery
Services Manual, Independent Clinic Services
Manual**

Post-Partum Period

**Adopted Amendments: N.J.A.C. 10:54-4; 10:58-1.2,
3; 10:66-1.6, 3**

Proposed: May 16, 1988 at 20 N.J.R. 1052(a).

Adopted: February 24, 1989 by Drew Altman, Commissioner,
Department of Human Services.

Filed: February 24, 1989 as R.1989 d.162, **without change.**

Authority: N.J.S.A. 30:4D-6a(5)b(3)(17), 7 and 7a, b, and c; 30:4D-12; 1902(e), 1905(a)(17) and 1905(m) of the Social Security Act.

Effective Date: March 20, 1989.

Expiration Date: N.J.A.C. 10:54—March 3, 1991. N.J.A.C.

10:58—March 3, 1991. N.J.A.C. 10:66—December 15, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:54-4 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

APPENDIX B (SURGERY)

QUALIFIERS

Appendix B/Surgery 4

HCPCS

CODE

PROCEDURE

58300 Includes cost of device and post insertion visit. Service provided by certified nurse midwife use code 58300 with modifier WM also limited to within the 60 days postpartum period.

58301 Limited to within the 60 day postpartum period. Service provided by certified nurse midwife use code 58301 with modifier WM.

10:58-1.2 Definitions

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

The "maternity cycle" means a time period limited to pregnancy, labor, birth and the immediate 60 day postpartum period.

10:58-3 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

APPENDIX B/1

(Nurse-Midwifery Services)

QUALIFIERS

HCPCS

CODE

PROCEDURE

58300WM Includes cost of device and post insertion visit and limited to within the 60 day postpartum period.

58301WM Limited to within the 60 day postpartum period.

58301WM Ante partum care consisting of initial ante partum visit and seven subsequent ante partum visits. Specific dates of all visits are to be listed on the HCFA-1500/NJ claim form.

Reimbursement will be decreased by the fee for the initial ante partum visit (59420WM22) if patient not seen for this visit. The total fee will also be decreased by the reimbursement sum for each subsequent ante partum visit (59420WM) which is less than seven.

Obstetrical delivery per vagina when performed by a certified nurse midwife with in-hospital, home, or birthing center postpartum care, whichever applies. This applies to a vaginal delivery at full term or premature following completion of at least 28 weeks of gestation or if baby lives over 24 hours. This shall also include one visit between the 15th and 60th postpartum day following delivery and out of the hospital. Include delivery date on the HCFA-1500/NJ claim form.

59410WM This applies to a vaginal delivery at full term or premature following completion of at least 28 weeks of gestation or if baby lives over 24 hours. This shall also include one visit between the 15th and 60th post-

partum day following delivery and out of the hospital. Include delivery date on the HCFA-1500/NJ claim form.

59420WM Indicate specific dates of services on HCFA-1500/NJ claim form.

59420WM22 Initial ante partum care by a certified nurse midwife (separate procedure).

59430WM By other than the delivering physician or certified nurse midwife. One visit between the 15th and 60th postpartum day following delivery, out of hospital.

10:66-1.6 Scope of Service

(a)-(i) (No change.)

(j) Obstetrical services (maternity) rules are as follows:

1. Obstetrical services, which may include obstetrical delivery, may be reimbursed when performed by a licensed physician and/or certified nurse-midwife in a licensed ambulatory care facility which is specifically approved to perform such services by the New Jersey Medicaid Program:

2. See N.J.A.C. 10:66-3 for procedure codes and reimbursement schedule.

(k)-(n) (No change.)

10:66-3 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

APPENDIX B

Qualifiers

Appendix B9

FAMILY PLANNING SERVICES BY CERTIFIED NURSE-MIDWIFE

INSERTION/REMOVAL OF IUD

58300WM Insertion of intracervical or intrauterine device for contraception by the certified nurse-midwife (includes cost of device and post insertion visit). Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14).

Note: Limited to within the 60 day postpartum period.

Appendix B10

58301WM Removal of an IUD by a certified nurse-midwife. Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14).

Note: Limited to within the 60 day postpartum period.

ROUTINE OR FOLLOW-UP VISIT BY A NURSE-MIDWIFE

90060WMWF Routine or follow-up visit, prolonged—provided by a certified nurse-midwife and limited to within the 60 day postpartum period: may involve pelvic examination, changes in method or instructions. Involves 20 or more minutes of personal time in patient contact, including documentation of the time as well as adequate significant progress notes on the clinic record. This code includes cost of birth control drugs dispensed. A prescription cannot be substituted. Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14).

Appendix B13

OBSTETRICAL SERVICES (MATERNITY) BY A NURSE-MIDWIFE

TOTAL OBSTETRICAL CARE

59400WM Total obstetrical care when given by a certified nurse-midwife and includes:

i. Ante partum care consisting of initial ante partum visit and seven subsequent ante partum visits. Specific dates of all visits are to be listed on the Independent Outpatient Health Facility Claim Form (MC-14).

Note: Reimbursement will be decreased by the fee for the initial ante partum visit (5942022WM) if patient not seen for this visit. The total fee will also be decreased by the reimbursement sum for each subsequent ante partum visit (59420WM) which is less than seven.

Note: If medical necessity dictates, corroborated by the record, additional visits above seven ante partum may be reimbursed under procedure code 90050WM (routine or follow-up visit). The claim form should clearly indicate the reason for the medical necessity and date for each code 90050WM listed.

ii. Obstetrical delivery per vagina with or without episiotomy including postpartum care when provided by the certified nurse-midwife in the home, birthing center or in the hospital (inpatient setting). This applies to a vaginal delivery at full term or premature following completion of at least 28 weeks of gestation or if baby lives over 24 hours. This shall also include one visit between the 15th and 60th postpartum day following delivery and out of the hospital. Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14).

VAGINAL DELIVERY

59410WM Obstetrical delivery per vagina with or without episiotomy including postpartum care when provided by the certified nurse-midwife in the home, birthing center or in the hospital (inpatient setting). This applies to a vaginal delivery at full term or premature following completion of at least 28 weeks of gestation or if baby lives over 24 hours. This shall also include one visit between the 14th and 60th postpartum day following delivery and out of hospital.

Appendix B14

POSTPARTUM CARE

59430WM Postpartum care provided by a certified nurse-midwife who is other than the individual who performed the delivery and who is not related to this individual by any financial or contractual arrangement, e.g. group, clinic, employee, etc. One visit between the 15th and 60th postpartum day following delivery. Include delivery date on the Independent Outpatient Health Facility Claim Form (MC-14). (separate procedure)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

(a)

Medicaid Only

New Eligibility Computation Amounts

Adopted Concurrent Amendments: N.J.A.C.

10:71-5.4, 5.5, 5.6, 5.7

Proposed: January 17, 1989 at 21 N.J.R. 207(a).

Adopted: February 28, 1989 by Drew Altman, Commissioner, Department of Human Services.

Filed: February 28, 1989 as R.1989 d.174, **without change**.

Authority: N.J.S.A. 30:4D-3i(7); 30:4D-7a, b, and c; 42 CFR 435.210 and 435.1005.

Effective Date: March 20, 1989.

Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

10:71-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:71-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

1.-11. (No change.)

12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an individual of his or her needs for food, clothing, and shelter at no cost or at a reduced value. Persons determined to be "living in the household of another" in accordance with N.J.A.C. 10:71-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in the household of another" who receive in-kind support and maintenance shall be considered to have unearned income in the amount of:

\$142.67 for an individual

\$204.33 for a couple

i. (No change.)

13. (No change.)

(b) (No change.)

10:71-5.5 Deeming of income

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

(g) A table for deeming computation amounts follows:

TABLE A

Deeming Computation Amounts

1. Living allowance for each ineligible child \$185.00
 2. Remaining income amount
- | | Head of Household | Receiving Support and Maintenance |
|--|-------------------|-----------------------------------|
| | \$184.00 | \$122.67 |

3. Spouse to Spouse Deeming—Eligibility Levels

- a. Residential Health Care Facility \$703.05
- b. Eligible individual living alone with ineligible spouse \$763.36
- c. Living alone or with others \$584.25
- d. Living in the household of another \$412.98

4. Parental Allowance—Deeming to Child(ren)

Remaining income is:

	1 Parent	Parent & Spouse of Parent
a. Earned only	\$736.00	\$1,106.00
b. Unearned only	\$368.00	\$ 553.00
c. Both earned and unearned	\$368.00	\$ 553.00

10:71-5.6 Income eligibility standards

(a) and (b) (No change.)

(c) Non-institutional living arrangements

1.-4. (No change.)

TABLE B

Variations in Living Arrangements	Medicaid Eligibility Income Standards	
	Individual	Couple
I. Residential Health Care Facility	\$ 518.05	\$1,017.36
II. Living Alone or with Others	\$ 399.25	\$ 578.36
III. Living Alone with Ineligible Spouse	\$ 578.36	
IV. Living in Household of Another	\$ 289.65	\$ 461.76
V. Title XIX	\$1,104.00†	

Approved Facility:
Includes persons in
acute general
hospitals, skilled
nursing facilities,
intermediate care
facilities (level A, B,
and ICFMR) and
licensed special
hospitals (Class A,B,C
and Title XIX
psychiatric hospitals
(for persons under age
21 and age 65 and
over) or a combination
of such facilities for a
full calendar month.

†Gross income (that is, income prior to any income exclusions) is applied to this Medicaid "Cap".

(d)-(g) (No change.)

10:71-5.7 Deeming from sponsor to alien

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

(e) To determine the amount of income to be deemed to an alien, the CWA shall proceed as follows:

1. (No change.)

2. Subtract \$368.00 for the sponsor, \$553.00 for the sponsor if living with his or her spouse, \$736.00 for the sponsor if his or her spouse is a co-sponsor.

3. Subtract \$184.00 for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.

4. (No change.)

(f) (No change.)

DIVISION OF PUBLIC WELFARE

(a)

Service Programs for Aged, Blind, or Disabled Supplemental Security Income Payment Levels Readopted Emergency Amendment: N.J.A.C. 10:83-1.11

Proposed: January 17, 1989 at 21 N.J.R. 208(a). (Concurrently proposed as amendments to N.J.A.C. 10:100 Appendix A, but recodified to N.J.A.C. 10:83-1.11 (see 21 N.J.R. 511(a)).

Adopted: February 28, 1989 by Drew Altman, Commissioner, Department of Human Services.

Filed: February 28, 1989 as R.1989 d.172, **without change**.

Authority: N.J.S.A. 44:7-87 and Section 1618(a) of the Social Security Act.

Effective Date: February 28, 1989.

Expiration Date: January 19, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

[10:100 APPENDIX A] *10:83-1.11*

The New Jersey Supplemental Security Income Payment Levels

Living Arrangement Categories

Payment Level
1/1/89

Eligible Couple

Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less \$50/553.00†

Residential Health Care Facilities and certain residential facilities for children and adults \$1017.36

Living Alone or with Others \$ 578.36

Living in Household of Another, Receiving Support and Maintenance \$ 461.76

Eligible Individual

Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less \$25/368.00†

Residential Health Care Facilities and certain residential facilities for children and adults \$ 518.05

Living Alone or with Others \$ 399.25

Living with Ineligible Spouse (No other individuals in household) \$ 578.36

Living in Household of Another, Receiving Support and Maintenance \$ 289.65

†The lower figure applies when Medicaid payments with respect to an individual equal an amount over 50 percent of the cost of services provided in a month.

(b)

General Assistance Manual Resident Defined

Adopted Amendment: N.J.A.C. 10:85-3.2

Proposed: December 5, 1988 at 20 N.J.R. 2968(b).

Adopted: February 24, 1989 by Drew Altman, Commissioner, Department of Human Services.

Filed: February 24, 1989 as R.1989 d.161, **without change**.

Authority: N.J.S.A. 44:8-111(d).

Effective Date: March 20, 1989.

Expiration Date: January 30, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

10:85-3.2 Application process

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

(f) Resident defined: A resident of a municipality is a person who maintains a permanent customary home in the municipality, a person who is in the municipality with intention to remain, a person who did maintain such a home prior to entering a medical facility, or a person who enters a New Jersey medical facility from out of state and qualifies as a resident in accordance with (f)liii below. No time intervals are relevant so long as the home is not established for a temporary purpose such as for a visit or vacation. A resident may live in his or her own home, a rented home or apartment, the home of a friend or relative, in a boarding home or, in accordance with (f)liii below, in a residential medical facility.

1. Any facility which is licensed by the New Jersey Department of Health to provide residential therapeutic medical care shall, except as specified below, be considered as a temporary residence of any General Assistance applicant or recipient residing in the facility. An applicant or recipient shall, therefore, be considered a resident of the last municipality in which he or she was a resident prior to entering the facility. (Exception: A GA recipient who continues to reside in a municipality in which GA payment status was acquired prior to May 31, 1978 by reason of having achieved "legal settlement" there as a private patient in a medical institution will continue to be considered as living in that municipality.) When the last municipality

ADOPTIONS

of residence, other than a medical facility, was not in New Jersey and the person qualifies in accordance with (f)liii below, that person shall be considered a resident of the municipality in which the medical facility is located. See (f)5 below for determination of municipal responsibility.

- i.-iv. (No change.)
- 2.-5. (No change.)
- (g)-(i) (No change.)

(a)

General Assistance Manual Medically Needy Eligibility

Adopted Amendments: N.J.A.C. 10:85-3.3

Proposed: November 7, 1988 at 20 N.J.R. 2688(b).

Adopted: February 15, 1989 by Drew Altman, Commissioner,
Department of Human Services.

Filed: February 16, 1989 as R.1989 d.138, **without change**.

Authority: N.J.S.A. 44:8-111(d).

Effective Date: March 20, 1989.

Expiration Date: January 30, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:85-3.3 Financial eligibility

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

(g) Medical care: Persons found eligible for General Assistance maintenance payments in accordance with the procedures and standards established in this subchapter (N.J.A.C. 10:85-3) are likewise eligible for medical care (see N.J.A.C. 10:85-5 regarding provision of medical care). In addition, certain other individuals and families are eligible for medical assistance from the MWD or for referral to the county welfare agency.

1. Medically needy: Individuals and families who are ineligible for the General Assistance, AFDC or Refugee Resettlement Program because their income exceeds the standards established for the applicable program may apply to the MWD on a monthly basis for assistance in paying excessive medical costs. The provisions of this subsection are not applicable to the payment of bills for inpatient hospitalization or for medical services rendered to an inpatient. The MWD shall refer to the county welfare agency those persons who appear to be potentially eligible for the Medically Needy Program administered by that agency. Except as stated in (g)li below, any person found eligible under the provisions of that program is not eligible for benefits under this subsection.

i. Elderly, blind or disabled individuals who are ineligible for the SSI Program, because their income exceeds the SSI standard, will be referred to the Medically Needy Program as in (g)l above. That program, however, does not provide payment for prescribed drugs. Therefore, individuals not entitled to receive assistance in meeting the cost of drugs from any other source may apply to the MWD on a monthly basis for assistance in meeting such costs.

- ii. (No change in text.)

iii. Income levels: For the purpose of determining excessive medical costs, the total available monthly income (see (g)liv below) of individuals, couples, or families with children is measured against the appropriate allowance standard. (See N.J.A.C. 10:85-3.1(b) regarding eligible unit concept.) For elderly, blind, or disabled persons, the Medically Needy Program standard applies. For families with children, the AFDC (C and F) standard applies. (See N.J.A.C. 10:82-1.2 for current AFDC standard.) For all others, the General Assistance standard (Schedule I or II as appropriate) applies. When the AFDC or Medically Needy Program standards are changed, a Public Notice to that effect will be published in the New Jersey Register. Information about the current standard may also be obtained by contacting the Division of Public Welfare.

- Renumber iii.-v. as iv.-vi. (No change in text.)
- 2.-4. (No change.)

CORRECTIONS

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Administrative Correction Adoptions

N.J.A.C. 10:121-1.1

Take notice that the Division of Youth and Family Services has discovered an error in the text of N.J.A.C. 10:121-1.1 currently appearing in the New Jersey Administrative Code. The correct text as set forth in this notice is derived from the rules as proposed on January 4, 1973 at 5 N.J.R. 12(a) and adopted, effective February 1, 1973, at 5 N.J.R. 86(a). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (addition shown in boldface thus).

10:121-1.1 Approval of agencies

(a) The following rules and regulations apply to agencies, public or private, whose principal offices are **not** located within the State of New Jersey, which do not otherwise maintain an adequately staffed office within the State of New Jersey and which do not provide direct adoption services in New Jersey but do on occasion place children for adoption with families living in or moving to New Jersey. Such agencies, whenever the contemplated adoption may not or cannot be completed in their own state, must before placing a child for adoption with a family living in New Jersey:

- 1.-3. (No change.)

CORRECTIONS

THE COMMISSIONER

(c)

Security and Control

Collection, Storage and Analysis of Urine Samples

Adopted Amendment: N.J.A.C. 10A:3-5.10

Proposed: January 3, 1989 at 21 N.J.R. 10(a).

Adopted: February 17, 1989 by William H. Fauver,

Commissioner, Department of Corrections.

Filed: February 17, 1989 as R.1989 d.140, **without change**.

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

Effective Date: March 20, 1989.

Expiration Date: October 6, 1991.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment which agrees with the proposed amendment, but offers two suggested additions to the proposed amendment. The suggested additions to the amendment are addressed below.

COMMENT: The commenter suggested that the proposed amendment require the results of urine tests to be returned within seven days, or the charges against the inmate must be dropped.

RESPONSE: The Department of Corrections disagrees because urine testing is performed by laboratories that are outside of the Department, and the Department cannot regulate the pace at which these tests are performed or the intervals at which the Department of Corrections receives the results.

COMMENT: The commenter suggested that a copy of the Continuity of Evidence—Urine Specimen Form be given to an inmate immediately after the sealing, labeling and notation of the specimen by the correction officer.

RESPONSE: The Department of Corrections disagrees because the Continuity of Evidence—Urine Specimen Form is incomplete immediately following the sealing, labeling and notation of the specimen. The Disciplinary Hearing Officer may permit the inmate to see the completed form if the results of the tests are positive.

Full text of the adoption follows.

CORRECTIONS

10A:3-5.10 Collection, storage and analysis of urine samples

(a) (No change.)

(b) Urine samples taken from inmates shall be voided directly into an approved specimen bottle in the presence of at least one correction officer or staff member of the same sex as the inmate.

1. The specimen bottle shall immediately be closed, labeled and sealed in the presence of the inmate by the correction officer or staff member.

2. (No change.)

(c)-(i) (No change.)

(a)

Inmate Discipline

Chronic Violator—Vroom Readjustment Unit, the Administrative Close Supervision Unit, and the Female Inmates at the Edna Mahan Correctional Facility for Women

Adopted Amendments: N.J.A.C. 10A:4-6.1, 6.3 and 6.4

Proposed: January 3, 1989 at 21 N.J.R. 10(b).

Adopted: February 15, 1989 by William H. Fauver, Commissioner, Department of Corrections.

Filed: February 15, 1989 as R.1989 d.136, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 30:1B-6; 30:1B-10 and 30:1-7.

Effective Date: March 20, 1989.

Expiration Date: July 21, 1991.

Summary of Public Comments and Agency Responses:

The Department of Corrections received two comments which are addressed below.

COMMENT: Both commenters suggested that the title, Superintendent of the Administrative Close Supervision Unit, be changed to Assistant Superintendent in charge of the Administrative Close Supervision Unit (A.C.S.U.), the correct title for this position.

RESPONSE: The Department of Corrections agrees and N.J.A.C. 10A:4-6.3 and 6.4 will be modified to delete the incorrect title, Superintendent of the Administrative Close Supervision Unit, and replace it with the correct title, Assistant Superintendent in charge of the Administrative Close Supervision Unit (A.C.S.U.).

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

SUBCHAPTER 6. CHRONIC VIOLATOR—VROOM READJUSTMENT UNIT, THE ADMINISTRATIVE CLOSE SUPERVISION UNIT, AND THE FEMALE INMATES AT THE EDNA MAHAN CORRECTIONAL FACILITY FOR WOMEN

10A:4-6.1 Scope

The rules in this subchapter apply to all male inmates assigned to adult institutions and female inmates serving prison sentences assigned to the Edna Mahan Correctional Facility for Women.

10A:4-6.3 Procedures for designation of a chronic violator

(a) Disciplinary charges lodged against an inmate during the time he or she is currently serving a 30 day term for other disciplinary violations shall be given directly to the Vroom Readjustment Unit (VRU) Director, the ***Assistant* Superintendent *in charge*** of the Administrative Close Supervision Unit (ACSU) at East Jersey State Prison or the Superintendent of the Edna Mahan Correctional Facility for Women. A copy of each charge shall be given to the inmate within 48 hours unless there are exceptional circumstances.

(b) The VRU Director, the ***Assistant Superintendent in charge of the* ACSU *[Superintendent]*** or the Edna Mahan Correctional Facility for Women Superintendent shall be responsible for ordering

that each charge be investigated. He or she shall review each charge and investigation to personally obtain all relevant information.

(c) If after review of all the reports and personal interviews with reporting staff that is deemed necessary to clarify facts or circumstances, the VRU Director, the ***Assistant Superintendent in charge of the* ACSU *[Superintendent]*** or the Edna Mahan Correctional Facility for Women Superintendent concludes that the inmate would pose a serious threat to persons or to the security or orderly operation of the Unit or correctional facility if released from lockup, he or she shall schedule the case for a due process hearing before the Department's Disciplinary Hearing Officer.

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

(g) If after review of all reports and testimony, the Disciplinary Hearing Officer/Adjustment Committee concludes that the inmate cannot safely be released from lockup at the expiration of his or her 30 day term, the inmate shall be designated a chronic violator. At VRU, the Disciplinary Hearing Officer's decision shall be referred to the Unit's Special Classification Committee for review and approval. At ACSU and at the Edna Mahan Correctional Facility for Women, the Disciplinary Hearing Officer's decision shall be referred to the Institution Classification Committee (I.C.C.) for review and approval. The inmate shall remain in Disciplinary Detention until, at a subsequent hearing, the Disciplinary Hearing Officer determines that the inmate has demonstrated that he or she will control his or her behavior and will refrain from repetitive acts of assault or destruction of property.

(h)-(i) (No change.)

10A:4-6.4 Appeal procedure

(a) (No change.)

(b) Prior to rendering a decision on the appeal, the Assistant Commissioner shall confer with the VRU Director, the ***Assistant Superintendent in charge of the* ACSU *[Superintendent]***, or the Edna Mahan Correctional Facility for Women Superintendent concerning the inmate's conduct. Alternative means for control and treatment shall be explored and utilized, if available and feasible. The inmate shall be notified of the Assistant Commissioner's decision and the reasons therefor within five working days.

(b)

Inmate Access to Courts

Amendment to Institutional Records

Adopted Amendment: N.J.A.C. 10A:6-3.2

Proposed: January 3, 1989 at 21 N.J.R. 11(a).

Adopted: February 17, 1989 by William H. Fauver, Commissioner, Department of Corrections.

Filed: February 17, 1989 as R.1989 d.139, **without change**.

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

Effective Date: March 20, 1989.

Expiration Date: November 2, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10A:6-3.2 Amendment of institutional records

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

(c) The Superintendent shall also notify the following of the inmate's name change:

1. The Central Office Senior Classification Officer;
2. The Bureau of Correctional Information and Classification Services; and

3. In the case of male inmates, the Reception Unit at the Garden State Reception and Youth Correctional Facility.

ADOPTIONS

CORRECTIONS

STATE PAROLE BOARD

(a)

Parole Board Rules

Confidentiality; Institutional Infractions

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

Proposed: September 6, 1988 at 20 N.J.R. 2129(a).

Adopted: February 22, 1989 by the New Jersey State Parole Board, Louis Nickolopoulos, Chairman.

Filed: February 23, 1989 as R.1989 d.151, **with substantive and technical changes** not requiring additional public notice and comment.

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

Effective Date: March 20, 1989.

Expiration Date: April 15, 1990.

Summary of Public Comments and Agency Responses:

N.J.A.C. 10A:71-2.1(a)7

COMMENT: The Department of Law and Public Safety believed that, in some instances, it would be difficult to ascertain that a person provided information with the expectation that the information would be confidential; that, where it is possible to demonstrate such an expectation, that expectation could be unreasonably associated with non-sensitive information that would not, if released, hinder the parole process; and that it appeared that such expectation is premised upon a belief that some danger could befall the provider if his identity were disclosed. The Department believed that proposed paragraph N.J.A.C. 10A:71-2.1(a)6 is sufficient to address the situation if the word "person" is substituted for citizens.

RESPONSE: The Board accepted the comments of the Department. Accordingly, the Board deleted the proposed rule and amended N.J.A.C. 10A:71-2.1(a)6 by substituting the word "person" for "citizen".

N.J.A.C. 10A:71-2.1(a)8

COMMENT: The Department of Law and Public Safety believed that the proposed paragraph may be too broad. Conceivably, a portion of a final report might contain non-sensitive material that could be released by the Board. Further, the Department believed that reference to N.J.A.C. 10A:71-3.45(q) be placed in a separate confidential category.

RESPONSE: In assessing the Department's comments, the Board determined that summary reports prepared at the conclusion of rescission and revocation hearings need not be generally classified confidential. The Board concluded that any confidential information which may be included in such summary reports could be deleted in accordance with other confidential rules prior to the public release of the documents. In reference to N.J.A.C. 10A:71-3.45(q), no revision to said rule was proposed and the Board concluded that further reference to the section was not necessary. The Board determined to delete the proposed rule.

N.J.A.C. 10A:71-2.1(a)9

COMMENT: The Department of Law and Public Safety believed that the proposed paragraph may be too broad and suggested a modification which would assist in delineating specific standards.

RESPONSE: The Board accepted the Department's suggested modification and amended the paragraph accordingly.

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

10A:71-2.1 Confidentiality of information and records

(a) The following information, files, documents, reports, records or other written material submitted to, prepared and maintained by or in the custody of the Board, any Board member or employee pertaining to parole and parole supervision are deemed confidential:

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

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

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

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

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

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

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

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

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

[10.]**8. A transcript, if prepared, of any proceeding of the Board; and

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

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

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

(d) Inmates or parolees shall be afforded disclosure of adverse material or information considered at a hearing, provided such material is not classified as confidential by the Board or the Department. If disclosure is withheld, the reason for nondisclosure shall be noted in the Board's files, and such material or information shall be identified as confidential.

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

10A:71-3.4 Institutional infractions: adult inmates

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

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

1.-4. (No change.)

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

i. Inmates who have committed the following institutional infractions:

(1) (No change.)

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

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

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

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

1.-3. (No change.)

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

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

6. (No change.)

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

(a)

Parole Board Rules

Tentative Parole Release Dates; Juvenile Inmates Parole Conditions

Adopted Amendments: N.J.A.C. 10A:71-3.21 and 6.4

Proposed: November 7, 1988 at 20 N.J.R. 2747(b).

Adopted: February 22, 1989 by the New Jersey State Parole Board, Louis Nickolopoulos, Chairman.

Filed: February 23, 1989 as R.1989 d.145, **without change**.

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

Effective Date: March 20, 1989.

Expiration Date: April 15, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: A District Office of the Bureau of Parole suggested that N.J.A.C. 10A:71-6.4(e) as proposed amendment be modified to permit, in essence, several designated representatives of the District Parole Supervisor to impose special conditions of parole in the cases of parolees.

RESPONSE: The Board did not accept the suggestion and declined to modify the rule. The amendment was proposed to alleviate the burden on the District Parole Supervisor and permit the parole officers to have access to experienced personnel capable of exercising sound judgment. The Board believed that the delegation of its authority should be limited and not of a general nature as suggested by the District Parole Office.

Full text of the adoption follows.

10A:71-3.21 Establishment of tentative parole release dates; juvenile inmates

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

(d) The juvenile Board panel may establish a tentative parole release date outside the range contained in the provisions of (a) above, if a tentative parole release date within the range is clearly inappropriate in view of the circumstances of the act of delinquency, the prior record of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4).

1. If, in the opinion of the hearing officer or juvenile Board panel member establishing the tentative parole release date, a date within the range contained in the provisions of (a) above is clearly inappropriate in view of the circumstances of the act of delinquency, the prior records of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4), the hearing officer or the juvenile Board panel member shall refer such a case to the juvenile Board panel.

2. The juvenile Board panel shall, upon disposition of the case, state in writing to the juvenile inmate, the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee, the reasons for the establishment of any tentative parole release date which is outside the range contained in the provisions of (a) above.

3. The decision of the juvenile Board panel to establish a tentative parole release date which is outside the range contained in the provisions of (a) above may be reconsidered pursuant to N.J.A.C. 10A:71-4.1 or appealed pursuant to N.J.A.C. 10A:71-4.2(h).

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

(CITE 21 N.J.R. 768)

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10A:71-6.4 Conditions of parole

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

(e) Additional special conditions may be imposed by the District Parole Supervisor, an Assistant District Parole Supervisor, or the designated representative of the District Parole Supervisor when, in the opinion of the District Parole Supervisor, an Assistant District Parole Supervisor, or the designated representative of the District Parole Supervisor, such conditions would reduce the likelihood of recurrence of criminal or delinquent behavior. The parolee and the Board shall be given written notice upon the imposition of such additional conditions.

(f) (No change.)

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(b)

DIVISION OF MOTOR VEHICLES

Salvage Certificates of Title

Adopted New Rules: N.J.A.C. 13:21-22

Proposed: November 7, 1988 at 20 N.J.R. 2675(a).

Adopted: February 17, 1989 by Glenn R. Paulsen, Director, Division of Motor Vehicles.

Filed: February 24, 1989 as R.1989 d.157, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 39:10-37, 30:3-5, 39:3-43 and 39:5-47.

Effective Date: March 20, 1989.

Operative Date: April 3, 1989.

Expiration Date: December 16, 1990.

Summary of Agency Changes:

The substantive changes are located in N.J.A.C. 13:21-22.4(b), 13:21-22.14(a) and 13:21-22.15(a). N.J.A.C. 13:21-22.4(b) has been changed to provide that the Division shall issue a salvage certificate of title in the name of the vehicle owner and shall deliver it to the lienholder of record of a salvage motor vehicle upon surrender of the certificate of ownership for such vehicle as required by N.J.A.C. 13:21-22.4(a) if the motor vehicle is owned subject to a lien. N.J.A.C. 13:21-22.14(a) has been changed to provide that the Division shall issue a certificate of ownership without a salvage designation in the name of the vehicle owner and shall deliver it to the lienholder of record of a motor vehicle which falls within the purview of N.J.A.C. 13:21-22.14 (which also imposes documentation and fee requirements) if the motor vehicle is owned subject to a lien. N.J.A.C. 13:21-22.15(a) has been changed to provide that the Division shall issue a certificate of ownership with a salvage designation in the name of the vehicle owner and shall deliver it to the lienholder of record of a salvage motor vehicle which falls within the purview of N.J.A.C. 13:21-22.15 (which also imposes documentation and fee requirements) if the motor vehicle is owned subject to a lien.

The above-mentioned changes are as a result of the Division's review of the proposed rules prior to adoption, and were neither raised nor suggested in any of the comments which were filed with the Division with regard to the rules. Each of the three changes is intended to protect the rights of lienholders in those instances where the motor vehicle in question is owned subject to a lien. N.J.S.A. 39:10-11 mandates that a certificate of ownership for a motor vehicle be delivered to the lienholder of record if the motor vehicle is owned subject to a lien. N.J.S.A. 39:10-32b requires the Division, after determining vehicle ownership, to issue a salvage certificate of title to a person who surrenders a certificate of ownership pursuant to N.J.S.A. 39:10-32a; if the "person" in possession of the certificate of ownership who surrenders it to the Division is the lienholder of record, it follows that N.J.S.A. 39:10-32b requires delivery of the salvage title to the lienholder. Hence, these changes bring the proposal into conformity with the requirements of Chapter 10 of Title 39 of the New Jersey Statutes by rectifying an omission in the proposed rules as to the rights of motor vehicle lienholders. In sum, the procedure for delivery of a certificate of ownership or a salvage certificate of title to the lienholder of record of a vehicle if it is owned subject to a lien, which is reflected by these changes, is mandatory and not discretionary.

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Summary of Public Comments and Agency Responses:

Opportunity to be heard with regard to the proposed rules was invited via notice published in the November 7, 1988 New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposed rules. The period for public comment was extended by the November 21, 1988 media advisory until December 21, 1988.

The New Jersey Division of Motor Vehicles received four comments with regard to the proposed rules. The comments are available for inspection at the Office of the Director, Division of Motor Vehicles, 25 South Montgomery Street, Trenton, New Jersey 08666. The comments were carefully reviewed and considered by the Division.

Two commenters expressed their support for the proposed rules, indicating their view that the rules are appropriate.

Another commenter opposed the proposed rules, stating that "it will hurt drivers and motor vehicle owners" without further elaborating the reasons for his opinion. The Division's response to this commenter is that the proposed rules are not designed to hurt drivers or motor vehicle owners, but are intended to protect the public from fraud by establishing standards and procedures to prevent certificates of ownership for salvage motor vehicles from being used to register stolen motor vehicles and by providing for the seizure of salvage motor vehicles which are stolen or reconstructed, rebuilt or repaired using parts from stolen motor vehicles.

Another commenter had numerous comments with regard to the proposed rules which are summarized below, along with the Division's responses:

COMMENT: The definition of "salvage motor vehicle" in N.J.A.C. 13:21-22.3 should be changed to include "or the insurer settles a total loss claim with the motor vehicle owner as a result of the damage to the motor vehicle".

RESPONSE: The Division does not agree with this comment. The relevant statute, N.J.S.A. 39:10-32, mandates that a motor vehicle which has either been reported as being stolen or suffered sufficient damage to render it economically impractical to repair is subject to salvage titling. The Division's definition of the term "salvage motor vehicle" basically tracks the statutory language contained in N.J.S.A. 39:10-32 as to those vehicles which are subject to salvage titling. The purpose of the salvage titling statutes, N.J.S.A. 39:10-31 et seq., is to prevent fraud by removing from circulation certificates of ownership of motor vehicles which have been stolen or damaged beyond repair, thus preventing such certificates of ownership from being used for illegal purposes. The definition of "salvage motor vehicle" in N.J.A.C. 13:21-22.3 tracks the relevant statutory language because it is intended to combat the same evil as the salvage titling statutes. A late model vehicle which has been rendered economically impractical to repair which is accompanied by a certificate of ownership would be attractive to those desiring to obtain the title document to use it for illegal purposes because such a vehicle could be purchased inexpensively, and it is for that reason that certificates of ownership for such vehicles must be removed from circulation. However, a late model vehicle which has not been rendered economically impractical to repair would be more expensive for those seeking to acquire it for illegal purposes to purchase, thus negating the profit motive for such a purchase and the need to expand the definition of "salvage motor vehicle". It should be noted that damaged "classic cars" are dealt with in the second portion of the definition of "economically impractical to repair" in N.J.A.C. 13:21-22.3.

COMMENT: With regard to the dealer reassignment certificates specified in N.J.A.C. 13:21-22.5(d), dealer reassignment information on all title chains should be entered into the Division of Motor Vehicles' computer.

RESPONSE: This comment pertains to motor vehicle titling in general, since use of the dealer reassignment certificates is not limited to salvage titling. The Division does not enter or store dealer reassignment information pertaining to title chains in its computer system. However, chain of title information for a motor vehicle is not jeopardized by the use of dealer reassignment forms because the reassignment form constitutes part of the chain of title for a vehicle which is microfilmed by the Division, and because the prefix on a motor vehicle title is incremented to reflect the use of a dealer reassignment form. In sum, although dealer reassignment information is not accessible by computer, it is available on microfilm.

COMMENT: The Division should reassess N.J.A.C. 13:21-22.9. All vehicles which meet the criteria to have a salvage certificate of title issued should undergo a physical examination. Repeated stolen vehicles which have been stolen twice and have been recovered via salvage inspection in the past exemplify why they should be examined. Without salvage

examinations, such stolen vehicles would have been issued a certificate of ownership.

RESPONSE: The Division agrees that all vehicles for which a salvage certificate of title has been issued must, as a prerequisite to the issuance of a certificate of ownership, undergo an inspection pursuant to N.J.S.A. 39:10-33 and 39:10-34. However, the Division perceives no valid reason to "reassess" or change N.J.A.C. 13:21-22.9. The inspection performed upon a recovered stolen vehicle by the recovering law enforcement agency to ascertain ownership of the vehicle is sufficient inspection pursuant to N.J.S.A. 39:10-33 for purposes of the issuance of a certificate of ownership for that vehicle pursuant to N.J.A.C. 13:21-22.14, provided that the recovered stolen vehicle does not have a missing, altered or damaged vehicle identification number or plate and has not sustained damage to such an extent that it has been rendered economically impractical to repair. Such an inspection by a law enforcement agency serves to verify ownership of a recovered stolen vehicle as well as insure that neither the vehicle nor its parts are stolen. It would be redundant for the Division to require an additional inspection of a recovered stolen vehicle for those vehicles specified in N.J.A.C. 13:21-22.9.

COMMENT: N.J.A.C. 13:21-22.10(c) should be deleted. All vehicles that meet the criteria to obtain a salvage certificate of title should undergo a physical examination.

RESPONSE: As stated previously, the Division agrees that all vehicles for which a salvage certificate of title has been issued must undergo an inspection as a prerequisite to the issuance of a certificate of ownership pursuant to N.J.S.A. 39:10-33 and 39:10-34. However, there is no valid reason to delete N.J.A.C. 13:21-22.10(c). That provision requires the owner of a salvage vehicle which is a recovered stolen vehicle that does not have a missing, altered or damaged vehicle identification number or plate and which has not been damaged to such an extent that it has been rendered economically impractical to repair to supply the Division with a copy of the report from the law enforcement agency which recovered the stolen vehicle to confirm that the vehicle has been inspected by the recovering law enforcement agency to ascertain ownership, together with the other documents required by N.J.A.C. 13:21-22.14. Since the inspection by a law enforcement agency serves to confirm ownership of a recovered stolen vehicle as well as insure that neither the vehicle nor its parts are stolen, it would be redundant for the Division to require an additional inspection of a recovered stolen vehicle for those vehicles specified in N.J.A.C. 13:21-22.10(c).

COMMENT: An inspection fee should be charged to inspect any stolen vehicle which is recovered with a missing, altered or damaged vehicle identification number or plate. Any such recovered stolen vehicle will require a full examination to determine the true identification.

RESPONSE: Although the commenter directed this comment to N.J.A.C. 13:21-22.9(e)1, no such citation appeared in the proposed rules. However, given the subject of this comment, it appears that the commenter is objecting to N.J.A.C. 13:21-22.10(e)1.

The Division does not agree that a fee be charged for the salvage inspection of a recovered stolen vehicle which has a missing, altered or damaged vehicle identification number or plate but which has not been recovered in such condition that it is economically impractical to repair. Such a fee would place an unfair burden on innocent victims of vehicle theft who have undergone the trauma of having their vehicle stolen, only to have the vehicle subsequently recovered with little or no physical damage other than a missing, altered or damaged vehicle identification number or plate but nevertheless be charged an inspection fee of either \$100.00 (for a motorcycle) or \$200.00 (for any vehicle other than a motorcycle). Given the unfair burden which would result from the imposition of a fee under such circumstances, no fee should be charged for such an inspection, and N.J.A.C. 13:21-22.10(e)1 as adopted retains the "no fee" language.

COMMENT: As grounds for failing State inspection under N.J.A.C. 13:21-22.12, the Division should add the following: failure to comply with N.J.A.C. 13:21-22.7(b)(1) to N.J.A.C. 13:21-22.7(b)(4)(ii) and N.J.A.C. 13:21-22.7(c) to (e), as well as supplying false information with regard to N.J.A.C. 13:21-22.12.

RESPONSE: It is not necessary to include failure to comply with N.J.A.C. 13:21-22.7 as a ground for failing State inspection, and N.J.A.C. 13:21-22.12 has not been changed. The Division will not inspect a salvage motor vehicle that sustained damage to such an extent that it had been rendered economically impractical to repair, including a stolen motor vehicle recovered in such condition, and that has subsequently been reconstructed, rebuilt or repaired unless the documents set forth in N.J.A.C. 13:21-22.7 have been presented to the Division. Hence, such

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documents are a prerequisite to the inspection of this type of salvage motor vehicle rather than a ground for failing inspection. If the Division ascertains upon inspection that documents filed in accordance with N.J.A.C. 13:21-22.7 are false and that the salvage motor vehicle therefore falls within N.J.A.C. 13:21-22.12(a)1, 2 or 3, no vehicle identification number verification form or inspection report shall be issued by the Division and the vehicle or part will be subject to seizure in accordance with N.J.A.C. 13:21-22.13.

COMMENT: N.J.A.C. 13:21-22.14(a)2 should be deleted. Any vehicle with a missing, altered or damaged vehicle identification number or plate that fits the criteria for a salvage title should maintain the salvage indicator.

RESPONSE: The Division does not agree with this comment. The purpose of a salvage designation on a certificate of ownership is to alert a potential buyer of a motor vehicle that the vehicle at one time had been damaged to such an extent that it was rendered economically impractical to repair and that it has been subsequently reconstructed, rebuilt or repaired. Thus, a subsequent buyer in good faith of a vehicle which has been reconstructed, rebuilt or repaired is placed on notice by the salvage designation that the vehicle suffered extreme physical damage in the past. However, no comparable salutary purpose would be served by placing a salvage designation on a certificate of ownership for a motor vehicle which is a recovered stolen vehicle with a missing, altered or damaged vehicle identification number if that vehicle has not been rendered economically impractical to repair. Such a recovered stolen vehicle must, as a prerequisite to the issuance of a certificate of ownership, undergo an inspection in accordance with N.J.A.C. 13:21-22.8 and 13:21-22.10(b) to insure that it is not a stolen motor vehicle. Since it is ascertained at inspection that such a vehicle is not a stolen vehicle, thus providing the public with a safeguard in that respect, no purpose would be served by placing a salvage designation on its certificate of ownership.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 22. SALVAGE CERTIFICATE***S*** OF TITLE

13:21-22.1 Purposes

(a) The Salvage Certificate of Title Act, N.J.S.A. 39:10-31 et seq., provides for the issuance of salvage certificates of title and regulates the transfer of ownership of salvage motor vehicles. The purposes of this subchapter are to:

1. Establish standards and procedures necessary to protect the public from fraud by preventing negotiable certificates of ownership for salvage motor vehicles from being used to title or register stolen or other motor vehicles;
2. Establish standards and procedures necessary to protect the public from fraud by providing for the seizure of salvage motor vehicles which are determined, after inspection pursuant to this subchapter, to be stolen or reconstructed, rebuilt or repaired using parts from stolen motor vehicles.
3. Establish standards and procedures necessary to notify the public that a salvage motor vehicle has been subsequently reconstructed, rebuilt or repaired;
4. Establish standards and procedures for the issuance of salvage certificates of title;
5. Establish a system which regulates the transfer of ownership of salvage motor vehicles only as salvage motor vehicles until a negotiable certificate of ownership is obtained;
6. Establish standards and procedures for the inspection of salvage motor vehicles;
7. Establish standards and procedures for the issuance of negotiable certificates of ownership after the salvage motor vehicle has been inspected in accordance with the requirements of this subchapter; and
8. Establish standards for the issuance of salvage and/or negotiable certificate of title which do not cause unreasonable burden to persons or entities licensed by the Director as auto body repair facilities, auto salvage yards, junk yards and/or motor vehicle dealers.

13:21-22.2 Prohibition on transfer

(a) This subchapter shall apply to every motor vehicle which is reported stolen or is damaged to such an extent that it is economically impractical to repair.

(b) No person shall, on or after the effective date of this subchapter, transfer the ownership of a salvage motor vehicle except as a salvage motor vehicle until the owner obtains a certificate of ownership in accordance with this subchapter.

13:21-22.3 Definitions

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

"Bona fide repair estimate" means any written determination of the approximate cost of parts and labor required to repair the damaged motor vehicle that is prepared by an auto body repair facility licensed pursuant to N.J.S.A. 39:13-1 et seq. or by an adjuster of an insurance company licensed to do business in New Jersey. Licensed auto body repair facilities shall prepare the estimate in accordance with N.J.A.C. 13:21-21.10. In the event that more than one such repair estimate is prepared for the damaged motor vehicle, then the highest repair estimate shall be used to determine if the damaged motor vehicle is economically impractical to repair. This term does not include any repair estimate prepared by the motor vehicle owner.

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Division" means the Division of Motor Vehicles in the Department of Law and Public Safety.

"Economically impractical to repair" means that the motor vehicle is damaged to such an extent that:

1. For those motor vehicles manufactured eight or less model years from the current model year, the cost to repair such damaged motor vehicle, as determined by a bona fide repair estimate, equals or exceeds the fair market value of the motor vehicle immediately before it was damaged; or

2. For those other motor vehicles where the fair market value of such damaged motor vehicle immediately before it was damaged equals or exceeds the fair market value of a motor vehicle of the same make and model manufactured five years from the current model year, or similar make and model if the same make and model is no longer manufactured, if the motor vehicle has sustained damage to the extent that either:

- i. The cost to repair such damaged motor vehicle, as determined by a bona fide repair estimate, equals or exceeds the fair market value of the motor vehicle immediately before it was damaged; or
- ii. The insurer settles a total loss claim with the motor vehicle owner as a result of the damage to the motor vehicle.

"Fair market value" means the retail value of the motor vehicle as determined by the average of the official valuation manuals approved by the Commissioner of the Department of Insurance in accordance with auto physical damage claims, N.J.A.C. 11:3-10. In the event that the retail value of the motor vehicle is not listed in the official valuation manuals, then the retail value of the motor vehicle may be determined by any other valuation method approved by the Commissioner of the Department of Insurance, in accordance with auto physical damage claims.

"Owner" means the owner of record with the Division on the date that the motor vehicle was stolen or sustained sufficient damage to render it economically impractical to repair.

"Person" means any natural person, business, firm, partnership, association, corporation, or any other entity.

"Salvage certificate of title" means the document issued by the Director pursuant to N.J.S.A. 39:10-31 et seq., or a similar document issued by another state, which serves as proof of ownership of a salvage motor vehicle.

"Salvage motor vehicle" means any motor vehicle which has been reported stolen or is damaged to such an extent that it is economically impractical to repair.

"State inspection" means an inspection conducted by persons approved and designated by the Director to inspect salvage motor vehicles.

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13:21-22.4 Issuance of salvage certificates of title; fee

(a) Whenever a motor vehicle is reported as being stolen or is damaged to such an extent that it is economically impractical to repair such motor vehicle, the owner, insurer or person in possession of the certificate of ownership shall, within 10 working days after the motor vehicle was reported as stolen or damaged, or within 10 working days after settling a total loss insurance claim, surrender the certificate of ownership for such motor vehicle to the Division.

(b) Upon surrender of the certificate of ownership, as required by (a) above, the Director shall issue a salvage certificate of title to the owner of the salvage motor vehicle, after determining that the person applying for a salvage certificate of title is the owner of record*; **provided, however, that if the salvage motor vehicle is owned subject to a lien, a salvage certificate of title shall be issued in the name of the vehicle owner and shall be delivered to the lienholder of record by the Division*.**

(c) A lienholder of record shall be noted on the salvage certificate of title until the lien is properly satisfied and discharged in accordance with N.J.S.A. 39:10-10.

(d) A fee, set forth in N.J.S.A. 39:10-11, shall be charged for the issuance of a salvage certificate of title.

13:21-22.5 Subsequent transfer of salvage motor vehicles

(a) Until such time as the owner obtains a certificate of ownership in accordance with this subchapter, no person shall transfer ownership of a salvage motor vehicle except by proper assignment and delivery of a salvage certificate of title.

(b) No salvage motor vehicle shall be sold at auction, or otherwise disposed of, in this State except by proper assignment and delivery of a salvage certificate of title.

(c) The buyer of a salvage motor vehicle shall, within 10 working days after its purchase, apply for a new salvage certificate of title. The Director shall issue a new salvage certificate of title to the buyer upon surrender of the previous salvage certificate of title properly executed and assigned by the seller, together with the required title fee and New Jersey sales tax.

(d) Whenever ownership of a salvage motor vehicle is transferred by a motor vehicle dealer in accordance with N.J.S.A. 39:10-19, the dealer may assign and attach a dealer reassignment certificate to the salvage certificate of title.

13:21-22.6 Salvage motor vehicles precluded from obtaining a registration

(a) A salvage motor vehicle shall not be registered for the purpose of being driven or operated on the public highways of this State, except in accordance with N.J.A.C. 13:21-22.11.

(b) The Director shall deny registration, except a temporary registration issued in accordance with N.J.A.C. 13:21-22.11, to the owner of a salvage motor vehicle until the owner obtains a certificate of ownership in accordance with this subchapter.

13:21-22.7 Inspection of salvage motor vehicles which are subsequently reconstructed, rebuilt or repaired

(a) A salvage motor vehicle that has sustained damage to such an extent that it has been rendered economically impractical to repair, including a stolen motor vehicle that is recovered in such condition, and that is subsequently reconstructed, rebuilt or repaired must be inspected in accordance with N.J.A.C. 13:21-22.10(a) to determine the accuracy of its vehicle identification number and/or any identification numbers of any major component parts used to reconstruct, rebuild or repair the motor vehicle before a certificate of ownership will be issued for the motor vehicle.

(b) The following documents must be presented to the Division before the salvage motor vehicle will be inspected:

1. Salvage certificate of title;
2. Notice of appointment obtained in accordance with N.J.A.C. 13:21-22.10;
3. Bill of sale as proof of ownership for each major component part used in the reconstruction, rebuilding or repair of the motor vehicle, including the following parts:
 - i. Engine;
 - ii. Transmission or transaxle;
 - iii. Front bumper;

- iv. Rear bumper;
- v. Each fender;
- vi. Hood or engine cover;
- vii. Each door;
- viii. Each quarter panel;
- ix. Decklid, tailgate or hatchback (whichever is present);
- x. Roof (including T-tops/removable roof if present);
- xi. Cowl;
- xii. Frame;
- xiii. Shock tower or apron; and
- xiv. Assembled items:
 - (1) Nose (fenders, hood, bumper, radiator support);
 - (2) Front clip (cowl, frame section, shock and apron structure);
 - (3) Rear clip (rear sheet metal, frame section, roof);
 - (4) Short clip (rear clip without roof); and
4. A set of "before" and "after" color photographs of the motor vehicle. Each set of "before" and "after" color photographs shall consist of:
 - i. One photograph showing the entire front and entire left side of the motor vehicle; and
 - ii. One photograph showing the entire rear and entire right side of the motor vehicle.

(c) The bill of sale for each major component part shall include the following information:

1. Name and address of the buyer;
2. Name and address of the seller;
3. Date and the purchase price; and
4. For parts, as follows:
 - i. For a new part: description of the part and part number; or
 - ii. For a used part: description of the part, the vehicle identification number (if available), make, model, and year of the motor vehicle from which the part was removed, the date the part was dismantled or removed (if available), and the name and address of the person or business which dismantled or removed the part. If the vehicle identification number is not indicated on the bill of sale, then the owner must obtain a letter from the seller or person who dismantled or removed the part stating why the vehicle identification number was not indicated on the bill of sale.

(d) If the motor vehicle had been reported stolen, then the owner must also present a copy of the report from the law enforcement agency which recovered the stolen motor vehicle.

(e) It is the responsibility of the owner to arrange satisfactory transportation of his or her salvage motor vehicle to have it inspected (for example, flatbed truck, towing by means of an approved towing device, temporary registration).

13:21-22.8 Inspection of stolen motor vehicles recovered with damaged or missing vehicle identification numbers

(a) A stolen motor vehicle that is subsequently recovered with a missing, altered or damaged vehicle identification number or plate must, whether or not the vehicle has been damaged, be inspected in accordance with N.J.A.C. 13:21-22.10(b) to determine the accuracy of its vehicle identification number before a certificate of ownership will be issued for the motor vehicle.

(b) The following documents must be presented to the Division before the motor vehicle will be inspected:

1. Salvage certificate of title;
2. Copy of the report from the law enforcement agency which recovered the stolen motor vehicle; and
3. Notice of appointment obtained in accordance with N.J.A.C. 13:21-22.10.

13:21-22.9 Inspection of stolen motor vehicles recovered without damaged or missing vehicle identification numbers and without damage sufficient to be rendered economically impractical to repair

The inspection performed upon a recovered stolen motor vehicle by the recovering law enforcement agency to ascertain ownership of the vehicle shall be deemed sufficient inspection for purposes of the issuance of a certificate of ownership to the owner of such vehicle pursuant to N.J.A.C. 13:21-22.14, provided that the recovered stolen vehicle does not have a missing, altered or damaged vehicle identification number.

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cation number or plate and has not sustained damage to such an extent that it has been rendered economically impractical to repair.

13:21-22.10 Inspection; appointment; inspection fee; rescheduling

(a) As a prerequisite to the issuance of a certificate of ownership, a salvage motor vehicle which has been damaged to such an extent that it has been rendered economically impractical to repair, including a stolen motor vehicle that is recovered in such condition, and that is subsequently reconstructed, rebuilt or repaired must undergo an inspection at a State inspection facility.

(b) As a prerequisite to the issuance of a certificate of ownership, a salvage motor vehicle which is a recovered stolen vehicle with a missing, altered or damaged vehicle identification number or plate must undergo an inspection at a State inspection facility.

(c) As a prerequisite to the issuance of a certificate of ownership, the owner of a salvage motor vehicle which is a recovered stolen vehicle that does not have a missing, altered or damaged vehicle identification number or plate and which has not been damaged to such an extent that it has been rendered economically impractical to repair shall supply the Division with a copy of the report from the law enforcement agency which recovered the stolen motor vehicle to confirm that the vehicle has been inspected to ascertain ownership, together with the other documents required by N.J.A.C. 13:21-22.14.

(d) Upon receipt of the completed application, together with the required inspection fee, if any, the Division shall mail a notice of appointment to the owner indicating the date, time and place of the inspection.

(e) The following fees, payable to the Division, shall be charged to inspect the following salvage motor vehicles:

1. For a stolen motor vehicle (including a stolen motorcycle) that is subsequently recovered with a missing, altered or damaged vehicle identification number or plate, there is no fee.

2. For a motor vehicle (other than a motorcycle that was previously determined to be economically impractical to repair, including a stolen motor vehicle that is recovered in such condition, and that is subsequently reconstructed, rebuilt or repaired, the fee is \$200.00.

3. For a motorcycle that was previously determined to be economically impractical to repair, including a stolen motorcycle that is recovered in such condition, and that is subsequently reconstructed, rebuilt or repaired, the fee is \$100.00.

(f) An inspection appointment shall be rescheduled at no additional cost provided that the owner notifies the Division at least five days prior to his or her scheduled inspection date that he or she is unable to have his or her salvage motor vehicle inspected on such date. In the event that the owner fails to provide the Division with at least five days notice of his or her inability to have his or her salvage motor vehicle inspected on the scheduled inspection date, then the owner must submit an additional inspection fee equal to the amount of the original inspection fee to the Division before a new inspection appointment will be issued to the owner to have his or her salvage motor vehicle inspected.

13:21-22.11 Temporary registration for salvage motor vehicles

(a) Owners of salvage motor vehicles may apply for a temporary registration in accordance with this section.

(b) After receiving a notice of appointment in accordance with N.J.A.C. 13:21-22.10, the owner may apply for a temporary registration.

(c) A temporary registration for a salvage motor vehicle may be obtained from any motor vehicle agency no sooner than five days before the scheduled appointment date.

(d) The following documents must be presented at a motor vehicle agency before a temporary registration will be issued to the owner:

1. Notice of appointment in accordance with N.J.A.C. 13:21-22.10;

2. Salvage certificate of title; and

3. Proof of current liability insurance coverage.

(e) If the motor vehicle was reported stolen and was subsequently recovered, then the owner must also present a copy of the report from the law enforcement agency which recovered the stolen motor vehicle.

(f) No temporary registration shall be issued unless the owner presents proof of current liability insurance coverage as required by N.J.S.A. 39:6B-1 and/or N.J.S.A. 39:6A-3. An insurance identifi-

cation card or a photocopy of the declaration page of the insurance policy for that vehicle shall constitute proof of current liability insurance coverage.

(g) A temporary registration issued to owners of salvage motor vehicles shall only be valid for a period of five days.

(h) A fee of \$2.00 shall be charged for the issuance of a temporary registration issued to owners in accordance with this section.

13:21-22.12 Grounds for failing State inspection

(a) No vehicle identification number verification form or inspection report shall be issued if it is determined upon inspection that:

1. The salvage motor vehicle is a stolen motor vehicle;

2. The salvage motor vehicle contains a stolen major component part; or

3. The salvage motor vehicle, or a major component part thereof, displays the identification number or plate of a stolen motor vehicle.

(b) The vehicle identification number verification forms and inspection reports referred to in (a) above are not public records and are not accessible for public examination pursuant to the "Right to Know Law", N.J.S.A. 47:1A-1 et seq.

13:21-22.13 Seizure of a salvage motor vehicle

(a) Members of the State and/or local law enforcement agencies shall seize and confiscate a salvage motor vehicle in the following circumstances:

1. Where the motor vehicle, or a major component part thereof, is determined to be stolen; and/or

2. Where the motor vehicle, or a major component part thereof, displays the identification number or plate of a stolen motor vehicle.

(b) The Director may also designate employees of the Division to seize and confiscate salvage motor vehicles as set forth in (a) above.

(c) The State or local law enforcement agency seizing a salvage motor vehicle shall retain custody of the vehicle, pending prosecution of any person arrested in connection with the seizure. The police shall retain custody of the vehicle until the ownership has been ascertained.

(d) Whenever a salvage vehicle is seized pursuant to this section, the law enforcement agency seizing the vehicle or part shall notify the owner of record for the vehicle, any person holding a security interest of record for the vehicle, any other person claiming an interest in the vehicle, and the person from whom the vehicle or part was seized. This notice shall be in writing and shall be served in person or by certified or registered mail, return receipt requested, to the last known address of the person to whom the notice is given within five days after the seizure. If the notice is unclaimed by the addressee or if the address of the person to whom the notice is to be given is unknown to the agency giving notice and cannot be ascertained from the records on file with the Division, then notice shall be given by publication twice in a newspaper circulating in the county where the vehicle or part was seized, once in each of two consecutive weeks, and by posting in five public places in this State designated by the Director. The notice shall describe the vehicle or part, state that it has been recovered, where it is located, and that it will be turned over to the named owner of record, unless an objection in writing is received by the Division within 10 days of the receipt or (where applicable) publication of the notice. The notice shall also advise that if no objection is timely filed and the vehicle or part remains unclaimed for a period of 90 days, the agency which seized the vehicle or part may sell the vehicle or part forthwith at auction in a public place as an abandoned vehicle. No vehicle or part shall be surrendered to an owner or other party or sold until the appropriate identification number has been affixed by the Division as necessary, nor where the vehicle is required as evidence in connection with a prosecution.

(e) Any objection filed pursuant to (d) above shall identify the person claiming an interest in the salvage vehicle or part, shall set forth in detail the facts upon which the claim is based, and shall provide copies of all documents supporting the claim, including invoices, bills of sale, and title papers.

(f) Upon sale of a salvage vehicle or part pursuant to this section all claims for interest shall be forever barred and the proceeds realized therefrom, after the payment of the expenses of possession and sale, shall become the sole property of the public entity seizing the vehicle and shall be remitted to the treasury of that public entity.

(g) Unless the Director determines to hear a case personally when an objection has been filed with the Division pursuant to this section, hearings on objections shall be conducted, 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, by the Office of Administrative Law. At the hearings, the burden shall be on the agency that seized the salvage vehicle or part to prove that the vehicle or part was stolen. Thereafter, the burden shall be on the person objecting to prove that the vehicle or part was not stolen and to prove that he has a rightful interest in the vehicle or part.

(h) Where inspection discloses that only a major component part is stolen, the owner of the salvage vehicle shall be provided the following options:

1. Seizure of the entire vehicle;
2. Seizure of only the major component part(s) that are determined to be stolen, provided the owner of the salvage vehicle has made arrangements, acceptable to the Division, to have that major component part removed from the vehicle. The owner shall bear any cost of removing the part; or
3. Any other equitable method of restoring the salvage vehicle and/or major component parts that are not stolen to the owner agreed upon by the owner and the Division.

(i) A copy of N.J.A.C. 13:21-22 shall be given to every person applying to the Division for an appointment for inspection of a salvage motor vehicle.

(j) When a salvage motor vehicle seized pursuant to (h)1 above is sold pursuant to (d) above, the owner of the salvage motor vehicle shall receive that portion of the purchase price representing the fair market value of the vehicle minus the fair market value of the stolen major component part.

13:21-22.14 Issuance of certificates of ownership without a salvage designation

(a) A certificate of ownership without a salvage designation shall be issued to the owner ***(or, if the motor vehicle is owned subject to a lien, a certificate of ownership without a salvage designation shall be issued in the name of the vehicle owner and shall be delivered to the lienholder of record)*** of the following motor vehicles:

1. A stolen motor vehicle that is subsequently recovered and which has not sustained damage to such an extent that it has been rendered economically impractical to repair, provided that the recovered stolen motor vehicle does not have a missing, altered or damaged vehicle identification number or plate.

2. A stolen motor vehicle that is subsequently recovered with a missing, altered or damaged vehicle identification number or plate after determination at a State inspection that such recovered motor vehicle is not a stolen motor vehicle, provided such vehicle has not sustained damage to such an extent that it has been rendered economically impractical to repair.

(b) No certificate of ownership without a salvage designation shall be issued unless the following documents are presented to the Division:

1. Salvage certificate of title;
2. Copy of the report from the law enforcement agency which recovered the stolen motor vehicle; and
3. For vehicles described in (a)2 above, a vehicle identification number verification form or inspection report.

(c) A fee, as set forth in N.J.S.A. 39:10-11, shall be charged for the issuance of a certificate of ownership without a salvage designation.

13:21-22.15 Issuance of certificates of ownership with a salvage designation

(a) A certificate of ownership with a salvage designation shall be issued to the owner ***(or, if the motor vehicle is owned subject to a lien, a certificate of ownership with a salvage designation shall be issued in the name of the vehicle owner and shall be delivered to the lienholder of record)*** of the following salvage motor vehicles:

1. A motor vehicle that was previously determined to be economically impractical to repair and that is subsequently reconstructed, rebuilt or repaired.

2. A stolen motor vehicle that is recovered in damaged condition (for example, stripped for major component parts) and that is subsequently reconstructed, rebuilt or repaired where the cost to repair the damaged motor vehicle, as determined by a bona fide repair estimate, equals or exceeds the fair market value of the motor vehicle immediately before it was stolen.

(b) No certificate of ownership with a salvage designation shall be issued unless the following documents are presented to the Division:

1. Salvage certificate of title;
 2. Inspection report; and
 3. For vehicles described in (a)2 above, a copy of the report from the law enforcement agency which recovered the stolen motor vehicle.
- (c) A unique vehicle identification number shall be assigned by the Division to a motor vehicle which is reconstructed, rebuilt or repaired from more than one salvage motor vehicle.

(d) A fee, as set forth in N.J.S.A. 39:10-11, shall be charged for the issuance of a certificate of ownership with a salvage designation.

13:21-22.16 Penalties

(a) Any person who transfers or obtains ownership of a salvage motor vehicle except by proper assignment and delivery of a salvage certificate of title shall be subject to the penalties set forth in N.J.S.A. 39:10-24.

(b) In addition to the penalties set forth in (a) above, the Director may suspend or revoke the license of any person who is licensed by the Director as an auto body repair facility, junk yard and/or motor vehicle dealer for a period not to exceed three years if such person transfers or obtains ownership of a salvage motor vehicle except by proper assignment and delivery of a salvage certificate of title.

13:21-22.17 Written notice

(a) Any person who transfers ownership of a salvage motor vehicle in violation of N.J.S.A. 39:10-31 et seq. and/or this subchapter shall be notified by the Director, in writing by registered mail, of any license suspension or revocation or other action sought to be imposed and the grounds thereof.

(b) Written notice shall be mailed to the person at the address of record with the Division.

13:21-22.18 Request for a hearing

(a) Any person who has been notified in accordance with N.J.A.C. 13:21-22.17 shall be entitled to an administrative hearing, provided that such person has filed with the Director a written request for a hearing within 30 days from the date of such notice. The 30 day period shall commence on the date such notice was mailed to the person by the Division in accordance with N.J.A.C. 13:21-22.17.

(b) Any written request for a hearing shall be sent to the Director. The hearing request shall contain the following information:

1. The name, address and telephone number to the person requesting a hearing;
2. A concise statement of facts constituting each ground of defense;
3. A specific admission, denial or explanation of each fact alleged by the Division in its notice or order to show cause, or if the person is without knowledge thereof, a statement to that effect; any allegation in the Division's notice or order to show cause which is not answered in accordance with this paragraph shall be deemed to have been admitted; and
4. A statement requesting a hearing.

13:21-22.19 Hearing procedures

Any hearing pursuant to this subchapter shall be conducted 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.

(a)

NEW JERSEY RACING COMMISSION**Thoroughbred Rules****Illegal Devices****Adopted Amendment: N.J.A.C. 13:70-14.5**

Proposed: December 19, 1988 at 20 N.J.R. 3114(b).

Adopted: February 16, 1989 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Filed: February 24, 1989 as R.1989 d.155, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: March 20, 1989.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:**No comments received.****Full text** of the adoption follows.**13:70-14.5 Illegal devices**

(a) No electrical, mechanical, or other appliance or device, other than the ordinary whip, shall be applied to a horse at any time, anywhere on the grounds of any licensed racetrack. Any person so offending shall be suspended by the stewards and referred to the Commission for license revocation. Possession of any such device at any time, anywhere on the grounds of any licensed racetrack, may be punished by fine and/or suspension.

(b) Any licensee at any licensed racetrack may be subjected to a non-invasive test for illegal electrical, mechanical, or other appliances or devices through the use of a metal detector. Any person who refuses to submit to a metal detection test when requested to do so by the New Jersey Racing Commission, a steward or both may be subject to the penalties provided in N.J.A.C. 13:70-31.

(c) If the metal detector records a positive reading on a person, that individual will be asked to remove the metal object which caused the positive reading and then be retested in the manner described in (b) above. Any licensee who refuses to remove a metallic object causing a positive reading may be subject to the penalties provided in N.J.A.C. 13:70-31.

(d) Should any licensee be found to be in possession of illegal electrical, mechanical, or other appliances or devices, or should a licensee refuse to submit to a test for such devices as outlined in (b) and (c) above, he or she will be requested to appear before the stewards on the following day for a hearing on the matter.

(e) Should any jockey be found to be in possession of illegal electrical, mechanical, or other appliances or devices, or should a jockey refuse to submit to a test for such devices as outlined in (b) and (c) above, that jockey will be taken off of any remaining mounts and he or she will be requested to appear before the stewards on the following day for a hearing on the matter.

(b)

DIVISION OF CRIMINAL JUSTICE**Administration of Victim and Witness Advocacy Fund****Adopted New Rules: N.J.A.C. 13:78**

Proposed: December 5, 1988 at 20 N.J.R. 2997(b).

Adopted: February 16, 1989 by Robert T. Winter, Director, Division of Criminal Justice.

Filed: February 24, 1989 as R.1989 d.156, **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. 2C:43-3.1a(5).

Effective Date: March 20, 1989.

Expiration Date: March 20, 1994.

Summary of Public Comments and Agency Responses:

The New Jersey Division of Criminal Justice (the Division) is adopting N.J.A.C. 13:78 to govern the distribution of monies from the Victim and Witness Advocacy Fund established pursuant to N.J.S.A. 2C:43-3.1a(5). These rules were proposed on December 5, 1988 at 20 N.J.R. 2997(b). The comment period closed on January 4, 1989.

COMMENT: The Division received comments from two county prosecutors noting that the rules as originally drafted made the assumption that a county prosecutor annually submits to the county governing body a separate budget for the county Office of Victim-Witness Advocacy. These budget figures would then be submitted to the Division.

RESPONSE: Because county prosecutors do not generally keep such separate budgets, a minor change has been made to N.J.A.C. 13:78-3.1(a)2 to require instead that county prosecutors submit an estimation of the annual costs to operate the county Office of Victim-Witness Advocacy. These figures would be extracted from the county prosecutor's overall budget.

COMMENT: Another comment was that it did not appear to be equitable that monies be allocated first to completely fund the State Office of Victim-Witness Advocacy, with only the excess amounts being distributed to the counties and municipalities.

RESPONSE: It is the opinion of the Division that this order of funding is appropriate since the primary statutorily mandated purpose of the State Office is to coordinate and assist with the providing of victim-witness services in each of the 21 counties.

An additional minor change reflects what was implicit in the rules as drafted. With this change, N.J.A.C. 13:78-3.1(a)1 clarifies that monies from the Fund would be distributed only to public entities that are in compliance with the law governing the county victim-witness advocacy program.

Full text of the adoption follows (additions indicated by boldface with asterisks ***thus***; deletions indicated in brackets with asterisks ***[thus]***):

CHAPTER 78**ADMINISTRATION OF VICTIM AND WITNESS ADVOCACY FUND****SUBCHAPTER 1. GENERAL PROVISIONS****13:78-1.1 Purpose**

The rules in this chapter govern the administration of the Victim and Witness Advocacy Fund created pursuant to N.J.S.A. 2C:43-3.1a. This Fund is legislatively mandated to support the development and provision of services to victims and witnesses of crimes, and for related administrative costs. All monies distributed according to this chapter shall be used to implement the Attorney General Standards to Ensure the Rights of Crime Victims, promulgated pursuant to the provisions of N.J.S.A. 52:4B-44a and b*.*

13:78-1.2 Legal authority

The Director of the Division of Criminal Justice within the Department of Law and Public Safety is charged with the responsibility to establish rules deemed necessary to effectuate the purposes of the Fund under N.J.S.A. 2C:43-3.1a(5).

SUBCHAPTER 2. USE OF FUND DISTRIBUTIONS**13:78-2.1 Use of Victim and Witness Advocacy Fund distributions**

Monies from the Fund which are distributed to the county prosecutors shall be applied exclusively toward the implementation of the Attorney General Standards, and shall not supplant regular county funding or any other outside funding currently in existence. These monies may be used to establish or enhance victim-witness waiting rooms, to hire personnel to provide services in accordance with the Standards, to purchase computer equipment to maintain communications with victims and witnesses, or for such other purposes as the Director of the Division of Criminal Justice may authorize.

SUBCHAPTER 3. DISBURSEMENT FROM FUND**13:78-3.1 Disbursement from Victim and Witness Advocacy Fund**

(a) Monies deposited in the Victim and Witness Advocacy Fund shall be distributed as follows:

1. To the State Office of Victim-Witness Advocacy as follows:

i. Monies first shall be allocated to provide complete funding for the State Office of Victim-Witness Advocacy within the Division of Criminal Justice established pursuant to N.J.S.A. 52:4B-43, and shall be in an amount sufficient to provide for all staff salaries and any other necessary operational expenses.

ii. After deductions are made from the Fund for the operation of the State Office of Victim-Witness Advocacy, any remaining monies may be distributed, according to the Director's discretion, to the entities in (a)2 and 3 below ***that are in compliance with N.J.S.A. 52:4B-43 et seq.***

2. To the county Offices of Victim-Witness Advocacy. In distributing monies to the 21 county Offices of Victim-Witness Advocacy within each county prosecutor's office established pursuant to N.J.S.A. 52:4B-44b and 52:4B-45, the following procedures shall be followed:

i. Each year, immediately preceding the fiscal year budget preparation period for county prosecutors' offices, the Director shall inform the county prosecutors of the monies available to assist with the operation of their county Office of Victim-Witness Advocacy for the next year.

ii. Upon receipt of this notification, each county prosecutor shall provide the State Office of Victim-Witness Advocacy with ***[the fiscal year budget request figures regarding]* *an estimation of the costs to operate* the county Office of Victim-Witness Advocacy, ***[which are]* *extracted to the extent possible from the overall budget*** to be submitted to the respective county governing body. These ***estimated*** figures shall be supplied on ***[forms]* *a form*** provided by the State Office of Victim-Witness Advocacy. The ***estimated*** budget request figures shall indicate the salary costs for the County Victim-Witness Coordinator and other personnel, as well as an ***itemization*** ***approximation*** of other expenses such as ***[supplies and]* equipment*, motor vehicles, travel and training***.**

iii. The county prosecutor, in consultation with the county victim-witness coordinator, shall also provide to the State Office of Victim-Witness Advocacy a detailed description of proposals and associated projected costs intended to enhance the basic provision of services to victims and witnesses, which would be provided by an appropriation from the Fund, and which would be necessary to comply with the Attorney General Standards.

iv. The Chief of the State Office of Victim-Witness Advocacy shall review the funding application submitted by each county prosecutor and, subject to the Director's approval, shall allocate monies to each county prosecutor for contribution toward the provision of services for victims and witnesses in that county. The Director may reject any costs deemed excessive or not integral to the implementation of the Attorney General Standards.

v. Monies from the Fund may be withheld from a county until that county's governing body approves the county prosecutor's budget request for the county Office of Victim-Witness Advocacy, as was furnished in the application form previously submitted to the State Office of Victim-Witness Advocacy. If the county governing body appropriates an amount to the county prosecutor which differs from the original budget request, the prosecutor shall submit to the State Office of Victim-Witness Advocacy a revised funding application. In its discretion, the State office shall modify its allocation accordingly.

vi. The Chief of the State Office of Victim-Witness Advocacy, subject to the Director's approval, may allocate to a county additional funding for special projects or other such purposes over and above the regular award. A county seeking such additional funding shall comply with normal application procedures as provided above.

3. To other public entities. After the allocation of monies as described in (a)2 and 3 above, the State Office of Victim-Witness Advocacy, with the Director's approval, may distribute funds to municipalities or other public entities as deemed appropriate for the implementation of the Attorney General Standards.

SUBCHAPTER 4. ACCOUNTING AND AUDIT

13:78-4.1 Accounting, reporting and audit

(a) A county prosecutor's office which receives monies from the fund shall maintain a separate account in which such monies shall be held, along with detailed records of all receipts, expenditures and unexpended balances. Each county office shall submit to the State Office of Victim-Witness Advocacy a quarterly report documenting these figures, as well as an annual report at the end of each fiscal year. Any unexpended balances at the end of the fiscal year are subject to return to the State.

(b) The Division reserves the right to periodically audit the records of any county prosecutor's office receiving monies from the Fund.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES OFFICE OF CABLE TELEVISION

Notice of Administrative Correction Notice of Alteration in Channel Allocation N.J.A.C. 14:18-14.6

Take notice that the Office of Cable Television, Board of Public Utilities, has discovered an error in the text of N.J.A.C. 14:18-14.6(b) currently in the New Jersey Administrative Code. The words "individually" and "in writing", deleted upon adoption in the documents (R.1987 d.367) filed with the Office of Administrative Law which also set forth the addition upon adoption of "in a manner reasonably calculated to provide such information", were not deleted in the notice of adoption published in the September 8, 1987 New Jersey Register at 19 N.J.R. 1651(a) or in the 9-21-87 update to the Code. This notice of administrative correction is made pursuant to N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (deletions indicated in brackets [thus]).

14:18-14.6 Notice of alteration in channel allocation

(a) (No change.)

(b) Each cable TV company shall [individually] notify [in writing] its subscribers and affected municipalities of an alteration in channel allocation at least 30 days prior to the effective date in a manner reasonably calculated to provide such information.

(c) (No change.)

TRANSPORTATION

(b)

TRANSPORTATION OPERATIONS Notice of Administrative Correction Permits for Driveway (Access) Permit Provisions N.J.A.C. 16:41-2.4

Take notice that the Department of Transportation has discovered an error in the text of N.J.A.C. 16:41-2.4(n) in which language adopted by the Department and published as part of the rule text in the November 21, 1983 New Jersey Register at 15 N.J.R. 1955(a) was omitted from the text in the New Jersey Administrative Code. This notice of administrative correction is provided pursuant to N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (additions indicated in boldface thus).

16:41-2.4 Permit provisions

(a)-(m) (No change.)

(n) Major land use changes or expansions which are proposed or which occur (in comparison with those specified in an approved permit) will require a new application for access, and could necessitate new permit-related requirements by the Department. Major land

use changes or expansions shall be considered to be any instance where the changed or expanded use results in development-related vehicular traffic increases of ten percent or more (based on trip generation rates specified in the Institute of Traffic Engineer's manual or other professionally accepted standards), but in no case less than 100 vehicles per hour. Development-related vehicular traffic **increases will be measured relative to the amount of development-related vehicular traffic** forecast in the original permit application or the observed development-related vehicular traffic, whichever is the lesser.

(o)-(q) (No change.)

(a)

OFFICE OF REGULATORY AFFAIRS

Practices and Procedures before the Office of Regulatory Affairs

General Provisions; Petitions; Motions:

Interventions; Offices; Disposition of Motions to

Interventions in Regular Route Operations

Petitions; Disposition of Motions to Intervene

Proceedings Involving Charter and/or Special

Operation Petitions; Disposition of Motions to

Intervene in Proceedings Involving Regular Route

in the Nature of Special or Casino Bus Operations

Petitions; and Reclassification Proceedings

Adopted Amendments: N.J.A.C. 16:51-1.3, 1.4, 1.6, 3.1 and 4.3 through 4.6

Adopted New Rule: N.J.A.C. 16:51-4.7

Proposed: November 7, 1988 at 20 N.J.R. 2635(b).

Adopted: February 9, 1989, Robert A. Innocenzi, Deputy

Commissioner, Department of Transportation.

Filed: February 22, 1989 as R.1989 d.144, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 48:4-1 et seq.

Effective Date: March 20, 1989.

Expiration Date: April 6, 1992.

Summary of Public Comments and Agency Responses:

COMMENT: A comment was received from Mr. Salon Karakoglou, of Private Carrier Consulting, Inc., P.O. Box 760, Asbury Park, New Jersey 07712, specific to proposed new rule N.J.A.C. 16:51-4.7, Disposition of motions to intervene in proceedings involving regular route in the nature of special or casino bus operation petitions.

The intent of Senate Bill 64 and Assembly Bill 614 was to liberalize entry into the casino bus route services and at the same time, make available more responsive service to the traveling public by promoting competition. The new rule does not establish any new criteria for relaxing entry standards into the casino bus service because: 1) the Office of Regulatory Affairs does not have the manpower to adequately determine whether or not a carrier holding authority will be substantially and specifically affected; 2) any carrier holding authority can fix numerical figures to reveal that its existing service would be irreparably harmed; and 3) the inclusion of the introduction of documentation to show economic loss by a carrier with authority will only stall the regulatory process and burden an applicant with additional costs, as the present scenario is today.

RESPONSE: The new rule formalizes a course of prior practice, contains proper content and filing of motions, affidavits, briefs and supporting statements regarding proceedings and casino bus operations. The Department's position is that the rule is necessary, adequate and meets the purpose for which promulgated. To arbitrarily liberalize entry as the commenter suggests would not provide any formal course of action or standards for carriers to meet. Additionally, the expertise exists within the Department to adequately determine whether a carrier will be affected and the requirement for documentation fully substantiated should preclude the fixing of numerical figures based upon past audit trends.

The Department has adopted the rule as proposed, without change.

Full text of the adoption follows.

16:51-1.3 Definitions

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

...
 "Autobus" means and includes any motor vehicle or motorbus operated over public highways or public places in this State for the transportation of passengers for hire in intrastate business, whether used in regular route, casino, charter or special bus operations, notwithstanding that such motor vehicle or motorbus may be used in interstate commerce.

"Autobus company" or "autobus carrier" means any person or party who possesses a valid Certificate of Public Convenience and Necessity to conduct autobus operations. Such a Certificate shall have been issued by the New Jersey Department of Transportation or, if issued prior to January 1, 1979, by the State's Board of Public Utilities.

...
 "Charter" or "charter bus operation" means and includes the operation of an autobus, not on a regular schedule, by the person owning or leasing such bus or buses pursuant to a contract, agreement or arrangement to furnish an autobus or autobuses and a driver or drivers thereof to a person, group of persons or organization (corporate or otherwise) for a trip designated by such person, group of persons or organization for a fixed charge per trip, per trip, per autobus, per period of time or per mile.

...
 "Complaint petition" means a petition or a letter, by which a party seeks to have the Department invoke its jurisdiction for the purpose of enforcing one or more provisions of the New Jersey Revised Statutes, the New Jersey Administrative Code or Departmental directives and orders against an autobus company.

...
 "Petitioner" means a person who has filed a petition with the Office of Regulatory Affairs, New Jersey Department of Transportation or in the case of a petition for transfer, the person who is the proposed certificate holder.

"Proposed service area" means, in the case of a petition primarily concerning regular route service, the proposed or the approved route plus that area within one and one-quarter miles of any pickup or drop off point on the petitioner's proposed or approved route; and, in the case of a petition primarily concerning charter or special service, any county in which the petitioner seeks authority from the Department to make pickups.

"Regular route" or "regular route bus operation" means and includes the operation of an autobus between fixed termini, on a regular schedule and with a provision for convenient one-way fare/transportation in either direction and shall also include all existing regular route operations to and from any casino licensed under the Casino Control Act, P.L. 1977, c.110 (N.J.S.A. 5:12-1 et seq.) unless that operation to and from casinos has been determined by the Commissioner to be other than a regular route operation.

"Regular route in the nature of special bus operation" or "casino route bus operation" means and includes the operation of an autobus to or from any casino licensed under the Casino Control Act, P.L. 1977, c.110 (N.J.S.A. 5:12-1 et seq.) unless that operation has been determined by the Commissioner to be a regular route bus operation.

"Special" or "special bus operation" means and includes the operation by the owner or lessee of an autobus or autobuses for the purpose of carrying passengers for hire, not on a regular schedule, each passenger paying a fixed charge for his or her carriage, on a special trip arranged and designated by such owner or lessee, which fixed charge may or may not include special premiums.

"Special premiums" means and includes the provision of meals, gifts, lodging, entertainment, sightseeing services or similar inducements in connection with the purchase or issuing of a ticket. No casino bonuses shall be included in this definition.

16:51-1.4 Offices

The Office of Regulatory Affairs is located at 744 Broad Street, Suite 1502, Newark, New Jersey 07102 or such other location as publicly noticed.

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16:51-1.6 Communications

(a) All pleadings, correspondence and other papers shall be addressed to the Director, Office of Regulatory Affairs, New Jersey Department of Transportation, 744 Broad Street, Suite 1502, Newark, New Jersey 07102 and shall include the appropriate Department docket number.

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

16:51-3.1 Petitions for the granting of a certificate of public convenience and necessity to conduct autobus operations and complaint petitions

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

(c) The following information shall also be included in all petitions requesting the granting of a certificate to conduct autobus operations:

1. Proof of publication of public notice, twice, one week apart, in a newspaper of general and regular circulation in the proposed service area which:

i. Briefly describes the purpose of the petition and the type(s) of equipment to be used in the proposed service area;

ii. States that a petition for approval to operate the proposed service has been filed with the Department;

iii. States that objections and other comments should be addressed to the Office of Regulatory Affairs, New Jersey Department of Transportation;

iv. Furnishes the address of said Office;

v. Includes the appropriate Department docket number; and

vi. Lists each municipality (in the case of a petition for regular and/or casino route authority) or county (in the case of a petition for charter and/or special authority) in which the petitioner seeks to provide pickup and/or drop off service.

2. A schedule of equipment, including but not limited to type and passenger capacity of the vehicle(s) to be used in the subject service (or in the case of a petition for sale or lease of property, a schedule of the equipment to be sold or leased and identification of the owner/lessor.)

3.-4. (No change.)

5. A copy of the petitioner's (or in the case of a petition for sale or lease of property, the transferee's) current balance sheet and income statement.

6.-7. (No change.)

8. The names and addresses of officers, directors and shareholders, that have five percent or more voting control, partners or owners, as the case may be, of the petitioner and the extent of their respective interests in the petitioner.

9.-13. (No change.)

(d) (No change.)

(e) The following information shall be included in all petitions for either the granting of a certificate to conduct regular route operations or the approval of extensions to existing regular route operations.

1.-5. (No change.)

6. A list of all proposed passenger pickup and/or drop off locations together with the following:

i. Certification that said locations are state or municipally approved pickup and/or drop off points in accordance with N.J.S.A. 27:1A-44 and N.J.S.A. 39:4-197; or

ii. Proof of the owner's or authorized lessee's written approval to access private property.

7.-9. (No change.)

(f)-(g) (No change.)

(h) Upon written request of any of the following parties, a petitioner for charter and/or special operations shall serve said party or parties with a copy of the petition:

1. (No change.)

2. Other persons who have petitions pending before the Department for authority to provide charter and/or special service in the proposed service area; and

3. (No change.)

(i) The petitioner shall not be required to honor any request of any party for a copy of the petition made later than 20 days after the last date of publication of public notice as required under N.J.A.C. 16:51-3.1(c)1.

(j) The following information shall be included in all petitions for the granting of a certificate to conduct casino route operations or for the approval of extensions to existing authorized regular route operations to Atlantic City licensed casino hotels.

1. The names of:

i. All casino route and regular route carriers to Atlantic City licensed casino hotels operating in the proposed service area; and

ii. Other petitioners seeking to conduct autobus operations as noted in (j)1i above;

2. Proof of service of the petition upon those persons as noted in (j)1 above;

3. Proof of service of the petition upon the clerk(s) of all municipalities in which the petitioner proposes to establish pickup and/or drop off locations;

4. A clear and concise statement as to how the proposed service will serve public convenience and necessity in each municipality in which the petitioner proposes to make a pickup;

5. An accurate and complete street-by-street description of the route for which authority is sought;

6. A list of all proposed passenger pickup and/or drop off locations together with the following:

i. Certification that said locations are state or municipally approved pickup and/or drop off points in accordance with N.J.S.A. 27:1A-44 and N.J.S.A. 39:4-197; or

ii. Proof of the owner's or authorized lessee's written approval to access private property.

7. A copy of the proposed schedule of operations;

8. The schedule of the fares proposed to be charged; and

9. A map of the proposed route, as well as the routes operated by any other carrier partially or wholly within the proposed service area.

(k) The following information shall be included in all complaint petitions initiated by the Department for reclassification of regular route autobus operations and answers thereto:

1. Proof of regular route authority;

2. Proof of continuous regular route operation since date of approval or within 60 days of said approval;

3. A copy of the current schedule of operations;

4. A copy of the approved tariff and proof of existing convenient one-way fare/transportation in either direction;

5. A list of all approved passenger pickup and/or drop off locations together with the following:

i. Certification that said locations are state and/or municipally approved pickup and/or drop off points, in accordance with N.J.S.A. 27:1A-44 and N.J.S.A. 39:4-197; or

ii. Proof of owner's written approval to access private property.

6. A map of the approved route, as well as the routes operated by any other carrier partially or wholly within the approved service area;

7. The total number of shares of the petitioner's capital stock issued and outstanding, if applicable; and

8. The names and addresses of officers, directors and shareholders, that have five percent or more voting control, partners or owners, as the case may be, of the petitioner and the extent of their respective interests in the petitioner.

16:51-4.3 Affidavits; briefs and supporting statements

(a) Motions and answering papers, that is, answers and replies, shall be accompanied by all necessary supporting affidavits and briefs or supporting documents, clearly delineating material facts in contest. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be annexed thereto.

(b) (No change.)

16:51-4.4 Disposition of motions to intervene; generally

(a) If a movant demonstrates, through the introduction of documentary evidence clearly delineating material facts, that it has a substantial and specific interest in the subject matter which will

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be affected by the proceeding, and if such interest with respect to the proceeding would not otherwise be adequately represented, the Commissioner or the Director may grant the motion to intervene by written order or decision on such terms as the Commissioner or the Director, as the case may be, may prescribe.

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

16:51-4.5 Disposition of motions to intervene in proceedings involving regular route operations petitions

(a) With respect to petitions for regular route service (original authority or modification requests), in order for a movant to demonstrate that it has an interest in the subject matter that will be substantially and specifically affected by the proceeding, its motion must clearly show, through the introduction of documentation, evidence delineating material facts, as follows:

1.-5. (No change.)

(b) (No change.)

16:51-4.6 Disposition of motions to intervene in proceedings involving charter and/or special operations petitions

(a) With respect to petitions for charter and/or special autobus service, in order for a movant to demonstrate that it has an interest in the subject matter that will be substantially and specifically affected by the proceeding, its motion must clearly show, through the introduction of documentation, evidence delineating material facts, as follows:

1.-3. (No change.)

(b) (No change.)

16:51-4.7 Disposition of motions to intervene in proceedings involving regular route in the nature of special or casino bus operations petitions

(a) With respect to petitions for regular route in the nature of special or casino autobus service, in order for a movant to demonstrate that it has an interest in the subject matter that will be substantially and specifically affected by the proceeding, its motion must clearly show, through the introduction of documentation, evidence delineating material facts, as follows:

1. It operates an authorized regular route service to and from Atlantic City casino hotels in the proposed service area, and that the granting of the relief sought may jeopardize the profitability of said movant's regular route service(s);

2. There is insufficient public need for the proposed casino bus service;

3. The petitioner has failed to make a request for which the Department can grant relief;

4. The petition lacks veracity; or

5. That the petitioner is unfit to conduct the proposed casino bus service.

(b) For purposes of (a)5 above, items relating to fitness shall include, but are not limited to:

1. The availability of the requisite equipment or personnel to provide the proposed casino bus service;

2. Whether petitioner has a history of illegal operations such that to grant the relief requested by petitioner might disserve the public interest;

3. Whether petitioner has been convicted of an offense listed in N.J.S.A. 5:12-86(c); and

4. Whether petitioner has otherwise acted in such a way that it would be inimical to the public interest to grant petitioner's relief request.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Alcoholic Beverage Tax
Tax Rates

Notice of Correction: N.J.A.C. 18:3-2.1

Take notice that an error appears in the New Jersey Administrative Code at N.J.A.C. 18:3-2.1 concerning Tax rates on alcoholic beverages; certification. A proposed amendment to N.J.A.C. 18:3-2.1(a)3 was published in the July 6, 1987 issue of the New Jersey Register at 19 N.J.R. 1181(a). Adoption of the amendment appeared in the November 16, 1987 Register at 2200(b). N.J.A.C. 18:3-2.1 should appear in the New Jersey Administrative Code as follows:

18:3-2.1 Tax rates on alcoholic beverages; certification

(a) The Alcoholic Beverage Tax Law levies and imposes upon any sale of alcoholic beverages made within this State, or upon any delivery of alcoholic beverages made within or into this State, the following excise taxes:

1. Beer—at the rate of \$0.03-1/3 a gallon or fraction thereof;

2. Liquors—at the rate of \$2.80 a gallon (effective: July 1, 1972);

3. Wines, vermouth and sparkling wines—at the rate of \$0.30 a gallon including wines, vermouth and sparkling wines manufactured by holders of a farm winery license, or wines, vermouth and sparkling wines manufactured from grapes or fruit grown in New Jersey by holders of a plenary winery license issued pursuant to the provisions of N.J.S.A. 33:1-10.

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

DIVISION OF TAXATION

(b)

Financial Business Tax

Readoption: N.J.A.C. 18:8

Proposed: January 3, 1989 at 21 N.J.R. 16(a).

Adopted: February 23, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: February 24, 1989 as R.1989 d.149, **without change**.

Authority: N.J.S.A. 54:10B-22.

Effective Date: February 24, 1989.

Expiration Date: February 24, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:8.

(c)

DIVISION OF TAXATION

Homestead Tax Rebate

Extension of Time to File Homestead Rebate Claim

Adopted Amendments: N.J.A.C. 18:12-7.1 and 7.12

Proposed: January 3, 1989 at 21 N.J.R. 16(b).

Adopted: February 23, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: February 24, 1989 as R.1989 d.146, **without change**.

Authority: N.J.S.A. 54:4-3.80 and 54:50-1.

Effective Date: March 20, 1989.

Expiration Date: July 29, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

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TREASURY-TAXATION

18:12-7.1 General provisions: homestead tax rebate

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

(c) In order to assure accuracy and efficiency in processing each application, and to aid in expediting the homestead tax rebate due each claimant, the following procedure should be followed.

1.-2. (No change.)

3. An application for a homestead tax rebate shall be filed on or before December 1 of the pretax year and shall reflect the prerequisites for the rebates as of October 1 of the pretax year. (For example, a claimant should file an application on or before December 1, 1988, which should reflect the prerequisites for the rebate as of October 1, 1988, in order to qualify for the rebate to be received in 1989.) For property owners who fail to file by December 1 of the pretax year, the time for filing is extended to March 1 of the tax year or, if March 1 falls on a Saturday or Sunday, on the first business day thereafter.

(d) (No change.)

18:12-7.12 Extension of filing date

(a)-(l) (No change.)

(m) The time for property owners to file their applications for a homestead rebate payable in 1989 pursuant to P.L. 1976, c.72, including applications by shareholders in cooperative associations and those residing in properties of certain mutual housing corporations, has been extended to March 1, 1989. For homestead rebates payable in 1990 and thereafter, see N.J.A.C. 18:12-7.1(c)3.

(a)

Local Property Tax; Farmland Assessment Act; Woodland

Adopted Amendment: N.J.A.C. 18:15-2.15

Proposed: January 17, 1989 at 21 N.J.R. 125(a).

Adopted: February 23, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: February 24, 1989 as R.1989 d.150, **without change**.

Authority: N.J.S.A. 54:4-23.1 et seq., specifically 54:4-23.21.

Effective Date: March 20, 1989.

Expiration Date: July 29, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

18:15-2.15 Transition rule initiating filing time for beginning of application of new conditions

An owner of woodland filing an application for farmland assessment (Form FA-1) in 1988 for valuation, assessment and taxation of land in accordance with the provisions of the Farmland Assessment Act of 1964 during the 1989 tax year, but not fulfilling the additional conditions imposed on affected woodland owners as set forth in N.J.A.C. 18:15-2.7, shall be granted an extension of time to fulfill such conditions by filing the required additional information with the tax assessor and the Commissioner of the Department of Environmental Protection no later than July 1, 1989. The extension of time shall not relieve an applicant seeking farmland assessment qualification of his land in 1989 from submitting an application for farmland assessment (Form FA-1) in a timely manner during the 1988 pretax year.

(b)

Public Utilities

Readoption with Amendment: N.J.A.C. 18:22

Proposed: January 3, 1989 at 21 N.J.R. 17(a).

Adopted: February 23, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: February 24, 1989 as R.1989 d.148, **without change**.

Authority: N.J.S.A. 54:30-16 through 29 and N.J.S.A. 54:30A-49 through 67 and N.J.S.A. 54:50-1.

Effective Date: February 24, 1989, Readoption.

March 20, 1989, Amendment.

Expiration Date: February 24, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:22.

Full text of the amendment follows.

18:22-1.3 Definitions

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

... "Cogenerator" means a person or business entity which owns or operates a cogeneration facility in the State of New Jersey, which facility is a plant, installation or other structure whose primary purpose is the sequential production of electricity and steam or other forms of useful energy which are used for industrial, commercial, heating or cooling purposes; and which is designated by the Federal Energy Regulatory Commission, or its successor, as a "qualifying facility" pursuant to the provisions of the "Public Utility Regulatory Policies Act of 1978", Pub.L. 95-617.

... "Gross receipts" means all receipts from the taxpayer's business over, on, in, through or from the whole of its lines or mains, excluding only the following:

1.-3. (No change.)

4. Any sum or sums of money received by the taxpayer from a cogenerator in payment for cogenerated electrical energy resold by the taxpayer to the producing cogenerator where produced or any sum or sums of money received by the taxpayer from a cogenerator in payment for natural gas sold by the taxpayer to the cogenerator and separately metered for use at the cogeneration facility.

5. (No change in text.)

6. In the case of a water purveyor, the amount equal to any sum or sums of money paid in accordance with the water tax imposed by section 11 of P.L. 1983, c.443 (N.J.S.A. 58:12A-21) and which is included in the tariff altered pursuant to section 6 of P.L. 1983, c.443 (N.J.S.A. 58:12A-17).

(c)

Railroad Property Tax

Readoption: N.J.A.C. 18:23

Proposed: January 3, 1989 at 21 N.J.R. 18(a).

Adopted: February 23, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: February 24, 1989 as R.1989 d.147, **without change**.

Authority: N.J.S.A. 54:29A-6.

Effective Date: February 24, 1989.

Expiration Date: February 24, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:23.

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(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Job Descriptions; Assistant Casino Manager Requirement

Adopted Amendments: N.J.A.C. 19:45-1.11A and 1.12

Proposed: December 19, 1988 at 20 N.J.R. 3120(b).

Adopted: February 23, 1989 by the Casino Control Commission, Walter N. Read, Chairman.

Filed: February 27, 1989 as R.1989 d.169, with substantive changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c), 5:12-69(a), 5:12-70(j), and 5:12-99.

Effective Date: March 20, 1989.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Resorts International, Inc. ("Resorts"), a casino licensee, submitted a comment in support of the amendments. Resorts supports the amendments to N.J.A.C. 19:45-1.11A because they permit casino licensees to avoid time consuming procedures, and the amendments to N.J.A.C. 19:45-1.12 because they permit casino licensees to be more flexible concerning the organization of their casino operations. Resorts notes that the amendments could reduce costs for casino licensees without adversely affecting the regulatory process.

Showboat Hotel Casino ("Showboat"), another casino licensee, also submitted a comment supporting the amendments to N.J.A.C. 19:45-1.11A. Showboat states that these amendments would enable casino licensees to save manpower which is presently required to change the reporting lines in job descriptions and then submit the amended descriptions when the licensee seeks to change its reporting lines.

RESPONSE: The Commission agrees with these comments as evidenced by its adoption of the amendments.

COMMENT: Atlantis Casino Hotel, ("Atlantis"), also a casino licensee, submitted a comment in support of the amendments. However, Atlantis also stated that despite the amendments to N.J.A.C. 19:45-1.11A, it wanted to continue including the reporting lines on the job descriptions in its jobs compendium for its own internal purposes.

RESPONSE: As proposed, the amendments could be interpreted to prohibit a casino licensee from including information in the job description, such as reporting lines, which is not expressly identified in N.J.A.C. 19:45-1.11A(b)3. The Commission did not intend to prohibit a casino licensee from including additional information which is not listed in N.J.A.C. 19:45-1.11A(b)3 in its job descriptions. Rather, it intended that paragraph to identify the minimum information which must be in the job descriptions.

Therefore, the Commission has changed the proposed amendments to clarify that N.J.A.C. 19:45-1.11A(b)3 establishes the minimum requirements which a casino licensee must meet, and that it is not meant to limit the information which can be included in the job descriptions. These are minor substantive changes which do not significantly enlarge or curtail the scope of the rule and its burden, enlarge or curtail who or what will be affected by the rule, or change what is being prescribed, proscribed or mandated by the rule. Thus, they are adopted without any additional notice.

COMMENT: Harrah's Marina Hotel ("Harrah's"), another casino licensee, submitted a comment in opposition to the amendments to N.J.A.C. 19:45-1.11A. Harrah's is concerned that removing the reporting lines from the job descriptions will cause casino licensees to experience problems tracking these lines and could result in confusion for the casino licensees and the regulatory authorities.

RESPONSE: As stated in response to the previous comment by Atlantis, the Commission does not seek to prohibit casino licensees from including the reporting lines for a position in that position's job description should a licensee desire to do so. The changes to the proposed amendments clarify that a casino licensee is not prohibited from including information which is not listed in N.J.A.C. 19:45-1.11A(b)3 from its job descriptions. Thus, Harrah's is free to retain the reporting lines for a

position in that position's job description if it believes removing such information will cause problems in tracking the reporting lines.

The Commission does not believe that the amendments to N.J.A.C. 19:45-1.11A will result in confusion for the regulatory authorities regarding the reporting lines of a particular position. The regulatory authorities will be able to track changes to reporting lines by updating the relevant job descriptions when new tables of organization are submitted by casino licensees. Moreover, the amended rules require casino licensees to update their copies of the jobs compendiums by noting any new table of organization on the relevant job descriptions. In addition, the licensees are still required to submit a new and updated copy of their job compendium every two years. These provisions in the amended rules should minimize any confusion on the part of the regulatory authorities about a position's reporting lines.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*):

19:45-1.11A Jobs compendium submission

(a) (No change.)

(b) A jobs compendium shall include the following sections, in the order listed:

1. (No change.)

2. A table of organization for each department and division illustrating by position title direct and indirect lines of authority within the department or division. Each table of organization shall include on each page the date of its submission and the date of the previously submitted table of organization which it supersedes;

3. A description of each employee position. Each position shall be listed on a separate page and shall accurately correspond to the position title as listed in the table of organization and as listed in the table of contents. Each job description shall include*, at a minimum,* the following:

- i. Position title and corresponding department;
- ii. Salary range;
- iii. Job duties and responsibilities;
- iv. Detailed descriptions of experiential or educational requirements;
- v. Projected number of employees in the position;
- vi. Equal employment opportunity class or subclass;
- vii. Proposed registration or license endorsement consistent with the requirements of the Act and the Commission's rules;
- viii. The date of submission of each employee position job description and the date of any prior job description it supersedes; and
- ix. The date of submission and page number of each table of organization on which the employee position title is included.

(c) Except as otherwise provided in (d) below, any proposed amendment to a previously approved jobs compendium shall be submitted to and approved by the Commission before such amendment is implemented by the casino licensee. Unless otherwise directed by the Commission, any amendment required to be preapproved pursuant to this subsection shall be submitted to the Commission at least 90 days prior to the proposed effective date of the amendment and shall contain, at a minimum:

1. A detailed cover letter listing by department each position title to which modifications are being proposed and a brief summary of all changes which are being proposed to the jobs compendium since the last amendment was submitted, including instructions regarding any changes in page numbers; and

2. The actual text of the proposed changes to the information required by (b) above contained on pages which may be used to substitute for those sections of the jobs compendium previously approved by the Commission.

(d) The following amendments to a previously approved jobs compendium shall be immediately recorded in the jobs compendium maintained by the casino licensee on its premises, but do not have to be submitted to the Commission except as otherwise provided in (e) below or upon request:

1. Amendments to casino hotel employee registrant position titles which report to casino hotel employee registrant position titles. Such amendments may be implemented by a casino licensee without the prior approval of the Commission; provided, however, this subsec-

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tion shall not apply to casino hotel employee registrant position titles which are departmental or divisional supervisory positions; and

2. Amendments to individual job descriptions required by (b)3ix above.

(e)-(f) (No change.)

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) The following personnel shall be used to operate and conduct table games in an establishment:

1.-6. (No change.)

7. Casino shift manager shall be the supervisor assigned to each shift with the responsibility for the supervision of table games conducted in the casino. In the absence of the casino manager and the assistant casino manager, should the establishment have an assistant casino manager, the casino shift manager shall have the authority of a casino manager.

Renumber existing 9. and 10. as 8. and 9. (No change in text.)

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

(d) Functions described in this section shall be performed only by persons holding the appropriate license and position endorsement required by the casino licensee's approved jobs compendium to perform such functions, or by persons holding the appropriate license and position endorsement required by the casino licensee's approved jobs compendium to supervise persons performing such functions, subject to the limitations imposed by N.J.A.C. 19:45-1.11(b)2.

(a)

Equal Employment Opportunity Procedures for Alleged Violations of Affirmative Action Programs

Adopted Repeal: N.J.A.C. 19:53-1.16

Proposed: January 3, 1989 at 21 N.J.R. 18(b).

Adopted: February 23, 1989 by the Casino Control Commission,
Walter N. Read, Chairman.

Filed: February 27, 1989 as R.1989 d.168, **without change**.

Authority: N.J.S.A. 5:12-69(a), 5:12-134 and 5:12-135.

Effective Date: March 20, 1989.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement submitted a comment in support of the repeal, noting that other procedures already exist for ensuring compliance with the Act and the Commission's rules concerning affirmative action and equal employment opportunity. Resorts International, Inc., a casino licensee, also submitted a comment in support of the repeal, for the reasons stated in the summary statement included in the Notice of Proposed Repeal.

RESPONSE: The Commission agrees with these comments as evidenced by its adoption of the repeal.

Full text of the adopted repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:53-1.16 and is designated as (Reserved).

(b)

Equal Employment Opportunity Set-Aside Goals For Casino Business with Minority and Women's Business Enterprises

Adopted New Rules: N.J.A.C. 19:53-2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.8, 2.9, 2.10, 2.11 and 2.12

Proposed: October 3, 1988 at 20 N.J.R. 2446(a).

Adopted: February 23, 1989 by the Casino Control Commission,
Walter N. Read, Chairman.

Filed: February 27, 1989 as R. 1989 d.167, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3), **and with N.J.A.C. 19:53-2.7 not adopted**.

Authority: N.J.S.A. 5:12-63(c), 69 and 190.

Effective Date: March 20, 1989.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

Comments on the proposed new rules were submitted by the Division of Gaming Enforcement (Division); the Affirmative Action Office of the New Jersey Expressway Authority (Expressway Authority); the Set-Aside and Certification Office of the Department of Commerce, Energy and Economic Development (Department of Commerce); the Atlantic City Branch of the National Association For the Advancement of Colored People (NAACP); the Casino Association of New Jersey (Casino Association) and by six casino licensees: Bally's Park Place, Inc. (Bally); Boardwalk Regency Corporation (Caesars); Claridge at Park Place, Inc. (Claridge); Grete Bay Hotel and Casino, Inc. (Sands); and a joint comment by Trump Castle Hotel and Casino and Trump Plaza Hotel and Casino (Castle).

Before summarizing and responding to the comments which were submitted on specific sections of the rules, the Commission will address several comments which, in the Commission's opinion, reflect a misunderstanding or misinterpretation of not only the Commission's proposed rules, but also the purposes and provisions of Article 13 of the Casino Control Act, N.J.S.A. 5:12-184 et seq. (the Act). As noted in the notice of proposal, Article 13 requires casino licensees to establish goals of expending within specified statutory intervals certain percentages of their contracts for goods and services, and their bus business, with certified minority business enterprises (MBEs) and certified women's business enterprises (WBEs) and to make good faith efforts to meet these goals.

Two casino licensees (Sands and Bally) have suggested that virtually every section of the proposed rules should be amended to provide casino licensees with set-aside credit for expenditures made with any minority business enterprise or women's business enterprise which fits the definition of those terms provided in N.J.S.A. 5:12-185, regardless whether the enterprise has been certified by the Department of Commerce. The Commission rejects this comment on the basis that it is contrary to the purposes and requirements of Article 13 of the Act.

The provisions of Article 13 of the Act, in combination with the provisions of the Unified Certification Act (see N.J.S.A. 52:27H-21.7 et seq.), are designed to assure "full minority and women's business enterprise participation in the casino industry . . ." N.J.S.A. 5:12-184. In order to assure that companies receiving the benefits of the set-aside provisions of Article 13 are actually minority and women's enterprises as defined by the two statutes, the Legislature has established a new division in the Department of Commerce whose responsibilities include the obligation to "establish and administer a unified certification procedure for minority and women's business enterprises that do business with casino licensees on contracts for goods and services or contracts for bus business." N.J.S.A. 5:12-188 (emphasis supplied). Moreover, the State certification agency is required to "supply casino licensees with a list of those minority and women's business enterprises which it has certified." N.J.S.A. 5:12-189.

The Commission cannot endorse the commenters' apparent conclusion that this elaborate certification mechanism was established for no meaningful purpose and may be avoided by any enterprise which can establish in some unspecified manner before some unspecified authority that it can meet the statutory definition of minority or women's business enterprise. Clearly, the intent of the two enabling statutes was to establish a uniform certification procedure whereby minority and women's business enterprises who wish to qualify for casino business set-asides would be certified by the State and identified to casino licensees. Any other conclusion would be unreasonable and would render major portions of the statutes meaningless. Accordingly, the comments by Sands and Bally suggesting that uncertified enterprises should be eligible for set-aside credit are rejected.

The proposed rules were also generally criticized by Bally (in support of the use of uncertified companies) and the Casino Association (for the failure of the rules to address a critical issue) due to the present dearth of certified MBEs and WBEs. These comments once again reflect the failure of the commenters to recognize the fundamental nature of the obligation being imposed on casino licensees by Article 13 and N.J.A.C. 19:53-2.

The set-aside goals established by N.J.S.A. 5:12-186 and 5:12-187 are just that, goals, not quotas. The primary obligation which must be satisfied by each casino licensee is the obligation to "make a good faith effort

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to meet . . . [these goals] and . . . [to] annually demonstrate to the commission that such an effort was made." N.J.S.A. 5:12-186b. and 187b. Accordingly, the fact that certified enterprises are currently in short supply neither argues in support of the use of uncertified, and perhaps unqualified, companies nor does it mean that the proposed rules are inadequate. To the contrary, the rules specifically provide that criteria relevant to the determination of a licensee's good faith efforts to reach the applicable set-aside goals in any year shall include "the general availability of certified MBEs and WBEs to provide needed goods and services" (N.J.A.C. 19:53-2.11(b)2). Also relevant to an evaluation of a casino licensee's good faith efforts will be its compliance with its set-aside plan, part of which shall include a program whereby the casino licensee encourages and assists with the certification efforts of minority and women's business enterprises with whom the licensee has done, or would like to do, business (see N.J.A.C. 19:53-2.8).

Several commenters (Sands, Bally and the Casino Association) suggested that the dates established by the proposed rules for implementation of the statutory set-aside goals are inconsistent with the requirements of the Act. Section 9 of the legislation which added Article 13 to the Casino Control Act provided that the set-aside requirements "shall take effect immediately but shall remain inoperative until the 90th day following the day of adoption of [certification] rules . . . pursuant to . . . [N.J.S.A. 5:12-188]." P.L. 1985, c. 539, §9 (approved January 21, 1986). The certification rules adopted by the Department of Commerce on August 24, 1987, became effective and operative when published in the New Jersey Register on September 21, 1987 at 19 N.J.R. 1739(a). The Commission believes that the operative date of the certification rules was the date intended by the Legislature to trigger the operative date of the set-aside requirements. Accordingly, 90 days after September 21, 1987, was December 20, 1987. For purposes of administrative convenience and ease of recordkeeping, the Commission determined to measure set-aside compliance for existing casino licensees on a calendar year basis beginning on January 1, 1988. The Commission maintains that this determination is well within its regulatory discretion and therefore each of the comments submitted on this issue has been rejected.

Related to this issue are the comments submitted by Sands and Castle which infer that casino licensees are entitled under the Act to a "grace" period within which to comply with the statutory set-aside requirements. Both N.J.S.A. 5:12-186 and 5:12-187 provide that a casino licensee shall establish set-aside goals of five percent by the end of the third year, 10 percent by the end of the sixth year and 15 percent by the end of the tenth year. The operative date for measuring the imposition of the obligation is the operative date of Article 13 (see discussion above) or the date of receipt of a casino license, whichever is later.

Several interpretations of the Act were available to the Commission when it considered what set-aside goals were intended to apply during the years leading up to the specified target years. Under the alternative apparently supported by the commenters, no numerical goal would be applied during the first two years; a casino licensee would simply be required to attempt to achieve a five percent goal by the end of the third year. Another alternative would have required the Commission to establish lesser goals during the first two years which progressively led to the five percent goal during the third year.

Recognizing, as explained above, that the fundamental obligation imposed on a casino licensee by the Act was the making of good faith efforts to use certified MBEs and WBEs, the Commission chose to apply the interval goal to each year during that interval. Any casino licensee that achieves the specified statutory goal in an annual review period is entitled to a prima facie determination that it has made the good faith efforts required by the Act (see N.J.A.C. 19:53-2.10(b) and 2.11(a)). If the casino licensee fails to reach the set-aside goal during an annual review period, the casino licensee would be required to make a detailed report to the Commission documenting its good faith efforts to reach the relevant set-aside goal (see N.J.A.C. 19:53-2.10(b) and 2.11(b)). As noted above, the acknowledged shortage of certified enterprises during the initial years of the set-aside program may well require casino licensees to comply with the requirements of N.J.A.C. 19:53-2.10(b)2. Therefore, the comments of Sands and Castle are rejected.

The following comments and Commission responses address specific sections of the proposed rules.

COMMENT: Subsection 186c of the Act provides that a casino licensee may fulfill up to 70 percent of its set-aside goal for contracts for goods and services by requiring a vendor to set aside a portion of its contract for minority or women's business enterprises. Sands alleges that the provision of N.J.A.C. 19:53-2.4(b) which restricts the amount of set-aside credit which a casino licensee may claim under subsection 186c to those

dollars actually expended by the vendor with certified MBEs and WBEs is inconsistent with the Act and beyond the Commission's authority. As an alternative, Sands suggests that a casino licensee should get credit for any expenditures required by the contract, regardless whether the vendor actually spends the dollars with certified MBEs and WBEs. Sands believes the contractor should be held accountable for its failure to satisfy the terms of the contract.

RESPONSE: This comment is rejected. N.J.S.A. 5:12-186a clearly states that a casino licensee is required to establish goals "of expending" specified percentages of the dollar value of its contracts for goods and services with certified MBEs and WBEs. Recognizing that certain contracts may, in the normal course of business, involve the use of subcontractors (such as construction general contracts), the Legislature allowed casino licensees to meet up to 70 percent of its set-aside goals by requiring a vendor to set-aside a portion of its casino contract for certified MBEs and WBEs. It makes no sense whatsoever to assume that the Legislature intended to allow a casino licensee to delegate its goal compliance effort to its vendors and thereby lessen the statutory objective of having casino contract dollars actually expended with certified MBEs and WBEs. The primary goal compliance effort attaches to the casino licensee; if the casino licensee must expend dollars to receive credit, so should a vendor who is helping the casino licensee obtain its goals.

COMMENT: Sands objects to that provisions of N.J.A.C. 19:53-2.4(b) which requires a casino licensee to provide proof of a qualified vendor expenditure before receiving credit on the basis that the Act only requires proof "[u]pon request . . ."

RESPONSE: The rule constitutes a standing request for proof; accordingly, the comment is rejected.

COMMENT: Sands alleges that the Commission is without authority to require a casino licensee to submit any particular form of proof in support of a claim for credit for an expenditure by a vendor under N.J.S.A. 5:12-186c. In particular, Sands challenges the Commission's authority to require that contracts and subcontracts requiring expenditures with MBEs and WBEs be in writing.

RESPONSE: The comments submitted by Sands are rejected. Section 190 of the Act grants the Commission the authority to "develop such other regulations as may be necessary to interpret and implement the provisions of [Article 13]" Clearly, the Commission has the authority to determine what kinds of proof shall be submitted by a casino licensee in support of a claim for credit. Moreover, since the obvious purpose of Article 13 is to require a casino licensee to provide the impetus for increased MBE and WBE participation in casino business, it is clearly within the Commission's authority to require that any part of an agreement between a casino licensee and a vendor which establishes a set-aside obligation by the vendor for the benefit of the casino licensee be in writing.

COMMENT: Castle commented that the information required by N.J.A.C. 19:53-2.4(b)2 is duplicative of information already submitted to the Commission and, if adopted, should be amended to permit computer print-outs of checks paid as opposed to actual copies of the checks.

RESPONSE: Castle's comment is accepted insofar as it suggests that N.J.A.C. 19:53-2.4(b)2 be clarified to permit the submission of computer records which evidence that the payments at issue have been made. A clarifying amendment of the language of this provision has been included as part of adoption of N.J.A.C. 19:53-2.

COMMENT: The Expressway Authority recommended that N.J.A.C. 19:53-2.4 be amended to clarify that a casino licensee may not receive credit for an expenditure made by a vendor with a subcontracting certified MBE or WBE if the vendor itself is a certified MBEs or WBEs whose contract is being claimed by the casino licensee.

RESPONSE: Although the Commission believes that the Act and N.J.A.C. 19:53-2 implicitly preclude the claiming of "double credit" under the circumstances identified by the Expressway Authority, the comment has been accepted and a clarifying amendment to N.J.A.C. 19:53-2.4 has been made upon adoption.

COMMENT: Claridge criticized the requirements of N.J.A.C. 19:53-2.5 concerning bus business goals due to its failure to recognize the two kinds of bus business. Claridge stated that a distinction must be made between line service and charters. Whereas line carriers proposing service from available areas are given equal consideration, charter operators are chosen primarily on their ability to provide quality service, regardless of their ownership status.

RESPONSE: Claridge's comment is rejected. The policy considerations underlying the requirements of Article 13 and N.J.A.C. 19:53-2 are equally applicable to both line and charter bus service. Nothing in the statutory or regulatory provisions requires a casino licensee to use the services of

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any enterprise which cannot or does not provide an acceptable level of performance. Article 13 and the rules do require, however, that licensees make a good faith effort to utilize the services of certified MBEs and WBEs and those good faith efforts will be judged in accordance with the criteria contained in N.J.A.C. 19:53-2.11(b).

COMMENT: The Casino Association and Castle both challenged the methods established by N.J.A.C. 19:53-2.6 for the valuation of bus business. The Casino Association asserted that the sole basis for the valuation of casino bus business should be payments made to bus operators, whether directly or indirectly. More specifically, the Casino Association maintained that a casino licensee should not be required to include the dollar value of monies expended for advertising or the value of complimentary goods or services provided to bus passengers. Castle similarly challenged the allocation of advertising expenses as being impractical, if not impossible, and also argued that the legislation requires the measurement of casino expenditures with MBEs and WBEs, not the bus passengers who are the patrons of those businesses.

RESPONSE: The Commission rejects both of these comments. First, the Commission considers advertising dollars spent by a casino licensee on behalf of a bus operator to be an indirect payment to that bus operator. The Commission does not agree that it is impractical to measure the amount of such expenditures since each casino licensee should have direct or indirect knowledge of the cost when it agrees to place an advertisement for the specific benefit of a bus operator. Second, as noted in the notice of proposal, the majority of bus business in which casino licensees engage does not result in any monetary consideration flowing directly from the casino licensee to the bus owner or operator. The Commission maintains that the value of complimentary goods or services issued to a bus operator's passengers is a fair measurement of casino licensee dollars expended in support of that bus operator. The obvious objective of the Act is to permit a measurement of the relative value of casino dollars expended in support of certified MBEs and WBEs and the Commission believes that N.J.A.C. 19:53-2.6 will allow the Commission to achieve this objective.

COMMENT: Caesars commented that N.J.A.C. 19:53-2.6 will create an undue burden on casino licensees by requiring them to record the amount of complimentary goods and services issued to the passengers of each bus operator. As an alternative, Caesars suggested that a fixed value of \$1,000 be assigned to each bus except where the value of complimentary goods or services exceed a value of \$50.00 per passenger, in which case actual value would be used.

RESPONSE: A review of the legislative history of the enactment of Article 13 reveals that the Legislature considered and specifically rejected measuring the amount of casino bus business by looking to the number of buses "assigned" to each casino hotel facility. Instead, the Legislature chose to measure the dollar value of bus business "expended" by casino licensees with certified MBEs and WBEs. Caesars' proposal would have the practical effect of converting the Commission's method of measuring dollars expended into a method of measuring the number of buses which were permitted to stop at each casino hotel. Moreover, data concerning the value of complimentary goods and services issued to the passengers of each bus arriving at a casino hotel is already maintained and available to each casino licensee due to existing independent regulatory requirements (see N.J.A.C. 19:45-1.46). Accordingly, Caesars' comment has been rejected.

COMMENT: Sands commented that the example contained in N.J.A.C. 19:53-2.6(a)2 suggests that casino licensees are required to measure the value of complimentary goods or services actually redeemed by bus passengers as opposed to the value of coupons issued for such goods or services. Sands suggested that the value of coupons issued, not redeemed, is the relevant standard.

RESPONSE: The Commission agrees with the Sands that the wording of the example in N.J.A.C. 19:53-2.6(a)2 needs to be clarified. The intent of the rule provision was, as Sands suggested, to measure the value of the complimentary goods and services to which the bus passengers were entitled. The provision was worded as it was since not all complimentary goods or services may be provided through the use of a coupon program (see N.J.A.C. 19:45-1.46(b)). From the perspective of the bus operator, the issuance and receipt of a casino coupon by the bus passenger is the receipt of a complimentary for purposes of N.J.A.C. 19:53-2.6(a)2. The subsequent use or non-use of the coupon by the passenger is of no particular interest to the bus operator in terms of the value of the bus operator's arrangement with the casino licensee. In an effort to avoid any confusion, however, clarifying amendments to N.J.A.C. 19:53-2.6(a)2 have been made by the Commission upon adoption of the rules.

COMMENT: Several commenters, including the Casino Association, Sands and Castle, criticized the quarterly reports required by N.J.A.C. 19:53-2.7 as being unduly burdensome and beyond the authority of the Commission to require. More specifically, the commenters asserted that the statutory requirement of an annual demonstration of casino licensee compliance precluded the Commission from adopting a quarterly reporting obligation, even if the offending degree of detail and conflict with existing reporting requirements was eliminated.

Conversely, the Division suggested that the quarterly reports required by N.J.A.C. 19:53-2.7 should be expanded to include several additional areas of information. The Expressway Authority supported the establishment of a quarterly report since it would not only allow the Commission to track and ascertain good faith efforts during the annual review period, but would also encourage the licensee to monitor its own progress and refocus its good faith efforts as required.

RESPONSE: First, the Commission rejects the comments of the Casino Association, Sands and Castle to the extent that they assert that the Commission lacks the authority to require more than annual reporting by a casino licensee on its compliance with the set-aside provisions of Article 13. As noted earlier, the Commission has clear statutory authority to "develop such other regulations as may be necessary to interpret and implement the provisions of [the] act." N.J.S.A. 5:12-190. Moreover, the Commission accepts and endorses the suggestion of the Highway Authority that periodic reporting during the annual compliance period is of substantial benefit not only to the Commission but to the casino licensee as well.

The Commission also accepts, however, those comments which suggest that the reporting requirements contained in N.J.A.C. 19:53-2.7 as proposed are burdensome and in some respects duplicative of the reporting requirements currently imposed as part of the Commission's vendor tracking system. Although some aspects of the information required for the existing vendor disbursement system are inconsistent with the requirements of Article 13 and vice versa, the Commission agrees that further efforts should be made to conform the two reporting requirements to the greatest extent possible. Therefore, the Commission has determined to not adopt the reporting requirements of N.J.A.C. 19:53-2.7 at this time. It should be noted that subsection (f) of N.J.A.C. 19:53-2.7, which prohibits dual credit for certain expenditures, has been adopted by the Commission and recodified in N.J.A.C. 19:53-2.4 and 2.6. A new rule concerning periodic reporting obligations will be published for public comment as soon as the Commission has an opportunity to study the matter further.

COMMENT: The Casino Association, Claridge, Bally and Castle specifically criticized the use of the purchasing categories set forth in N.J.A.C. 19:45-2.7(c) as being unrelated to existing reporting obligations, unnecessary, inconsistent with Article 13 and overly burdensome.

RESPONSE: In view of the Commission's determination to review and revise the reporting obligations which were proposed in N.J.A.C. 19:53-2.7, no further response is deemed necessary at this time other than to note that the Commission will consider the criticisms of the commentators when drafting a new reporting rule.

COMMENT: N.J.A.C. 19:53-2.8 requires each casino licensee to submit for approval a plan detailing the means by which the casino licensee intends to meet the goals established by Article 13. Sands suggested that the Commission lacks the statutory authority to require such a plan since it is not specifically mandated by the Act. Sands also criticized the plan requirement on the basis that the Commission's "true interest is in whether the licensee complies with its statutory requirements, not in the manner such compliance may take."

RESPONSE: Sands comments are rejected. As noted several times previously, the Commission disagrees with Sands' rather narrow interpretation of the implementing authority granted to the Commission by section 190 of the Act. Second, the Commission takes strong exception to Sands' conclusion that the Commission is not interested in the manner in which a casino licensee complies with the obligations imposed by Article 13. As discussed above, the primary obligation imposed on casino licensees by Article 13 is the requirement that good faith efforts be made to reach the goals established therein; mere compliance with the numbers alone may not be sufficient if a casino licensee has not actually made good faith efforts to provide certified MBEs and WBEs with the opportunity to compete for the business which casino gaming has generated.

COMMENT: In view of the bidding procedures which are generally utilized by casino licensees, Bally and Claridge questioned the validity of N.J.A.C. 19:53-2.8(a)5 which requires a casino licensee to provide as part of its set-aside plan a list of those contracts or expenditures "which

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the casino licensee anticipates to be made with certified MBEs and WBEs."

RESPONSE: As noted earlier, nothing in Article 13 or N.J.A.C. 19:53-2 requires casino licensees to give certified MBEs or WBEs preference over more qualified or lower priced competitors. Similarly, N.J.A.C. 19:53-2.8(a)5 is not intended to require casino licensees to predetermine that certain kinds of business will be transacted with certain certified enterprises. The Commission believes that a casino licensee's good faith efforts may be encouraged, however, by requiring the casino licensee to identify, to the extent then known, certified MBEs and WBEs with whom it reasonably expects to conduct business in striving to meet the goals. Therefore, the comment is rejected.

COMMENT: Sands asserted that N.J.A.C. 19:53-2.10 is inconsistent with the Act to the extent that it provides that a casino licensee may be required to prove its compliance with Article 13 despite having satisfied the statutory goals. Sands also maintained that subsection (c) of N.J.A.C. 19:53-2.10 fails to provide casino licensees with adequate notice as to when a licensee may be required to present additional proof of its good faith efforts. Finally, Sands criticized subsection (d) of the section for requiring that a hearing be held on each casino licensee's compliance with the Act regardless of any evidence indicating a failure to meet its obligations.

RESPONSE: Once again, Sands comment simply fails to recognize the nature of the basic obligation imposed by Article 13. There are various ways a casino licensee could satisfy the statutory numerical goals yet fail to exercise good faith efforts as required by the Act. For example, a licensee could engage in one large contract with one certified enterprise and make no further efforts to utilize the services of other certified enterprises. Similarly, a record which demonstrated that a casino licensee expended 15 percent of its contracts for goods and services with certified MBEs but not a single contract with a certified WBE could legitimately raise questions about the good faith efforts of that licensee to do business with certified WBEs.

The Commission also disagrees that N.J.A.C. 19:53-2.10(c) needs to be amended to identify what would constitute cause for a more detailed review of a licensee's good faith efforts. The nature of the basic good faith efforts required by a casino licensee are set forth in N.J.A.C. 19:53-2.8(a), 2.10 and 2.11. Moreover, no one is in a better position to know the true extent of its good faith efforts than the licensee itself. Nevertheless, the Commission will identify the basis for further review when the casino licensee is notified of its obligation to file under N.J.A.C. 19:53-2.10(b)2 or (c).

Finally, the Commission notes that the Act specifically requires the Commission to make a determination as to whether a casino licensee has made good faith efforts to meet the requirements of the Act (see N.J.S.A. 5:12-186b, 187b and 187.1). All decisions of the Commission must be made by a majority of the full Commission at a public hearing (N.J.S.A. 5:12-73 and N.J.S.A. 10:4-6 et seq.). The rule at issue, N.J.A.C. 19:53-2.10(d), merely requires the Commission to determine the compliance of each casino licensee after "an appropriate hearing." Where no issues have been raised as to a particular licensee's compliance, the "appropriate hearing" may consist of nothing more than consideration as an agenda item at a regularly scheduled public meeting of the Commission. Where substantial issues as to a compliance are involved, a full evidentiary hearing may be appropriate. Sands comments are rejected.

COMMENT: The Department of Commerce, the NAACP, and the Expressway Authority generally supported the adoption of N.J.A.C. 19:53-2. The Department of Commerce suggested, however, that N.J.A.C. 19:53-2.11(b) be amended to include another criterion for evaluating the good faith efforts of casino licensees. Specifically, the Department of Commerce suggested that licensees be required to "actively encourage . . . involvement in the vendor registration/certification programs of the Department of Commerce by including both the Vendor Registration Form and information on MBE and WBE certification in all promotional kits distributed to vendors." In addition, the Department of Commerce suggested that casino licensees should be required to connect to its Set-Aside Vendor Injury System.

RESPONSE: Although the Commission supports the proposals suggested by the Department of Commerce, the Commission believes these proposals are already adequately addressed by those provisions of N.J.A.C. 19:53-2.8(a)1 which require a casino licensee's set-aside plan to include a specification of the efforts that the casino licensee will make to assist MBEs and WBEs to apply for certification and qualify for appropriate contracts. Moreover, once these proposals are included in an approved set-aside plan, the Commission is entitled to review the

licensee's compliance with its set-aside plan as one of the criteria for evaluating the good faith efforts of that licensee. Therefore, although the Commission supports Commerce's comments in concept, no amendments to N.J.A.C. 19:53-2.11 are deemed necessary at this time.

COMMENT: Sands commented that the provisions of N.J.A.C. 19:53-2.12 concerning sanctions are beyond the authority of the Commission since potential sanctions for non-compliance are not limited to those listed in N.J.S.A. 5:12-187.1, but rather include "any sanction authorized by the Act. . . ."

RESPONSE: Sands' comment is rejected. Obviously, Article 13 of the Act is part of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Section 129 of the Act, N.J.S.A. 5:12-129, titled "Supplemental sanctions," provides, in pertinent part, that "[i]n addition to any penalty, fine or term of imprisonment authorized by law, the commission shall . . . have the authority to impose the following sanctions upon any person licensed or registered pursuant to this act. . . ." Section 130 of the Act, N.J.S.A. 5:12-130, which provides standards for the imposition of sanctions, is equally applicable to any violation of any section of any Article of the Casino Control Act.

COMMENT: Sands criticized N.J.A.C. 19:53-2.7, 2.8, 2.9, and 2.10 on the ground that they each require reports or plans to be filed with both the Commission and the Division of Gaming Enforcement, whereas the relevant sections of Article 13 only require the submission of documents to the Commission.

RESPONSE: As just noted, Article 13 is part of the Casino Control Act. Pursuant to section 76 of the Act, N.J.S.A. 5:12-76, the Division of Gaming Enforcement is obligated, among other things, to investigate violations of the Act and regulations, to enforce the provisions of the Act and regulations and to provide the Commission with all information necessary for all proceedings involving enforcement of the Act or regulations. Clearly, the Division has the right to receive any report or plan filed with the Commission. Sands' comment is rejected.

COMMENT: The Expressway Authority suggested the rules be clarified as to how the percentage goals are to be distributed between certified MBEs and WBEs.

RESPONSE: Neither the Act nor the rules require that licensees attempt to distribute their business with certified MBEs and WBEs in any particular proportion. The law does require, however, that casino licensees make good faith efforts to do business with both certified MBEs and WBEs.

COMMENT: The Division suggested that both N.J.A.C. 19:53-2.2 and 2.4 be amended to clarify that the contracts or subcontracts for goods and services addressed by the rules are those which relate to the casino hotel or a related facility.

RESPONSE: Although the Commission believes that the Act and rules implicitly limit the scope of contracts implicated by the set-aside requirements to those involving the casino hotel or a related facility, a clarifying amendment to N.J.A.C. 19:53-2.2 has been made upon adoption to define the relevant contracts through the use of the standards contained in N.J.S.A. 5:12-104b.

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. SET-ASIDE GOALS FOR CASINO BUSINESS WITH MINORITY AND WOMEN'S BUSINESS ENTERPRISES

19:53-2.1 Applicability and scope

(a) The rules in this chapter implement the requirements of Article 13 of the Act, N.J.S.A. 5:12-184 et seq., concerning casino business set-aside goals for minority and women's business enterprises.

(b) The Act requires the Department of Commerce, Energy and Economic Development to establish and administer a unified certification procedure for minority and women's business enterprises that do business with casino licensees on contracts for goods or services or contracts for bus business. The certification procedures promulgated by the Department of Commerce, Energy and Economic Development are codified at N.J.A.C. 12A:11-1. All questions concerning applications or eligibility for certification as a minority or women's business enterprise should be addressed to:

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N.J. Department of Commerce,
Energy and Economic Development
Set-Aside and Certification Office
CN 835
One West State Street
Trenton, New Jersey 08625

(c) Pursuant to the provisions of N.J.S.A. 5:12-190, the Commission is required to adopt such rules as may be necessary to interpret and implement the casino business set-aside goals established by the Act. Questions concerning the obligations of casino licensees and the applicability of these rules should be addressed to:
New Jersey Casino Control Commission
Division of Affirmative Action and Planning
1300 Atlantic Avenue, 4th Floor
Atlantic City, New Jersey 08401

(d) Certification of an enterprise as a minority or women's business enterprise does not in any way relieve that enterprise or any casino licensee of its obligation to comply with any requirement of the Casino Control Act or the Commission's rules concerning enterprises doing business with casino licensees.

19:53-2.2 Definitions

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

"Bus" means any "autobus" as defined in N.J.S.A. 48:4-1; provided, however, for purposes of this subchapter, such term shall include any autobus engaged in intrastate or interstate commerce.

"Bus business" means any direct or indirect agreement, arrangement or contract between a casino licensee and the owner or operator of a bus pursuant to which a bus is used to transport passengers for the direct or indirect benefit of the casino licensee.

"Certified MBE or WBE" means any business enterprise that has been certified by the Department of Commerce, Energy and Economic Development as being a minority business enterprise or women's business enterprise as defined in N.J.S.A. 5:12-185b and d.

"Contract" means any written or unwritten agreement between a casino licensee and any other person ***regarding the realty, construction, maintenance or business of a casino hotel or related facility*.**

"MBE" means minority business enterprise.

"Minority" is defined in N.J.S.A. 5:12-185c.

"Minority business enterprise" is defined in N.J.S.A. 5:12-185b.

"WBE" means women's business enterprise.

"Women's business enterprise" is defined in N.J.S.A. 5:12-185d.

19:53-2.3 Casino set-aside goals: contracts for goods and services

(a) Every casino licensee shall, beginning on January 1, 1988, or on the date of receipt of its casino license, whichever is later, make a good faith effort to expend each year at least five percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-2.4, with certified MBEs and WBEs.

(b) Every casino licensee shall, beginning on January 1, 1991, or three years after the receipt of its casino license, whichever is later, make a good faith effort to expend each year at least 10 percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-2.4, with certified MBEs and WBEs.

(c) Every casino licensee shall, beginning on January 1, 1994, or six years after the receipt of its casino license, whichever is later, make a good faith effort to expend each year at least 15 percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-2.4, with certified MBEs and WBEs.

19:53-2.4 Determination of expenditures for goods and services

(a) In determining the total dollar value of contracts for goods and services expended by a casino licensee each year and the percentage thereof awarded to certified MBEs and WBEs, a casino licensee shall record the dollar value of all expenditures for goods and services made by the casino licensee; provided, however, that expenditures for the following categories of goods and services shall be excluded:

1. Utilities and taxes;

2. Financing costs, such as mortgages, loans or any other type of debt;

3. Medical insurance;

4. Dues and fees to the Atlantic City Casino Association;

5. Fees and payments to a parent or affiliated company of the casino licensee other than those that represent fees and payments for goods and services supplied by non-affiliated persons through an affiliated company for the use or benefit of the casino licensee;

6. Rents paid for real property and any payments constituting the price of an interest in real property as a result of a real estate transaction; and

7. Bus business recorded pursuant to N.J.A.C. 19:53-2.6.

(b) A casino licensee may fulfill up to 70 percent of the set-aside goals established by N.J.S.A. 5:12-186 and N.J.A.C. 19:53-2.3, or any part thereof, by requiring contractors to set aside portions of their contracts for certified MBEs and WBEs, to the extent that dollars are actually expended with certified MBEs and WBEs. In determining the good faith efforts of a casino licensee to comply with the provisions of N.J.S.A. 5:12-186 and this subchapter, no consideration shall be given to dollars expended by casino contractors with certified MBEs and WBEs in excess of this 70 percent limitation. Any casino licensee seeking set-aside credit for subcontracts awarded to certified MBEs or WBEs by a casino contractor shall provide proof of the amount of the set-aside to the Commission. Such proof shall include:

1. Executed copies of the contract and subcontract;

2. Copies of any payment orders and checks made payable to the certified MBE or WBE subcontractor ***or copies of computer generated records which indicate that such payments were made***; and

3. Any other information the Commission may require.

(c) When recording or reporting the dollar value of its expenditures for goods or services, a casino licensee may record or report an expenditure with an enterprise that has been certified as both an MBE and WBE only once. If a casino licensee has an agreement with a contractor to set aside a portion of its contract for certified MBE or WBEs pursuant to (b) above and the contractor itself is a certified MBE or WBE, a casino licensee may not claim a set-aside credit for any expenditure made with the certified MBE or WBE subcontractor if a corresponding set-aside credit is claimed for the casino contract.

19:53-2.5 Casino set-aside goals: bus business

(a) Every casino licensee shall, beginning on January 1, 1988, or on the date of receipt of its casino license, whichever is later, make a good faith effort to expend each year at least five percent of the dollar value of its bus business, calculated in accordance with the provisions of N.J.A.C. 19:53-2.6, with certified MBEs and WBEs.

(b) Every casino licensee shall, beginning on January 1, 1991, or three years after the receipt of its casino license, whichever is later, make a good faith effort to expend each year at least 10 percent of the dollar value of its bus business, calculated in accordance with the provisions of N.J.A.C. 19:53-2.6, with certified MBEs and WBEs.

(c) Every casino licensee shall, beginning on January 1, 1994, or six years after the receipt of its casino license, whichever is later, make a good faith effort to expend each year at least 15 percent of the dollar value of its bus business, calculated in accordance with the provisions of N.J.A.C. 19:53-2.6, with certified MBEs and WBEs.

19:53-2.6 Determination of bus business expenditures

(a) In determining the total dollar value of bus business expended by a casino licensee each year and the percentage thereof awarded to certified MBEs and WBEs, a casino licensee shall record the dollar amount of its bus business in each of the following categories:

1. Direct or indirect payments to bus owners or operators. This category shall include the total dollar value of all bus business pursuant to which a casino licensee either directly or indirectly compensates a bus owner or operator for the use of its bus. The amount of bus business to be recorded under this category shall be equal to the value of the compensation provided to the bus owner or operator. Examples of bus business in this category shall include, without limitation, arrangements whereby:

- i. The casino licensee directly charters and pays for the use of the bus;

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ii. The casino licensee indirectly pays for the use of the bus by reimbursing the user of the bus specifically for the cost of transportation;

iii. The casino licensee reimburses a third party for providing the bus for the use of other persons; or

iv. The casino licensee pays for the cost of advertising or other goods or services which directly benefit the owner or operator of the bus.

2. Complimentary goods or services ***[provided]* *offered*** to the passengers of bus owners or operators. This category shall include the total dollar value of all complimentary goods or services which are directly or indirectly ***[provided]* *offered*** by the casino licensee to the passengers of the bus owner or operator (see N.J.A.C. 19:45-1.9). For example, if a casino licensee has an arrangement with a bus operator whereby the casino licensee agrees to provide each bus passenger brought to its casino by the bus operator with complimentary goods or services worth \$20.00, the amount of bus business to be recorded under this category shall equal the ***actual*** number of passengers who are entitled to ***[and actually receive]*** the complimentary goods or services multiplied by \$20.00.

(b) If any bus business includes both payments and compliments within the categories identified in (a) above, each component shall be separately recorded in accordance with the requirements of this section. ***When recording or reporting the dollar value of its expenditures for bus business, a casino licensee may record or report an expenditure with an enterprise that has been certified as both an MBE and a WBE only once.***

19:53-2.7 ***[Quarterly expenditure reports]**(Reserved)***

***[(a)** Each casino licensee shall submit to the Commission and the Division a quarterly report listing for each category of goods and services identified in (c) below:

1. The total dollar value of all disbursements in the category made by the casino licensee during the quarter and the year to date, recorded in accordance with the requirements of N.J.A.C. 19:53-2.4;

2. The name of each certified MBE or WBE with whom the casino licensee did business during the quarter, as well as:

i. The certification status of the enterprise (MBE or WBE);

ii. The commodity code established by the Commission for the good or service provided by the enterprise;

iii. The total dollars disbursed to the enterprise; and

iv. The total amount of dollars, if any, which were disbursed to the certified MBE or WBE by a contractor pursuant to an agreement authorized by N.J.S.A. 5:12-186c.;

3. The total dollar amount of disbursements in the category made to certified MBEs and WBEs during the quarter and the year to date by either the casino licensee or its contractors, listed by MBEs, WBEs and combined total, and the percentage of the total disbursements reported pursuant to (a)1 above that each listed amount represents; and

4. The total dollar amount of disbursements in the category made during the quarter and the year to date to certified MBEs and WBEs by contractors pursuant to agreements authorized by N.J.S.A. 5:12-186c.

(b) Each quarterly report required pursuant to (a) above shall also include:

1. The total dollar amount of disbursements in all categories of goods and services combined made by the casino licensee during the quarter and the year to date;

2. The total dollar amount of disbursements in all categories of goods and services combined made to certified MBEs and WBEs during the quarter and the year to date by either the casino licensee or its contractors, listed by MBEs, WBEs and combined total, and the percentage of the total disbursements reported pursuant to (b)1 above that each listed amount represents; and

3. The total dollar amount of disbursements in all categories of goods and services combined made to certified MBEs and WBEs by contractors pursuant to agreements authorized by N.J.S.A. 5:12-186c.

(c) The information required by (a) above shall be reported for each of the following major purchasing categories of goods and services:

1. Food and beverage, including alcoholic beverages;

2. Non-durable hotel supplies, including paper products, chemicals and allied products, linens, cleaning products, hardware supplies, water, office supplies, uniforms, textiles, carpeting and apparel;

3. Construction, renovation and repair of the casino hotel and related facilities, including construction materials and supplies;

4. Entertainment, including theatrical supplies, sound equipment, audiovisual aids and the hiring of entertainment services, such as musical contractors, musicians and performers;

5. Durable hotel supplies, including furniture and fixtures, office equipment and data processing equipment;

6. Maintenance services, including cleaning services, both general and construction, and landscaping services;

7. Advertising, including marketing, photographic services, and print and broadcast media;

8. Laundry and drycleaning;

9. Tour, travel and junket services not recorded under N.J.A.C. 19:53-2.6;

10. Gaming related equipment; and

11. Other products and services, including, but not limited to, fuel oil, lease arrangements not involving real estate, floral services, freight moving services, garbage handling services, interior decorating services and professional services.

(d) Each casino licensee shall submit to the Commission and the Division a quarterly report listing for each category of bus business identified in N.J.A.C. 19:53-2.6 the following:

1. The total dollar value of all disbursements in the category made by the casino licensee during the quarter and the year to date, recorded in accordance with the requirements of N.J.A.C. 19:53-2.6;

2. The name of each certified MBE or WBE with whom the casino licensee did business during the quarter, as well as the information required by (a)2i through iii above; and

3. The information required by (a)3 above.

(e) Each quarterly report required pursuant to (d) above shall also include the information required by (b)1 and 2 above, except that total disbursements in both categories of bus business shall be substituted for total disbursements in all categories of goods and services combined.

(f) When recording or reporting the dollar value of its expenditures for goods or services or bus business, a casino licensee may record or report an expenditure with an enterprise that has been certified as both an MBE and a WBE only once.

(g) The quarterly reports required by this section shall be filed with the Commission and the Division within 15 days of the expiration of the quarter. Casino licensees operating under a calendar year compliance period pursuant to N.J.A.C. 19:53-2.3 and 19:53-2.5 shall file reports on a calendar quarter basis. All other casino licensees shall file quarterly reports in accordance with a schedule approved by the Commission.]*

19:53-2.8 Casino licensee set-aside plans

(a) Each casino licensee shall prepare and submit for approval by the Commission a set-aside plan which shall detail the means by which the casino licensee intends to meet the set-aside goals established by N.J.S.A. 5:12-186, 5:12-187 and this subchapter during the next annual compliance period. Such plan shall, without limitation, include:

1. The efforts that the casino licensee will make to assist MBEs and WBEs to:

i. Apply for certification;

ii. Qualify for appropriate contracts; and

iii. Submit all necessary documentation to the casino licensee and regulatory authorities;

2. The means by which the casino licensee will provide notice to certified MBEs and WBEs of its intent to purchase goods or services;

3. The internal controls and procedures which the casino licensee will use to document its good faith efforts to utilize the services of certified MBEs and WBEs;

4. A general description and estimated cost of the goods and services anticipated to be purchased by the casino licensee during the next annual compliance period; and

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5. A list of those contracts or expenditures which the casino licensee anticipates to be made with certified MBEs and WBEs, either directly or through a contractor pursuant to the provisions of N.J.S.A. 5:12-186c and N.J.A.C. 19:53-2.4(b).

(b) The initial set-aside plan required by (a) above shall be submitted to the Commission and the Division as follows:

1. Each holder of a casino license shall submit its plan no later than 120 days following the effective date of this section;

2. Each applicant for a casino license shall submit its plan no later than 120 days prior to the anticipated issuance of its casino license, unless such submission date would be prior to the effective date of this section, in which event the requirements of (b)1 above will govern the submission of the plan.

(c) Each casino licensee shall submit a revised set-aside plan reflecting any changes which are proposed to the last set-aside plan approved by the Commission at least 90 days prior to the start of its next annual compliance period.

19:53-2.9 Responsibility for implementation of set-aside plan

Each casino licensee's chief executive officer shall be ultimately responsible for insuring that its approved set-aside plan is fully implemented. The casino licensee's equal employment officer shall be directly responsible for implementing the casino licensee's obligations under this subchapter. The equal employment officer shall, among other things, act as a liaison and provide assistance to the Commission, the Division and the Department of Commerce, Energy and Economic Development.

19:53-2.10 Annual demonstration of good faith efforts

(a) Pursuant to N.J.S.A. 5:12-186b and 5:12-187b, each casino licensee is required to demonstrate annually its good faith efforts to meet the set-aside goals established by the Act and this subchapter.

(b) Each casino licensee shall, within 30 days of the end of each annual compliance period established by N.J.A.C. 19:53-2.3 and 19:53-2.5, file a report with the Commission and Division which either:

1. Demonstrates that the casino licensee is entitled to the prima facie determination of good faith efforts authorized by N.J.A.C. 19:53-2.11(a); or

2. Documents its good faith efforts to achieve the set aside goals established by the Act and this subchapter, which report shall address the criteria listed in N.J.A.C. 19:53-2.11(b) and shall include, but not be limited to, the following:

i. Documentation demonstrating its compliance with the terms of its approved set-aside plan;

ii. A summary and analysis of its expenditures for goods and services and bus business during the annual reporting period and the availability of certified MBEs and WBEs to fulfill its needs;

iii. A summary and analysis of all contracts awarded during the annual reporting period which required the contractor to set aside a portion of its contract for certified MBEs and WBEs, and the contractor's compliance therewith; and

iv. Any other information relevant to the casino licensee's efforts to comply with the set-aside goals established by the Act and this subchapter.

(c) Notwithstanding the provisions of (b)1 above and N.J.A.C. 19:53-2.11(a), the Commission may require any casino licensee to comply with all or any part of (b)2 above if the Commission has cause to question the actual good faith efforts of that casino licensee.

(d) Within 90 days of the receipt of any report required by this section, the Commission shall hold a hearing and make a determination with regard to the good faith efforts of the casino licensee to comply with the set-a-side goals established by the Act and this subchapter. If, after an appropriate hearing, the Commission determines that a casino licensee has failed to make a good faith effort

to comply with all or any part of the requirements established by the Act and this subchapter, the Commission may impose any sanction or combination of sanctions authorized by the Act and this subchapter.

19:53-2.11 Criteria for determining good faith efforts to meet set-aside goals

(a) A casino licensee shall be entitled to a prima facie determination that it has satisfied its obligation to make the good faith efforts required by N.J.S.A. 5:12-186 or N.J.S.A. 5:12-187 if the casino licensee demonstrates for the relevant annual compliance period that it has expended the following percentage of the dollar value of its contracts for goods or services or bus business with certified MBEs and WBEs during the specified year:

1. Five percent during any calendar year prior to 1991, or during any of the first three years in which the casino licensee holds a license if the license was initially issued after January 1, 1988;

2. Ten percent during any calendar year after 1990 but prior to 1994, or during any of the fourth through sixth years in which the casino licensee holds a license if the license was initially issued after January 1, 1988; or

3. Fifteen percent during any calendar year after 1993, or during any year after the sixth year the casino licensee has held a license if the license was initially issued after January 1, 1988.

(b) If a casino licensee is required by N.J.A.C. 19:53-2.10(b)2 or 2.10(c) to document its good faith efforts to achieve the set-aside goals established by N.J.S.A. 5:12-186, 5:12-187 and this subchapter, the Commission shall consider the following criteria when determining whether the casino licensee has satisfied its good faith obligations:

1. The casino licensee's compliance with the set-aside plan approved by the Commission pursuant to N.J.A.C. 19:53-2.8;

2. The general availability of certified MBEs and WBEs to provide needed goods and services in the appropriate area;

3. The casino licensee's willingness to require its contractors to set aside a portion of their contracts for certified MBEs and WBEs;

4. The number of different certified MBEs and WBEs used by a casino licensee *[and their distribution among the categories of bus business identified in N.J.A.C. 19:53-2.6 and the major purchasing categories identified in N.J.A.C. 19:53-2.7]*;

5. The relative amount of total dollars expended with certified MBEs versus certified WBEs;

6. The casino licensee's participation in conferences, workshops and expositions designed to enhance the development of minority and women's enterprises; and

7. Any other relevant evidence submitted by the casino licensee.

19:53-2.12 Sanctions

(a) If the Commission determines that all or any part of the requirements of N.J.S.A. 5:12-186, 5:12-187 or this subchapter have not been met by a casino licensee, the Commission may impose any sanction authorized by the Act or this subchapter to ensure that the casino licensee makes good faith efforts to meet the expenditure goals established for certified MBEs and WBEs, including, without limitation, the:

1. Imposition of appropriate fines;

2. Imposition of license conditions;

3. Suspension of the casino license; or

4. Revocation of the casino license.

(b) If a determination is made that a casino licensee has failed to demonstrate compliance with the provisions of N.J.S.A. 5:12-186 and 5:12-187, the casino licensee shall have 90 days from the date of the determination of noncompliance within which to comply with the provisions of those sections.

(c) Sanctions proceedings shall be conducted in accordance with N.J.A.C. 19:42.

EMERGENCY ADOPTIONS

HUMAN SERVICES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Social Services Program for Individuals and Families Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes

Adopted Emergency Amendment and Concurrent Proposed Amendment: N.J.A.C. 10:123-3.2

Emergency Amendment Adopted: February 9, 1989 by Drew Altman, Commissioner, Department of Human Services.
Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): February 28, 1989.

Emergency Rule Amendment Filed: February 28, 1989 as R.1989 d.171.

Authority: N.J.S.A. 44:7-87.

Emergency Amendment Effective Date: February 28, 1989.

Emergency Amendment Expiration Date: April 29, 1989.

Concurrent Proposal Number: PRN 1989-157.

Submit comments by April 19, 1989 to:

Mary Ann Earhart
Boarding Home Coordinator
Division of Youth and Family Services
1 South Montgomery Street
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment makes one change in the existing text of N.J.A.C. 10:123-3.2. The amount of the personal needs allowance to be reserved by owners and operators of residential health care facilities and boarding homes for the use of Supplemental Security Income or General Public Assistance recipient residents is being increased by two dollars from \$55.00 to \$57.00. This increase is based on the total 1988 Federal Social Security cost of living increase.

Social Impact

The personal needs allowance increase will allow the residents' spending power to maintain an equilibrium with the cost of living.

Economic Impact

Recipients of the increased personal needs allowance will benefit by having their spending power, for use in purchasing incidentals, keep pace with increases in cost of living. There will be no negative impact on facility owners or operators.

Regulatory Flexibility Analysis

This rule and the proposed amendment are required by N.J.S.A. 44:7-87. The rule affects small businesses, in that a number of the residential health care facilities and boarding homes are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, it is not appropriate to exclude any small business from the compliance requirements of the rule, or to lessen the compliance requirements for small businesses, since to do so would penalize the residents of such facilities and boarding homes. There is a statutory entitlement to the personal needs allowance, and to adjustments made in favor of residents.

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

10:123-3.2 Amount

The owner or operator of each residential health care facility or boarding home shall reserve to each Supplemental Security Income recipient residing therein, and the owner or operator of each residential health care facility shall reserve to each General Public Assistance

recipient residing therein, a personal needs allowance in the amount of at least [\$55.00] **\$57.00** per month. No owner or operator or agency thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance.

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(b)

ELECTION LAW ENFORCEMENT COMMISSION

Public Financing of Primary Election for Governor, Political Communications of All Candidates

Adopted Emergency New Rules and Concurrent Proposed New Rules: N.J.A.C. 19:25-16.37, 16.38, 16.39, 16.40, 16.41, 16.42, 16.43, 16.44, 16.45, 16.46 and 16.47

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 19:25-16.3, 16.6, 16.7, 16.8, 16.9, 16.10, 16.11, 16.12, 16.14, 16.18 and 16.22

Adopted Emergency Recodifications and Amendments and Concurrent Proposed Recodifications and Amendments: N.J.A.C. 19:25-16.30, 16.32 and 16.34

Emergency New Rules, Amendments, and Recodifications and Amendments Adopted and Concurrent Proposal Authorized: March 1, 1989 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.
Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): March 3, 1989.

Emergency New Rules, Amendments, and Recodifications and Amendments Filed: March 6, 1989 as R.1989 d.181.

Authority: N.J.S.A. 19:44A-38 and P.L. 1989 c.4, specifically section 12.

Emergency New Rules, Amendments, and Recodifications and Amendments Effective Date: March 6, 1989.

Emergency New Rules, Amendments, and Recodifications and Amendments Expiration Date: May 5, 1989.

Concurrent Proposal Number: PRN 1989-178.

Public hearings concerning the concurrent proposal will be held on:

March 21, 1989 at 10:00 A.M., and on
April 18, 1989 at 10:00 A.M.
Election Law Enforcement Commission
28 West State Street, 12th Floor
Trenton, New Jersey

Submit written comments by April 19, 1989 to:

Nedda Gold Massar, Esq.
Election Law Enforcement Commission
National State Bank Building, 12th Floor
CN-185
Trenton, New Jersey 08625-0185

The new rules, amendments, and recodifications and amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency new rules, amendments, and recodifications and amendments are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted new rules, amendments, and recodifica-

EMERGENCY ADOPTIONS

tions and amendments become effective upon acceptance of the notice of adoption for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)).

The agency emergency adoption and concurrent proposal follows:

Summary and Statement of Imminent Peril

On January 21, 1989, substantial changes were enacted to the Gubernatorial Public Financing provisions of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., (hereafter, the Act) with the approval by Governor Thomas H. Kean of P.L. 1989, c.4. The New Jersey Election Law Enforcement Commission (hereafter, "the Commission" or "ELEC") proposes new rules and amendments to existing rules concerning the public financing of candidates for nomination in the primary election for Governor in order to implement these changes in the law, which create immediate regulatory responsibilities for the Commission. Emergency amendments to existing rules are necessary to reflect the revised thresholds and limits which are contained in the new law, and emergency new rules are necessary to implement the newly-created requirements of the Act.

The Commission perceives imminent peril to the public welfare if it were to begin distribution to candidates of the anticipated millions of dollars of public moneys without rules in place to clarify and regulate that process. All potential candidates must be informed without delay of the changed prerequisites to participation in public financing. Under prior law, a candidate did not have to qualify for receipt of public funds by any fixed date. The new public financing provisions require that a candidate must be qualified to receive public matching funds by the primary election petition filing deadline, April 13, 1989. This significant departure from prior law requires emergent treatment in rules prior to April 13, 1989 to ensure that no qualified candidates are excluded from participation in public financing.

The Commission believes that the debate participation requirements created in the new sections of the public financing law also necessitate emergency promulgation of rules. The debate sponsor selection process, as well as candidate participation and resolution of disputed participation issues, would be imperiled by the absence of rules regulating these completely new requirements. For example, March 15, 1989 has been established as the deadline for applications to the Commission by private organizations wishing to sponsor the newly-mandated gubernatorial interactive primary election debates. It is therefore essential that rules exist prior to that imminent date to direct and insure the uniformity and integrity of the sponsor application and selection process.

Among the changes are:

1. Amendments of pertinent sections of subchapter 16 to implement an increase of the contribution limit from \$800.00 to \$1,500, an increase in the candidate threshold to qualify for receipt of public matching funds from \$50,000 to \$150,000 of eligible contributions deposited and expended, an increase in the primary election expenditure limit to \$2.2 million, and an increase in the maximum public funds allowable to a primary election candidate to \$1.35 million.

2. A new subsection (j) has been added to N.J.A.C. 19:25-16.18, Matching of funds, to implement the requirement that each submission for public matching funds submitted by a candidate contain a minimum of \$12,500 of contributions eligible for match.

3. N.J.A.C. 19:25-16.7, Candidates deemed non-participating; effect, has been amended to state that failure of a gubernatorial candidate to apply for or to prove qualification to apply for public funds by the petition filing deadline precludes that candidate from receipt of public funds in the pending primary election. N.J.A.C. 19:25-16.18(a), Matching of funds, has been amended to specify the actions which a candidate must complete by the primary election petition filing deadline in order to qualify for receipt of public funds. The actions include signing a statement of agreement to participate in required debates, and either qualifying for receipt of public funds or providing proof of qualification to receive public funds by the petition filing deadline. Proposed new rule N.J.A.C. 19:25-16.37, Candidate statement of qualification to participate in public financing, describes the report of \$150,000 of contributions received and expenditures made which must be filed by a candidate no later than the petition filing deadline if that candidate intends to apply for public funds after the petition deadline. Proposed new rule N.J.A.C. 19:25-16.38, Statement of candidates electing to participate in debates, describes the prerequisites which must be met by a non-publicly financed candidate who wishes to qualify to participate in the primary election debates. A nonparticipating candidate must notify the Commission by the petition

filing deadline of the intent to participate in the debates and must file a report containing evidence that \$150,000 in contributions has been received and expended.

4. Existing N.J.A.C. 19:25-16.3, Definitions for this subchapter, has been amended to expand the definition of "qualified candidate" to include the new debate participation requirement and to reflect the deadline for notifying the Commission of intent to participate in public financing. Obligations of the candidates and private organizations sponsoring debates are clarified by three completely new definitions which have been added. "Debate sponsor" and "interactive primary election debate" attempt to provide uniformity in describing the new debate requirement. "Statement of agreement" describes the agreement to debate, which must be signed by a candidate who wishes to receive public matching funds.

5. Proposed new rule N.J.A.C. 19:25-16.39, Application to sponsor debate, lists and clarifies the newly enacted statutory criteria for debate sponsor applicants and requires written applications to be filed by March 15 by private organizations seeking to be considered by the Commission to sponsor one or more of the primary election debates. Proposed new rule N.J.A.C. 19:25-16.40, Selection of debate sponsor, reiterates the statutory deadline for Commission selection of debate sponsors and explains the Commission's authority to assign debate responsibilities. In proposed new rule N.J.A.C. 19:25-16.41, Dates, times, and location of debates, the Commission requires debate sponsors to provide written notice of debate details and schedules and to agree not to endorse candidates in the pending election. At subsection (b), the new statutory primary election debate time constraints are repeated with provisions at subsection (c) for postponement of the second debate upon vote of the majority of participating candidates. At subsections (d) and (e), the Commission retains the power to review sponsors' debate calendars to ensure that no scheduling conflicts occur and to require new debate schedules should there be a conflict in date or time. In proposed new rule N.J.A.C. 19:25-16.42, Rules for conduct of debate, the statutory one hour debate length is repeated and procedures are outlined for debate sponsors to promulgate and circulate rules to the chairpersons of the Republican State Committee and the Democratic State Committee for consultation. Provision is made for distribution of any changes made to the rules.

6. Proposed new rules N.J.A.C. 19:25-16.43, 16.44, 16.45, 16.46, and 16.47 explain the process for the filing and handling of a complaint alleging failure of a primary election candidate to participate in a required debate. In proposed new rule N.J.A.C. 19:25-16.43, Complaint alleging failure to participate in debate, the contents and service requirements for a complaint alleging failure to participate in a primary election debate are described. The Commission's authority to hear complaints for failure to participate in a debate or debates is described in proposed new rule N.J.A.C. 19:25-16.44, Temporary cessation of distribution of public funds. This new section requires that the Commission cease the review and certification of any pending public fund applications if it is determined that reasonable cause exists to believe that a candidate may have failed to participate in a required debate. Proposed new rule N.J.A.C. 19:25-16.45, Response to a complaint for failure to participate in a debate or debates, lists the time in which a complaint for failure to participate must be answered and describes the required contents of the response. Service requirements are also listed. A proposed new rule, N.J.A.C. 19:25-16.46, Conduct of the hearing, outlines the procedures and rules of evidence which will apply in any hearing for failure to participate in any debate. Representation of participants is described at subsection (a) and the Uniform Administrative Procedure rules at N.J.A.C. 1:1, are adopted by the Commission at subsection (b). Additional rules governing the hearing are set out in subsections (c) through (f). Proposed new rule N.J.A.C. 19:25-16.47, Final decision of nonparticipation, explains at subsections (a) and (b) the process by which the Commission renders a decision of nonparticipation and notifies the participants of its decision. At new subsections (c) and (d), the penalty process of candidate repayment to ELEC of public monies already distributed is explained.

Social Impact

The Commission believes that the social impact of the proposed amendments and new rules is beneficial. They communicate the recently-enacted statutory changes to the public financing provisions of the Campaign Contributions and Expenditures Reporting Act (hereafter, the Act) which will promote candidate participation in the program. The proposed rules and amendments implement the new debate provisions of the Act which require a publicly-financed candidate to participate in two primary election debates as a condition of receipt of public funds. The public will be served by this provision which encourages discussion among can-

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didates. The emergency adoption of these rules and amendments provides certainty in the process of debate sponsor selection and in resolution of debate participation issues by the Commission.

Economic Impact

The Commission perceives that the economic impact of this emergency adoption and concurrent proposed rules and amendments is minimal. Candidates and the public are informed of the new limits and thresholds in the public financing law and of the enhanced availability of public funds to qualified candidates. Public moneys are safeguarded by provisions for recapturing public funds in the event of a finding of a candidate's failure to debate. Although there may be minimal additional recordkeeping costs associated with the increased qualification and continuing submission thresholds, these will be more than offset by the greater amount of public funds available to a qualified candidate participating in public financing. A non-publicly-financed candidate who elects to participate in the primary election debates may incur minimal costs associated with preparation of a statement of qualification to debate, but preparation of such information must ultimately be required to complete campaign cycle reports.

Regulatory Flexibility Statement

The proposed new rules and amendments affect the campaign financing of gubernatorial candidates in a primary election, and as such do not affect impact or impose reporting, recordkeeping or other compliance requirements on small businesses. Therefore, a regulatory flexibility analysis is not required because this proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses.

Full text of the emergency adoption and concurrent proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

19:25-16.3 Definitions for this subchapter

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

...

"Contribution eligible for match" means contributions from one contributor to be matched from public funds on a two-for-one basis. No contribution which must be or is intended by the contributor or the recipient to be refunded or repaid at any time, no loan obtained pursuant to section 15 of P.L. 1980, c.74 (N.J.S.A. 19:44A-44), no amount of the candidate's own funds in the aggregate in excess of [\$800.00] **\$1,500**, no in-kind contribution and no other moneys received by the candidate, his or her campaign treasurer, or deputy campaign treasurer, except those contributions described in subsection (a) of section 5 of P.L. 1980, c.74 (N.J.S.A. 19:44A-29(a)), shall be deemed contributions eligible for match. Funds received by an individual who is testing the waters may be matched when the individual becomes a candidate, if such contributions meet all the requirements of the regulation.

"Debate sponsor" means the private organization or organizations to which the Commission has delegated the responsibility for conducting one or more of the televised interactive primary election debates.

...

"Interactive primary election debate" means the moderated reciprocal discussion of issues among the candidates of a political party which involves responses by the candidates to questions posed by the representative or representatives of the sponsor organization.

...

"Qualified candidate" means:

1. Any candidate for nomination for election to the office of Governor whose name appears on the primary election ballot and who has deposited and expended [\$50,000] **\$150,000** pursuant to N.J.S.A. 19:44A-32; and who, not later than the last day for filing petitions to nominate candidates to be voted upon in a primary election for a general election in which the office of Governor is to be filled, notifies the Election Law Enforcement Commission in writing that the candidate intends that application will be made on the candidate's behalf for monies for primary election campaign expenses pursuant to N.J.S.A. 19:44A-33, and signs a statement of agreement, in a form to be prescribed by the Commission, to participate in two interactive gubernatorial primary election debates; or

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2. Any candidate for nomination for election to the office of Governor whose name does not appear on the primary election ballot, but who has deposited and expended [\$50,000] **\$150,000** pursuant to N.J.S.A. 19:44A-32 and who, not later than the last day for filing petitions to nominate candidates to be voted upon in a primary election for a general election in which the office of Governor is to be filled, notifies the Election Law Enforcement Commission in writing that the candidate intends that application will be made on the candidate's behalf for monies for primary election campaign expenses pursuant to N.J.S.A. 19:44A-33, and signs a statement of agreement, in a form to be prescribed by the Commission, to participate in two interactive gubernatorial primary election debates.

"Statement of agreement" means a written declaration, by a candidate for nomination for election to the office of Governor who intends that application will be made on that candidate's behalf to receive monies for primary election campaign expenses pursuant to N.J.S.A. 19:44A-33, that the candidate undertakes to abide by the terms of any rules established by any private organization sponsoring a gubernatorial primary election debate in which the candidate is to participate. The statement of agreement shall include an acknowledgment of notice to the candidate who signs it that failure on that candidate's part to participate in any of the gubernatorial primary election debates may be cause for termination of the payment of such monies on the candidate's behalf and for the imposition of liability for the return to the Commission of such monies as may previously have been so paid.

19:25-16.6 Contribution limits; applicability

(a) Each candidate, whether or not intending to participate in public funding, and each campaign treasurer or deputy campaign treasurer of such candidate shall not knowingly accept from any person, candidate or political committee any contribution in aid of the candidacy of or in behalf of such candidate in the aggregate in excess of [\$800.00] **\$1,500** in any primary election.

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

19:25-16.7 Candidates deemed non-participating; effect

[(a)] Any candidate who does not **by the last day for filing petitions to nominate candidates to be voted upon in a primary election for governor** make application for public funding in a primary election pursuant to N.J.A.C. 19:25-16.18 (Matching of funds) shall be deemed non-participating in public funding of that primary election **and shall not receive public funds on behalf of his or her campaign.**

[(b)] Any candidate deemed non-participating pursuant to this section shall not receive public funds on behalf of his or her campaign for any contribution received during the period of time he or she was deemed non-participating unless the candidate was in compliance with these regulations including all of the limitations contained in N.J.A.C. 19:25-16.9 (Limitations on participating candidates) during the time the candidate was deemed non-participating and thereafter.]

19:25-16.8 Non-participating candidates; generally

(a) A non-participating candidate is subject to the [\$800.00] **\$1,500** limitation on contributions from a person or political committee, pursuant to section 5 of P.L. 1980, c.74 (N.J.S.A. 19:44A-29).

(b) A non-participating candidate is subject to the [\$800.00] **\$1,500** limit on guarantors of bank loans, except if the guarantor is the non-participating candidate himself or herself.

(c) (No change.)

19:25-16.9 Limitations on participating candidates

(a) Each candidate intending to participate in public funding, in addition to any other requirement imposed by the act (N.J.S.A. 19:44A-1 et seq.) or these regulations, is subject to the following limitations:

1.-2. (No change.)

3. The amount which any qualified candidate may spend in aid to his or her candidacy shall not exceed [\$0.35 for each voter who voted in the last preceding general election in a presidential year in New Jersey] **\$2,200,000**, which amount shall include all expenditures for testing the waters activity prior to candidacy. Such amount shall not include expenditures listed in N.J.A.C. 19:25-16.27.

4. Contributions by any candidate in excess of [\$800.00] **\$1,500** from his or her own funds in aid of his or her candidacy shall not

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be deposited in a matching fund account and shall not be calculated in determining if such candidate is a qualified candidate eligible for public matching funds.

19:25-16.10 Who may or may not contribute; generally

(a) No person or political committee, other than a candidate contributing his or her own funds to his or her campaign, shall make any contribution to any candidate, the candidate's campaign treasurer or deputy campaign treasurer, or to any other person or committee, in aid of the candidacy of or in behalf of a candidate, whether or not participating in public funding, for nomination for election to the office of Governor in a primary election, in the aggregate in excess of [\$800.00] **\$1,500**. Any such contribution in excess of [\$800.00] **\$1,500** must be promptly returned to the contributor, and evidence of the repayment shall be submitted to the [commission] **Commission**. Notwithstanding the provision of N.J.S.A. 19:44A-3(i) and N.J.A.C. 19:25-1.7 excluding "continuing political committees" from the meaning of "political committees", the term "political committee" as it appears in N.J.S.A. 19:44A-29(a) and [herein] **this subsection** shall include "continuing political committees" as defined in N.J.S.A. 19:44A-3(n)(2).

(b) (No change.)

(c) A corporation, association or labor organization or any subsidiary, affiliate, branch, division, department or local unit of any such corporation, association or labor organization shall not make any contribution to or on behalf of a candidate which, when added to any other contribution by any related or affiliated corporation, association or labor organization, exceeds [\$800.00] **\$1,500** in the aggregate. Whether such corporation, association or labor organization is related or affiliated shall depend on the circumstances existing at the time of such contribution, including, but not by way of limitation, the degree of control or common ownership with related or affiliated corporations, associations or labor organizations, the source and control of funds used for such contribution and the degree to which the decisions whether to contribute, to what candidate and in what amount are independent decisions.

19:25-16.11 Contributions eligible for match; generally

(a) (No change.)

(b) Only contributions in cash or by check, money order or negotiable instruments shall be contributions eligible for match. Loans shall not be eligible for match. In-kind contributions shall not be eligible for match, but will count toward the individual contribution limit of [\$800.00] **\$1,500** and the overall expenditure limit contained in section 2 of P.L. 1980, c.74 (N.J.S.A. 19:44A-7) except for expenses not subject to expenditure limits pursuant to N.J.A.C. 19:25-16.27. The total of all contributions eligible for match from any person or political committee shall not exceed [\$800.00] **\$1,500** in the aggregate.

(c) A maximum of [\$800.00] **\$1,500** in the aggregate of a candidate's own funds may be deposited in the matching fund account.

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

19:25-16.12 Contributions and loans prior to candidacy

(a) Each candidate, whether or not intending to participate in public funding, shall certify to the [commission] **Commission** in writing within 10 days after the date of commencement of his or her candidacy that:

1.-2. (No change.)

3. No contribution in excess of [\$800.00] **\$1,500** in the aggregate from a person or political committee had theretofore been received for pre-candidacy "testing the waters" activity; or contributions in excess of [\$800.00] **\$1,500** in the aggregate have been received for that purpose, and the amount of each contribution in excess of [\$800.00] **\$1,500** in the aggregate has been returned to the contributor. The certification shall include:

i. A list of all contributors who contributed more than [\$800.00] **\$1,500** and the dates and amounts of all such contributions; and
ii. Written evidence such as photocopy of check, showing that such excess amounts have been returned to the contributor.

(b)-(f) (No change.)

19:25-16.14 Limitation on contributions eligible for match

(a) Any contribution in the form of the purchase price paid for an item with significant intrinsic and enduring value (such as a watch) shall be eligible for match only to the extent the purchase price exceeds the fair market value of the item or benefit conferred on the contributor, and only the excess will be included in calculating the [\$800.00] **\$1,500** contribution limit.

(b) A contribution in the form of the purchase price paid for admission to a dinner or testimonial affair as defined in N.J.A.C. 19:25-1.7 shall be a contribution eligible for match and for purposes of the [\$800.00] **\$1,500** limitation.

(c) (No change.)

19:25-16.18 Matching of funds

(a) [Each candidate seeking to qualify for public funding shall so notify the commission in writing on or before January 1 immediately preceding the primary election being funded, except that a person who becomes a candidate after January 1 shall notify the commission on or before the 15th day after becoming a candidate.] **Any candidate seeking to qualify for receipt of public matching funds shall not later than the last day for filing petitions to nominate candidates to be voted upon in a primary election for Governor file with the Commission:**

1. A statement of agreement in a form prescribed by the Commission to participate in the series of two interactive gubernatorial primary election debates; and

2. Either of the following:

i. **A certified application for receipt of public matching funds pursuant to this section; or**

ii. **A statement of qualification to participate in public financing pursuant to N.J.A.C. 19:25-16.37.**

(b) (No change.)

(c) A candidate seeking to become eligible to receive matching funds shall certify to the [commission] **Commission** in a written statement signed by the candidate that he or she is a candidate for Governor in a primary election and that he or she has received and deposited into his or her matching fund account contributions eligible for match of at least [\$50,000] **\$150,000** from persons or political committees each of whose contributions in the aggregate do not exceed [\$800.00] **\$1,500**, and that at least [\$50,000] **\$150,000** of such contributions [have] **has** been expended. "Expended" for this purpose shall mean disbursed or irrevocably committed by a legally binding commitment for expenditure in the campaign and ultimately disbursed.

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

(g) The initial certification shall include two photocopies of checks receipted bills, contracts or the like, as proof of the expenditure of at least [\$50,000] **150,000**.

(h)-(i) (No change.)

(j) Each submission for public matching fund payments following the date on which a candidate is determined to be a qualified candidate shall contain no less than \$12,500 of contributions eligible for match. Upon determination by the Commission that each submission contains no less than \$12,500 of contributions eligible for match, public matching funds will be awarded based upon the total amount of contributions determined to be eligible for match.

19:15-16.22 Receipt of public funds; limitation

(a) (No change.)

(b) The maximum amount which any qualified candidate may receive from public funds shall not exceed \$0.20 for each voter who voted in New Jersey in the last preceding general election in a presidential year] **\$1,350,000**.

19:25-16.30 (Reserved)

[19:25-16.30]19:25-16.31 Borrowing of funds; repayment

Any candidate, his or her campaign treasurer or deputy campaign treasurer may borrow funds from any national or State bank, provided that no person or political committee other than the candidate may in any way endorse or guarantee such loan in the aggregate in excess of the [\$800.00] **\$1,500** contribution limit. Except for a non-participating candidate guaranteeing a loan to his or her

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campaign, the amount so borrowed shall not at any one time in the aggregate exceed \$50,000 and must be repaid in full by such candidate or his or her campaign treasurer or deputy campaign treasurer from moneys accepted or allocated pursuant to section 5 of P.L. 1980, c. 74 (N.J.S.A. 19:44A-29) not later than 20 days prior to the primary election. Certification of such repayment shall be made by the borrower to the [commission] Commission not later than 15 days prior to the date of primary election. In the event of the failure of the borrower to repay timely the full amount of the loan or to certify properly such repayment to the [commission] Commission, all payment of public funds to such candidate shall promptly cease and the [commission] Commission shall take action as directed by the act to prohibit the expenditure by the candidate of moneys received from the fund and any other moneys received by him or her in aid of his or her candidacy in such primary election.

[19:25-16.31] **19:25-16.32** (No change in text.)

[19:25-16.32] **19:25-16.33** Post-election contributions; post-election payment of expenses

(a) Any person or political committee otherwise eligible to make political contributions to a candidate may make a contribution in aid of the candidacy of such candidate after the date of such primary provided such person or political committee does not exceed [\$800.00] **\$1,500** in the aggregate for such primary.

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

[19:25-16.33] **19:25-16.34** (No change in text.)

[19:25-16.34] **19:25-16.35** Computation of value of goods and services

(a) Goods and services shall, for purposes of the reports required to be filed under the act and for purposes of the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7) where applicable, be valued by the reasonable commercial value of such goods and services to the candidate, whether or not the cost or value of such goods or services to the contributor or other provider of those services is higher or lower than such reasonable commercial value.

1. Example 1: Candidate Y, a candidate for the office of Governor who has chosen to accept public funding, obtains the use of a helicopter for travel of the candidate for campaign purposes. By agreement with the owner of the helicopter, the campaign committee for the candidate will pay \$500.00 per day, which represents the cost to the owner of the maintenance and operation of the helicopter. The reasonable commercial value of the use of the helicopter is [\$900.00] **\$1,000** per day. In this example, the amount of \$500.00 paid by the campaign committee of the candidate to the owner for use of the helicopter is not includable as an expenditure for purposes of the expenditure limitations contained in section 7 of the act (N.J.S.A. 19:44A-7). The difference between the \$500.00 actually paid for use of the helicopter and the reasonable commercial value normally charged by the owner for the use of the helicopter, represents a contribution from the owner of the helicopter to the candidate in the amount of [\$400.00] **\$500.00**. The candidate could obtain the use of the helicopter under this arrangement from a lawful contributor for campaign purposes for not more than [two] **three** days. If the candidate obtained the use of the helicopter for [three] **four** days under this arrangement, the owner of the helicopter would have made an unlawful contribution to the candidacy of the candidate, since the aggregate of the contributions [(\$1,200)] **(\$2,000)** from that contributor in this instance would have exceeded [\$800.00] **\$1,500**.

2. Example 2. Candidate Y in example 1, wishes to obtain the use of the helicopter from the owner for three days, and the campaign committee for the candidate pays to the owner the reasonable commercial value of [\$900.00] **\$1,000** for each day, or a total of [\$2,700] **\$3,000**. The amount paid to the owner is not an expenditure within the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7). On these facts the owner has made no contribution to the candidate.

3. In example 1 and example 2, the total amounts of expenditures, including expenditures not subject to the expenditures limitation of section 7 of the act (N.J.S.A. 19:44A-7), must be reported in the preelection and post-election report filed on behalf of the candidate.

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[19:25-16.35] **19:25-16.36** (No change in text.)

19:25-16.37 Candidate statement of qualification before participation in public financing

(a) A candidate who intends to apply to the Commission for public matching funds on a date later than the last day for filing petitions to nominate candidates to be voted upon in a primary election for the office of Governor must on or before the last day for filing petitions to nominate candidates in a primary election for Governor file:

1. A certified statement of qualification containing evidence that \$150,000 has been deposited and expended pursuant to N.J.S.A. 19:44A-32 for gubernatorial primary election campaign expenses. Evidence that \$150,000 has been deposited and expended shall be filed with the Commission on the last day for filing petitions in the primary election to nominate candidates for the office of Governor and in a form to be prescribed by the Commission.

2. Each contribution submitted in the report required by (a)1 above as evidence that \$150,000 in contributions has been deposited must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of receipt of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order for, or specially endorsed without qualification to, the candidate or to his or her campaign committee, if such check, money order or instrument contains all of the foregoing information.

3. Each disbursement submitted in the report required by (a)1 above as evidence that \$150,000 has been expended for primary election expenses shall include two photocopies of checks, receipted bills, contracts, or similar documents as evidence of the expenditure of at least \$150,000.

(b) The reports filed pursuant to (a) above to establish qualification shall not be available for public inspection.

(c) Any report required to be filed pursuant to (a) above cannot be handwritten.

19:25-16.38 Statement of candidates electing to participate in debates

(a) A candidate who has not by the last day for filing petitions to nominate candidates to be voted upon in a primary election applied to the Commission for public matching funds may elect to participate in the series of interactive gubernatorial primary election debates by:

1. Notifying the Commission in writing no later than the last day for filing petitions in the primary election to nominate candidates for the office of Governor of his or her intent to participate in the series of gubernatorial primary election debates; and

2. Filing a statement of qualification containing evidence that \$150,000 has been deposited and expended pursuant to N.J.S.A. 19:44-32 for gubernatorial primary election expenses. The statement of qualification shall contain the same information as that required at N.J.A.C. 19:25-16:37(a).

(b) The reports filed pursuant to (a) above to establish qualifications for participation in gubernatorial primary election debates shall not be available for public inspection.

(c) Any report required to be filed pursuant to (a) above cannot be handwritten.

19:25-16.39 Application to sponsor debates

(a) To be eligible for selection by the Commission to sponsor one or more of the interactive gubernatorial primary election debates, a private organization:

1. Must be unaffiliated with any political party or with any holder of or candidate for public office;

2. Must not have endorsed any candidate in the pending primary election for the office of Governor and must represent to the Commission that no such endorsement will be forthcoming; and

3. Must have previously sponsored one or more televised debates for Statewide office in New Jersey since 1976.

(b) Written applications by organizations to sponsor a gubernatorial primary election debate or debates shall be submitted to the Commission on a form provided by the Commission not later than March

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15 of any year in which a primary election is held to nominate candidates for the office of Governor. The written application shall set forth plans of the applicant for television and media coverage.

19:25-16.40 Selection of debate sponsor

(a) Based upon the criteria in N.J.A.C. 19:26-16.39(a), the Commission shall select the private organization or organizations to sponsor the gubernatorial primary election debates within 30 calendar days of the March 15 deadline for receipt of sponsor applications and shall provide written notification to the organization or organizations so selected.

(b) The Commission shall determine the number of primary election debates for which each debate sponsor organization is responsible and the party affiliation of the candidates in each debate. The Commission shall provide each debate sponsor it has selected with a list of candidates who are required to participate in the gubernatorial primary election debates or who have elected to participate.

19:25-16.41 Dates, times, and location of debates

(a) Not later than five calendar days after receipt of notification from the Commission that an organization has been selected to sponsor one or more of the gubernatorial primary election debates, each sponsoring organization shall:

1. Submit a written calendar to the Commission and to all candidates who are required to or have elected to participate in the relevant debate or debates containing the date, time, location, and plans for television and other media coverage of the debate or debates assigned to the sponsor;

2. Submit to the Commission a description of the physical facilities available at the debate site or sites for use by television, broadcast and other media personnel; and

3. Submit a written statement to the Commission agreeing not to endorse any candidate for nomination in the pending primary election.

(b) The debate date or dates selected by each sponsoring organization in the written calendar required in (a) above shall be no earlier than the date upon which the ballot for the pending primary election is finally certified by the Secretary of State to the county clerks and no later than the 11th day prior to the pending primary election.

(c) Upon the vote of a majority of the candidates participating in the second in the series of primary election debates that an emergency condition exists requiring postponement of that debate, the debate sponsor shall:

1. Reschedule the second debate to occur no later than the second calendar day preceding the primary election; and

2. Take whatever actions are necessary to notify all participating candidates and the Commission of the date, time, and location of the rescheduled debate.

- i. Actions to notify the participating candidates and the Commission of the rescheduled debate shall include, but not be limited to, telephone contact and first class mail, return receipt requested.

(d) The Commission shall review and approve the debate calendars submitted by the debate sponsoring organizations pursuant to (a) above prior to the occurrence of any primary election debate and shall create a master debate calendar which ensures compliance with the date requirements of (b) above and ensures that no two or more debates are scheduled for the same date.

(e) In the event that the Commission determines in its review pursuant to (d) above that a conflict exists in two or more scheduled debates, the Commission shall direct a debate sponsor or sponsors to submit a revised debate schedule or schedules within two calendar days containing new debate dates and times which eliminate the conflict.

19:25-16.42 Rules for conduct of debates

(a) Each debate in the series of interactive debates between or among candidates for nomination for the office of Governor shall be of at least one hour's duration.

(b) Promulgation of the rules for the conduct of each debate shall be the responsibility of the private organization selected by the Commission as the sponsor of each debate and such rules shall not be made final without consultation with the chairpersons of the New Jersey Republican and Democratic State Committees.

(c) Immediately upon notification of its selection as a sponsor and no later than five calendar days before each debate is to occur, the sponsor shall forward the written rules for conduct of the interactive primary election debate to the chairpersons of the New Jersey Republican State Committee and the New Jersey Democratic State Committee, to the Commission, and to the relevant candidates who are required to or have elected to participate in the debate.

(d) The candidates participating in the debate and the Commission shall be notified by the sponsor in writing of any modifications or changes to the rules for conduct of a debate no later than two calendar days before the debate is scheduled to occur.

19:25-16.43 Complaint alleging failure to participate in debate

(a) Any complaint filed with the Commission alleging failure of a primary election candidate to participate in a required debate shall:

1. Be in writing and be verified; and
2. Contain a detailed statement alleging with specificity all facts known to the complainant pertinent to the allegation of failure to participate in a debate.

(b) Service of a complaint alleging failure to participate in a primary election debate shall be made by the complainant in person or by certified mail, return receipt requested upon the respondent candidate, the Commission, the debate sponsor, and any person named in the complaint.

19:25-16.44 Temporary cessation of distribution of public funds

(a) Upon receipt by the Commission of a verified complaint alleging failure to participate in a debate, the Commission shall meet as soon as practicable to determine whether there is reasonable cause to believe the respondent candidate may have failed to participate as required in a primary election debate.

(b) If it is determined by majority vote of the Commission that there is reasonable cause to believe that a candidate may have failed to participate in a debate as required, the Commission shall:

1. Cease the review and certification of any public fund amounts which have been requested by the respondent candidate from the Commission and which have not previously been approved; and

2. Schedule a hearing before it on the complaint to determine whether the respondent candidate has failed to participate in a debate as alleged.

(c) The Commission shall as soon as practicable notify the respondent candidate in writing of the actions it has taken pursuant to (b) above.

19:25-16.45 Response to a complaint for failure to participate in a debate or debates

(a) Within five calendar days of service of the complaint upon the respondent candidate, he or she shall respond to the complaint in a written, verified answer which:

1. Admits or denies each of the factual allegations contained in the complaint; and

2. Sets forth any affirmative defenses to the allegations contained in the complaint including all facts known to the respondent candidate pertinent to any such affirmative defense.

3. Justification and excuse shall be deemed to be affirmative defenses for the purposes of this subsection.

(b) Service of an answer shall be made by the respondent candidate in person or by certified mail, return receipt requested, upon the complainant, the Commission, the debate sponsor, and any person named in the complaint or response.

19:25-16.46 Conduct of the hearing

(a) The complainant and the respondent candidate shall appear at the hearing. Other interested persons may appear as permitted by N.J.A.C. 1:1-16 and may be represented as permitted by N.J.A.C. 1:1-5.

(b) The hearing shall be governed by the New Jersey Uniform Administrative Procedure Rules, (N.J.A.C. 1:1).

(c) The complainant shall have the burden of proving non-participation by a preponderance of the credible evidence, and the respondent candidate charged with the failure to participate in a debate shall have the burden of proving justification or excuse by a preponderance of the credible evidence.

OTHER AGENCIES

(d) At the request of the complainant or respondent candidate, subpoenas shall be issued to compel the attendance of witnesses to testify at the hearing held to determine a candidate's failure to participate in a debate.

(e) The Commission may refer the matter for hearing to the Office of Administrative Law as a contested case pursuant to the provisions of the New Jersey Uniform Administrative Procedure Rules, (N.J.A.C. 1:1).

(f) The Commission shall have the authority to assess the costs associated with a hearing held pursuant to this section against any complainant, respondent or interested person permitted to appear.

19:25-16.47 Final decision of non-participation

(a) At the conclusion of a hearing, the Commission shall determine by majority vote:

1. Whether a candidate required to participate in a primary election debate has failed to do so;

2. Whether the failure to participate occurred under circumstances which were beyond the control of the candidate and of such a nature that a reasonable person would find the failure justifiable or excusable; and

EMERGENCY ADOPTIONS

(b) The Commission shall serve its written decision upon the participants or upon their legal representatives as soon as practicable.

(c) If it is determined by the Commission that the respondent candidate failed to participate in a primary election debate without reasonable justification or excuse, the Commission shall:

1. Calculate the total amount of public moneys distributed by the Commission pursuant to N.J.S.A. 19:44A-33 to the respondent candidate for campaign expenses;

2. Notify the respondent candidate and campaign treasurer in writing of the total dollar amount of the liability of the campaign for repayment and of the interest due upon the amount at the rate of one per cent for each month or fractional part of a month during which the liability remains unpaid; and

3. Cease certification of any further public fund amounts to the candidate.

(d) Within 10 calendar days of receipt of notification of the amount of repayment required to the Commission, the respondent candidate and his or her campaign shall submit to the Commission a written schedule for repayment of public funds which specifies dates and amount of repayment installments.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE Notice of Extension of Commercial Shooting Preserve Season

Authority: N.J.S.A. 23:3-32.

Take notice that the Commissioner, Department of Environmental Protection, hereby extends the commercial shooting preserve season from March 15, 1989 to April 15, 1989, upon the recommendation of the Director of the Division of Fish, Game and Wildlife, pursuant to statutory authority granted at N.J.S.A. 23:3-32.

This Notice shall take effect immediately.

(b)

DIVISION OF ENVIRONMENTAL QUALITY Notice of Petition for Rulemaking N.J.A.C. 7:27-18

Petitioner: Richard E. Shapiro, Director, Department of the Public Advocate.

Take notice that on February 2, 1989, the Department of Environmental Protection (the Department) received a petition for rulemaking concerning N.J.A.C. 7:27-18, the Department's rules on the control and prohibition of air pollution from new or altered sources affecting ambient air quality (emission offset rules).

Petitioner requests that the Department (1) amend the definition of "significant emission increase" contained in N.J.A.C. 7:27-18.1 to incorporate threshold levels from the Federal regulations promulgated under the Clean Air Act which appear at 40 C.F.R. 51.165(a); and (2) eliminate the emission offset postponement rule which appears at N.J.A.C. 7:27-18.5.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

(c)

DIVISION OF WATER RESOURCES Amendment to the Mercer County Water Quality Management Plan Public Notice

Take notice that Hopewell Township has petitioned Mercer County to amend the Mercer County Water Quality Management (WQM) Plan. This amendment would adopt a Wastewater Management Plan (WMP) for Hopewell Township. The WMP would alter the Stony Brook Regional Sewerage Authority (SBRSA) sewer service area. The Princeton Farms Sewage Treatment Plant (STP) will be converted to a pump station with flows conveyed to the SBRSA Hopewell STP. The remainder of the Township will be served by individual subsurface sewage disposal systems.

This notice is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Mercer County Planning Division, County Administration Building, Room 412, 640 South Broad Street, P.O. Box 8068, Trenton, New Jersey 08650; and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

The Mercer County Planning Board will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, April 12, 1989 at 8:30 A.M. in Room 211 of the Mercer County Administration Building.

Interested persons may submit written comments on the amendment to the Secretary, Mercer County Planning Board at the address cited above; and to George Horzempa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted by April 27, 1989. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Planning Board and the County Executive with respect to this amendment request. In addition, if the amendment is adopted by Mercer County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Mercer County and the NJDEP thereafter may approve and adopt this amendment without further notice.

(d)

DIVISION OF ENVIRONMENTAL QUALITY Notice of Public Hearings New Jersey Radiological Emergency Response Plan

Take notice that, pursuant to the "Radiation Accident Response Act" N.J.S.A. 26:2D-43 et seq., the Department of Environmental Protection, in cooperation with the Division of State Police, will hold **public hearings** to determine the adequacy and effectiveness of the New Jersey Radiological Emergency Response Plan (RERP). The hearings will be held on the following dates, at the following locations:

Tuesday, April 4, 1989 from 7:00 P.M. to 9:30 P.M.

Fire Training Center

Cemetery Road

Mannington Township, New Jersey

Wednesday, April 12, 1989 from 7:00 P.M. to 9:30 P.M.

Greenwich Fire Department

2nd Floor Meeting Room

Ye Great Street

Greenwich, New Jersey

Tuesday, April 18, 1989 from 7:00 P.M. to 9:30 P.M.

Ocean County Administrative Building

Room 119

101 Hooper Avenue

Toms River, New Jersey

In addition to accepting public comments, the following speakers will appear at the hearings: the Director of the Office of Emergency Management, Division of State Police, and the Chief, Bureau of Nuclear Engineering, Department of Environmental Protection.

Copies of the New Jersey RERP are available at the following locations: the Office of Emergency Management, State Police Headquarters, West Trenton, New Jersey; the Salem County Emergency Management Office, Cemetery Road, Mannington Township, New Jersey; the Cumberland County Office of Emergency Management, Bridgeton Ave., Bridgeton, New Jersey; and the Ocean County Office of Emergency Management, Robert J. Miller Air Park, Route 530, Berkeley Township, New Jersey.

For additional information, contact:

Department of Environmental Protection

c/o Maryanne Quinn, Emergency Preparedness

Bureau of Nuclear Engineering

CN 415

Princeton, New Jersey 08540

Telephone: (609) 987-2036

ENVIRONMENTAL PROTECTION

PUBLIC NOTICES

(a)

NEW JERSEY CLEAN AIR COUNCIL

**Notice of Public Hearing
Risk Assessment—The Future of Environmental
Quality?**

Take notice that the New Jersey Clean Air Council pursuant to the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., will hold a public hearing entitled "Risk Assessment—The Future of Environmental Quality?" The public hearing will be held on:

Monday, April 17, 1989 at 8:30 A.M.
Centennial Room
Newark Public Library
5 Washington Street
Newark, New Jersey

The objective of the Clean Air Council is to obtain information regarding the current status of risk assessment, whether it is appropriate to use risk assessment in formulating environmental legislation and regulation, and if so, how risk assessment should be properly used in the environmental legislative and regulatory processes.

Persons wishing to make oral presentations are asked to reserve a 15 minute time period by telephoning or writing to:

Mrs. Helen Benedetti
New Jersey Department of Environmental Protection
Division of Environmental Quality
CN027
401 East State Street
Trenton, New Jersey 08625
609-292-6704

Presenters should bring 15 copies of their remarks to the hearing for use by the Council members, the hearing transcriber, and the press. The hearing record will be held open for 15 days following the date of the public hearing so that additional written testimony can be received. **Submit written comments** by May 2, 1989 to:

John D. Grant, Chairman
New Jersey Clean Air Council
c/o New Jersey Department of Environmental Protection
Division of Environmental Quality
CN027
401 East State Street
Trenton, New Jersey 08625

The Clean Air Council wants to explore the following questions at the hearing:

1. What do you mean by the term Risk Assessment?
2. What do you believe to be the generally accepted meaning of Risk Assessment?
3. What human and/or animal data is available to determine risks?
4. What are the limitations of available data? What is the quality of the data? How can it be used?
5. What are currently accepted risk assessment methods?
6. What should be the goal(s) of risk assessment?
7. Should there be environmental legislation and regulation which would prioritize environmental risks, determine the level of control required, and allocate limited resources associated with risk assessment?
8. How should regulatory risk assessment methods and data be defined by legislation and regulation?
9. Through what process should risk assessment be used?
10. What is a legitimate measure of risk and what is a legitimate risk goal, that is, zero vs. de minimis vs. "acceptable", societal, scientific, voluntary vs. involuntary?
11. What is the difference between risk assessment and risk management?
12. Can risk management be implemented without first completing a risk assessment? How should risk assessment be prepared for use as a risk management tool?
13. Risk assessment is very detailed, subjective and technical. How do we reduce it to language and terminology anyone can understand?
14. Traditional environmental policy—both legislative and regulatory—have assumed that emissions and exposure are the same. This has resulted in controlling emissions to reduce or eliminate exposure.

Emissions do not necessarily result in exposure. How can risk assessment be used to improve the regulatory process—that is, to develop different controls for those emissions which will result in exposure vs. those which will not result in exposure?

HEALTH

(b)

DIVISION OF EPIDEMIOLOGY

Availability of Grants

Cardiovascular Disease Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987, c.7), the Department of Health hereby publishes notice of the availability of the following grant:

NAME OF GRANT PROGRAM: Cardiovascular Disease Program, Grant Program No. 90-66-HYP.

PURPOSE FOR WHICH THE GRANT PROGRAM FUNDS WILL BE USED: To provide blood pressure and capillary cholesterol screening; multiple risk factor assessment including smoking, one-to-one counseling, referral, and follow-up; and public, patient and provider education services in selected high need populations.

AMOUNT OF MONEY IN THE GRANT PROGRAM: The availability of funds for this program is contingent upon appropriation of funds to the Department. Contact the person identified below to determine whether the funds have been awarded and to receive further information.

GROUP OR ENTITIES WHICH MAY APPLY FOR THE GRANT PROGRAM: Local government agencies, State agencies, non-profit agencies, hospitals, universities, HMOs, and Primary Care Centers.

QUALIFICATIONS NEEDED BY AN APPLICANT TO BE CONSIDERED FOR THE GRANT: Demonstrated ability to provide services and to organize and collaborate with other community agencies.

PROCEDURES FOR ELIGIBLE ENTITIES TO APPLY FOR GRANT FUNDS: Submit a completed New Jersey State Department of Health application for Health Services Grant.

FOR INFORMATION CONTACT:

Ms. Phyllis F. Dower, MPH, Coordinator
Cardiovascular Disease Program
Division of Epidemiology and Disease Control
NJ Department of Health
CN 369
Trenton, N.J. 08625
(609) 588-7479

DEADLINE BY WHICH APPLICATIONS MUST BE SUBMITTED: May 1, 1989.

DATE BY WHICH APPLICANTS SHALL BE NOTIFIED WHETHER THEY WILL RECEIVE FUNDS: December 1, 1989.

(c)

DIVISION OF EPIDEMIOLOGY

Availability of Grants

Sexually Transmitted Disease Control—Training

Take notice that, in compliance with P.L. 1987, c.7, the Department of Health hereby publishes notice of the availability of the following grant:

NAME OF GRANT PROGRAM: Sexually Transmitted Disease Control—Training, Grant Program No. 90-67-STD.

PURPOSE FOR WHICH THE GRANT PROGRAM FUNDS WILL BE USED: To operate a national Sexually Transmitted Disease (STD) Prevention/Training Center.

AMOUNT OF MONEY IN THE GRANT PROGRAM: The availability of funds for this program is contingent on appropriation of funds to the department. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

GROUP OR ENTITIES WHICH MAY APPLY FOR THE GRANT PROGRAM: Applications are accepted from STD clinics, medical schools or teaching hospitals affiliated with a medical school.

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QUALIFICATIONS NEEDED BY AN APPLICANT TO BE CONSIDERED FOR THE GRANT: The agency must have an STD clinic which records at least 50 patient visits per day and utilizes a nurse clinician model of health care delivery. The medical school or affiliated teaching hospital must be accredited and be able to schedule lecturers in the Newark/New York area.

PROCEDURES FOR ELIGIBLE ENTITIES TO APPLY FOR GRANT FUNDS: Complete and submit a New Jersey State Department of Health application for a Health Service Grant.

FOR INFORMATION CONTACT:

Assistant Director, Communicable Disease Control Services
New Jersey State Department of Health
CN 369
Trenton, New Jersey 08625-0369
(609) 588-7526

DEADLINE BY WHICH APPLICATIONS MUST BE SUBMITTED: November 1, 1989.

DATE BY WHICH APPLICANT SHALL BE NOTIFIED WHETHER THEY WILL RECEIVE FUNDS: December 15, 1989.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Petition for Rulemaking

Licensing Standards for Home Health Agencies Testing and Certification of Homemaker/Home Health Aides

N.J.A.C. 8:42-7.8

Petitioner: Kenneth Dolan, Executive Director, Home Care Council of New Jersey; John Paul Marosy, President, Home Health Assembly of New Jersey; Jean Alan, President, Home Health Services and Staffing Association (Joint Petition)

Authority: N.J.S.A. 26:2H-5 and N.J.A.C. 8:42-1.1 et seq.

Take notice that on January 26, 1989, the Department of Health received a petition for rulemaking, signed jointly by Kenneth Dolan, Executive Director, Home Care Council of New Jersey; John Paul Marosy, President, Home Health Assembly of New Jersey; and Jean Alan, President, Home Health Services and Staffing Association. The petition asks the Department to undertake a rulemaking proceeding so that there can be public review and comment on the testing and certification process for homemaker/home health aides in New Jersey. The petition indicates that the rulemaking proceeding is important to provide information about what tests are proposed, where tests have been used previously and the results of previous tests. The petition states that only through the rulemaking process can the most workable regulations be developed for homemaker/home health aide training and certification.

A rule already exists requiring certification of homemaker/home health aides who are employed by licensed home health agencies, N.J.A.C. 8:42-7.8. This rule provides that such aides "shall have completed a training program approved by the Department, shall be certified by the Department, and while providing direct patient services shall have with him or her an identification card issued annually by the Department," N.J.A.C. 8:42-7.8(a)1. This training and certification program has been expressly required by rule for the purpose of ensuring a basic degree of competence for homemaker/home health aides employed by licensed home health agencies to assist in delivering health care in the home.

Because of the apparent misunderstandings about changes in the training and certification program, the Department is giving the petition very careful consideration. In accordance with N.J.A.C. 1:30-3.6, the results of this consideration shall be provided to the petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.

HUMAN SERVICES

HUMAN SERVICES

(b)

OFFICE OF THE COMMISSIONER

Public Notice

Keys Amendment Certification

Take notice that the Keys Amendment to the Federal Social Security Act (45 CFR 1397) requires an annual certification by states that there are standards in facilities where significant numbers of Supplemental Security Income (SSI) recipients reside. The publication of a summary of these standards is also required.

Three State departments have licensing and enforcement authority for facilities housing significant numbers of SSI residents in New Jersey, the Departments of Community Affairs, Health, and Human Services. Each department maintains standards and enforces its own rules.

Within the Department of Human Services, three divisions license or otherwise regulate facilities housing significant number of SSI recipients. The Division of Developmental Disabilities licenses group homes, family care homes, skill development homes and supervised apartment programs for persons with developmental disabilities. Comprehensive standards for each program have been developed and codified. Full text of the standards can be found in N.J.A.C. 10:44A and 10:44B, or by contacting the following office:

Division of Developmental Disabilities
Bureau of Operations
222 South Warren Street
CN 700
Trenton, New Jersey 08620

The Division of Youth and Family Services maintains standards for both large residential and smaller community based facilities for clients under its jurisdiction. Specific programs include foster care homes, residential child care facilities, group homes for children and victims of domestic violence, and teaching family homes. Full text of the standards can be found in N.J.A.C. 10:127 and 10:128, or by contacting the following office:

Division of Youth and Family Services
Bureau of Licensing
1 South Montgomery Street
Trenton, New Jersey 08620

The Division of Mental Health and Hospitals contracts for residential services which include group homes, family care homes, and supervised apartment programs for mentally ill adults and children. Life safety and program standards are maintained by the Division for each program type. A copy of the standards may be obtained by contacting the following office:

Division of Mental Health and Hospitals
Bureau of Standards and Inspections
13 Roszel Road
Princeton, New Jersey 08540

In all three Divisions, standards are enforced through site visits conducted at least annually, time-limited corrective-action plans, and facility closure in the event of noncompliance.

The Department of Community Affairs licenses rooming houses (Class A) and Class B, C, and D boarding homes. The Bureau of Rooming and Boarding House Standards has a legislative mandate to annually evaluate the physical and social conditions of all rooming and boarding houses as defined under N.J.S.A. 55:13B-1-16, the Rooming and Boarding House Act of 1979. Full text of the standards can be found in N.J.A.C. 5:27 or by contacting:

Department of Community Affairs
South Broad and Front Sts.
CN 800
Trenton, New Jersey 08625

The Department of Health licenses Residential Health Care Facilities and enforces standards through annual inspections. Full text of the standards can be found in N.J.A.C. 8:43. The rules govern the physical plant and operation of such facilities. Full text of the standards can be obtained by contacting:

HUMAN SERVICES

Department of Health
John Fitch Way
CN 360
Trenton, New Jersey 08625

Both the Department of Health and the Department of Community Affairs enforce their standards by curtailment of admissions, fining, or closure. In addition to these annual inspections, county welfare agency social workers of the Department of Human Services make, at a minimum, visits to these facilities every six months to offer services. These social workers are required to investigate and report any abuse, neglect, and exploitation of residents, as well as other violations, to the licensing and enforcement authority. Facilities which do not meet standards, after the development of time-limited corrective action plans, will be closed.

Requests for additional information may be directed to the following office:

Department of Human Services
Institutional, Residential and
Support Services
222 South Warren Street
CN 700
Trenton, New Jersey 08625

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

Home Improvement Practices

Notice of Action Regarding Petition for a Rule Amending or Invalidating N.J.A.C. 13:45A-16 as Related to Electrical Contractors

Petitioners: Peter Horan, Albert Hoesley, Jr., Lighthouse Electrical Construction, Inc., and New Jersey State Council of Electrical Contractor Associations, Inc., a non-profit corporation of the State of New Jersey.

A Notice of Petition for a Rule to amend or invalidate the Home Improvement Practices regulations, N.J.A.C. 13:45A-16, as related to electrical contractors licensed under N.J.S.A. 45:5A-1 et seq., was published in the January 3, 1989 New Jersey Register at 21 N.J.R. 71(c). Petitioners specifically requested a determination that the Home Improvement Practices rules are invalid as they apply to all electrical contractors who are licensed by the New Jersey Board of Examiners of Electrical Contractors and who are holders of valid electrical contractors' business permits issued by the Board; or, in the alternative that the rules be amended to provide exemption for these entities. Petitioners argued that neither the intent of the Home Improvement Practices rules nor any evidence of misdeeds by electrical contractors as a class justifies inclusion of these persons, who are already regulated by a statutorily-created licensing board.

The Division of Consumer Affairs believes that the existence of the Board of Examiners of Electrical Contractors does not preclude regulation of those electrical contractors who engage in the remodeling, altering, repairing, or modernizing of residential or noncommercial property. There is nothing in the Electrical Contractors Licensing Act of 1962, N.J.S.A. 45:5A-1 et seq. which would indicate incompatibility with the Consumer Fraud Act. While the electrical contractors' statute was meant to insure competence in this specialized field, occupational competence is plainly not the only public policy involved. The consumer desires assurance not only that the work is done properly but that he is not

PUBLIC NOTICES

otherwise being defrauded. Supplemental regulation, designed to protect the consumer with respect to aspects of a project not directly involving occupational competence, furthers the policy of the licensing act.

However, the Division has established a committee to undertake immediate review of the existing Home Improvement Practices rules. The committee will make a recommendation to the Director by April 1, 1989, regarding amendments that may be required in order to update the provisions of the rules and meet the concerns voiced by Petitioners.

(b)

DIVISION OF CONSUMER AFFAIRS OFFICE OF CONSUMER PROTECTION

Petition for Rulemaking Home Improvement Practices N.J.A.C. 13:45A-16

Petitioners: New Jersey State League of Master Plumbers, Inc.
Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 56:8-4.

Take notice that on January 30, 1989, petitioners filed a petition with the Division of Consumer Affairs requesting amendment or invalidation of the Home Improvement Practices rules, N.J.A.C. 13:45A-16 as related to plumbing contractors licensed under N.J.S.A. 45:14C-1 et seq.

Specifically, petitioners request a determination that the cited rules are invalid as they apply to all plumbing contractors who are the holders of valid plumbing licenses issued by the New Jersey Board of Examiners of Master Plumbers; or, in the alternative, that the rules be amended to provide that such licensed individuals are exempt from the Home Improvement Practices rules.

Petitioners state that:

1. The cited rules were intended to prohibit and prevent fraud and "sharp" business practices which pervaded New Jersey prior to adoption of the rules such as "bait and switch" tactics; "model home" sales pitches; the starting but failing to complete awning, roofing, heating and aluminum siding and storm window installations; and the fraudulent financial manipulations which resulted in substantial economic losses to homeowners in New Jersey, particularly among the poor and illiterate.

2. These rules, as meritorious as they may be, were not intended to regulate plumbing contractors who were and are already subject to regulation and control by the statutorily created Board of Examiners of Master Plumbers which has the power to investigate claims of wrongdoing by such contractors and to conduct hearings in cases of alleged wrongdoing; and upon a finding of violation of the Licensing Act to impose sanctions, penalties and even revocation of the license of such wrongdoer.

3. There is no evidence or findings by the Director of the Division of Consumer Affairs or his agents that there is a pattern or pervasive scheme by licensed plumbing contractors in New Jersey that warrants the use of these rules against the petitioners or plumbing contractors as a class or body.

4. The actual and threatened actions of the Director's agents present a clear, imminent and real threat to all licensed plumbing contractors in New Jersey inasmuch as they may be subject to further investigation, prosecution and fines or penalties; as well as having to suffer intrusion into their normal business practices and therefore forced to incur the unnecessary legal costs and other expenses needed to contest these charges and accusations, which are based on rules which do not and should not apply.

After due notice, this petition will be considered by the Division of Consumer Affairs in accordance with the provisions of N.J.S.A. 52:14B-4(f).

REORGANIZATION PLAN

OFFICE OF THE GOVERNOR

Governor Thomas H. Kean

Notice of a Plan for the Reorganization and

Coordination of Responsibility for the Delivery of Certain Services to Persons who are Deaf or Hard of Hearing within the Department of Human Services

Take notice that on February 27, 1989, Governor Thomas H. Kean hereby issues the following Reorganization Plan (No. 001-1989) to coordinate and consolidate the delivery of certain services to persons who are deaf or hard of hearing in a single department by transferring the Division of the Deaf in the Department of Labor to the Department of Human Services, while retaining certain employment and training services for this population in the Department of Labor.

General Statement of Purpose

Pursuant to its existing statutory authority, it is the duty of the Division of the Deaf to perform the collection and tabulation of statistics pertaining to the deaf, their employment and welfare; ascertain by annual review of the New Jersey job market what trades or occupations are most suitable for the deaf; arrange for Statewide vocational retraining as necessary; create new fields of employment to which the deaf may adapt themselves and place deaf persons in such lines of employment; and maintain an interpreter referral service. In addition the Division of the Deaf may investigate and file complaints with the Division of Civil Rights in the Department of Law and Public Safety on behalf of deaf persons and assist them in any subsequent proceedings involving acts of discrimination against them by employers, industries, corporations, or organizations with whom they may seek employment, including the State. The Division is also charged with promoting the general welfare of the deaf population within the State, increasing the employability of deaf persons, and seeking the cooperation of State departments and agencies so that deaf persons may be employed in State government, or any subdivision thereof. Finally, this Division shall make reports and recommendations as necessary to advance the best interests of the Division and of deaf persons in the State in general.

The purpose of this Reorganization Plan is to consolidate the delivery of social services to persons who are deaf or hard of hearing within a single State agency by transferring the Division of the Deaf in the Department of Labor to the Department of Human Services. This Plan will enable deaf and hard of hearing persons to benefit from better access to social services and activities offered by the Department of Human Services. Specifically, these services are currently provided within the Department of Human Services by the Division of Developmental Disabilities, Division of Mental Health and Hospitals, Division of Youth and Family Services, Division of Medical Assistance and Health Services, Division of Public Welfare, Commission for the Blind and Visually Impaired and the Office of Education. This transfer will also allow greater coordination between these various divisions and offices and the State's deaf and hard of hearing population. In addition, the Department of Human Services will be able to better coordinate the delivery of these social services with activities and services provided to the deaf or hard of hearing by other State departments. These various other activities and services include vocational training, vocational rehabilitation, educational services and investigatory activities. Finally, this transfer will advance the sharing of expertise among State officials involved in the delivery of services to persons who are deaf or hard of hearing.

This Reorganization Plan also, however, recognizes the Department of Labor's continuing role in the delivery of employment and training services to the deaf and hard of hearing population. To that end, this reorganization transfers certain existing employment and training functions of the Division of the Deaf to the Division of Vocational Rehabilitation in the Department of Labor.

In accordance with the provisions of the "Executive Reorganization Act of 1969," P.L. 1969, c. 203, (C. 52:14C-1 et seq.), I find with respect to each reorganization included in this Plan that each is necessary to accomplish the purposes set forth in Section 2 of that Act and will do the following:

1. It will promote better execution of the laws and more effective management by the Executive Branch of its departments by consolidating the delivery of social services to the deaf and hard of hearing population within one State agency.

2. It will promote economy and efficiency in the operation of the Executive Branch through a sharing of expertise among State officials involved in the delivery of services to deaf or hard of hearing persons.

3. It will group, coordinate, and consolidate functions of the Executive in a more consistent and practical way.

4. It will eliminate overlapping and duplication of effort by locating these entities for the delivery of social services to the deaf and hard of hearing within one department.

The provisions of the Reorganization Plan are as follows:

I. 1.a. The Division of the Deaf in the Department of Labor, created pursuant to P.L. 1941, c. 197, as amended by P.L. 1977, c. 166, §2 (C. 34:1-69.1), together with all its functions, powers and duties as set forth in P.L. 1941, c. 197, as amended by P.L. 1977, c. 166, §4 (C. 34:1-69.3), is continued and, except as otherwise indicated in Section III of this Plan, this Division is transferred to and constituted the Division of the Deaf and Hard of Hearing in the Department of Human Services.

b. The Division of the Deaf and Hard of Hearing shall be under the immediate supervision of a director who shall administer the work of the Division under the direction and supervision of the Commissioner of Human Services and shall perform such other functions of the Department as the Commissioner may prescribe.

c. The Commissioner shall organize the work of the Division of the Deaf and Hard of Hearing and establish therein such administrative subdivisions as he may deem necessary, proper and expedient.

d. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Division of the Deaf in the Department of Labor, the same shall mean and refer to the Division of the Deaf and Hard of Hearing in the Department of Human Services; except that with regard to the functions, powers and duties contained in Section III of this Plan, references to the Division of the Deaf in the Department of Labor shall mean and refer to the Division of Vocational Rehabilitation in the Department of Labor.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203. Specifically, this reorganization will confer on the Department of Human Services the necessary authority to implement the important goals of coordinating and integrating the delivery of social services to persons who are deaf or hard of hearing. This Plan will provide the State's deaf and hard of hearing population with greater access to the social services and activities currently provided by the Department of Human Services.

II. 1.a. The Advisory Council on the Deaf in the Division of the Deaf in the Department of Labor, created pursuant to P.L. 1977, c. 166, §8 (C. 34:1-69.1a), together with all its functions, powers and duties as set forth in P.L. 1977, c. 166, §8 (C. 34:1-69.1a), is continued and transferred to and constituted the Advisory Council on the Deaf and Hard of Hearing in the Department of Human Services.

b. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Advisory Council on the Deaf in the Department of Labor, the same shall mean and refer to the Advisory Council on the Deaf and Hard of Hearing in the Department of Human Services.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203. Specifically, this reorganization will provide the Commissioner of the Department of Human Services with a body that can advise him regarding the accessibility of social services to the State's deaf and hard of hearing population.

III. The following functions, powers and duties heretofore exercised by the Division of the Deaf in the Department of Labor are hereby transferred to the Division of Vocational Rehabilitation in the Department of Labor: collection and tabulation of statistics pertaining to the deaf, their employment and welfare; annual review of the New Jersey job market to determine what trades or occupations are most suitable for the deaf; arrangement for Statewide vocational retraining as necessary; and creation of new fields of employment to which the deaf may adapt themselves and placement of deaf persons in such lines of employment.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203. Specifically, this reorganization

THE GOVERNOR

will group, coordinate and consolidate functions of the Executive in a more consistent and practical way by retaining certain employment and training functions in the Department of Labor. This Plan will, therefore, provide the State's deaf and hard of hearing population with continued access to the employment and training services currently offered by the Department of Labor.

IV. All transfers directed by this Act shall be made in accordance with the "State Agency Transfer Act," P.L. 1971, c. 375 (C. 52:14D-1 et seq.).

All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies. A copy of this Reorganization Plan was filed on February 27, 1989

REORGANIZATION PLAN

with the Secretary of State and the Office of Administrative Law. This Plan shall become effective in 60 days on April 28, 1989 unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than April 28, 1989 should the Governor establish such a later date for the effective date of the Plan by Executive Order.

TAKE NOTICE that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the public laws under a heading of "Reorganization Plans."

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 February 6, 1989 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1989 d.1 means the first rule adopted in 1989.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JANUARY 17, 1989

NEXT UPDATE: SUPPLEMENT FEBRUARY 21, 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. 571 and 692	March 21, 1988	20 N.J.R. 2417 and 2498	October 3, 1988
20 N.J.R. 693 and 842	April 4, 1988	20 N.J.R. 2499 and 2610	October 17, 1988
20 N.J.R. 843 and 950	April 18, 1988	20 N.J.R. 2611 and 2842	November 7, 1988
20 N.J.R. 951 and 1018	May 2, 1988	20 N.J.R. 2843 and 2948	November 21, 1988
20 N.J.R. 1019 and 1126	May 16, 1988	20 N.J.R. 2949 and 3046	December 5, 1988
20 N.J.R. 1127 and 1316	June 6, 1988	20 N.J.R. 3047 and 3182	December 19, 1988
20 N.J.R. 1317 and 1500	June 20, 1988	21 N.J.R. 1 and 88	January 3, 1989
20 N.J.R. 1501 and 1594	July 5, 1988	21 N.J.R. 89 and 224	January 17, 1989
20 N.J.R. 1595 and 1758	July 18, 1988	21 N.J.R. 225 and 364	February 6, 1989
20 N.J.R. 1759 and 1976	August 1, 1988	21 N.J.R. 365 and 588	February 21, 1989
20 N.J.R. 1977 and 2122	August 15, 1988	21 N.J.R. 589 and 658	March 6, 1989
20 N.J.R. 2123 and 2350	September 6, 1988	21 N.J.R. 659 and 810	March 20, 1989
20 N.J.R. 2351 and 2416	September 19, 1988		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

1:1-5.5	Non-lawyer representatives: consent orders and stipulations
1:1-10.4	Discovery: requests for admissions
1:1-14.3	Interpreters for hearing impaired
1:10-12.2	Emergency fair hearings concerning AFDC and General Assistance: transmittal of notices and initial decisions
1:13A	Lemon Law hearings

PROPOSAL NOTICE (N.J.R. CITATION)

20 N.J.R. 2845(a)
20 N.J.R. 2845(b)
20 N.J.R. 2845(c)
20 N.J.R. 3049(a)
21 N.J.R. 91(a)

DOCUMENT NUMBER

R.1989 d.158
R.1989 d.159
R.1989 d.160

ADOPTION NOTICE (N.J.R. CITATION)

21 N.J.R. 749(a)
21 N.J.R. 749(b)
21 N.J.R. 749(c)

Most recent update to Title 1: TRANSMITTAL 1989-1 (supplement January 17, 1989)

AGRICULTURE—TITLE 2

2:5-2.1, 2.3, 2.5, 2.6, 2.8	Equine infectious anemia
2:24-2, 3	Registration and transportation of bees
2:24-2.1	Over-wintering of bees
2:32-2.2, 2.3, 2.10, 2.11, 2.13, 2.20, 2.22, 2.27, 2.28	Sire Stakes conditions
2:33	Agricultural fairs
2:52-1.6	Reporting by small milk dealers
2:71-2.2, 2.4	"Jersey Fresh" logo program
2:71-2.4, 2.5, 2.6	"Jersey Fresh" logo program
2:76-5.3	Soil and water conservation projects: cost sharing
2:76-9.1, 9.2	Emergency acquisition of development easements on farmland

21 N.J.R. 92(a)		
20 N.J.R. 2951(a)	R.1989 d.128	21 N.J.R. 633(a)
20 N.J.R. 2951(a)		
20 N.J.R. 2952(a)	R.1989 d.95	21 N.J.R. 443(a)
20 N.J.R. 2954(a)	R.1989 d.129	21 N.J.R. 633(b)
20 N.J.R. 2955(a)	R.1989 d.127	21 N.J.R. 634(a)
21 N.J.R. 591(a)		
21 N.J.R. 227(a)		
21 N.J.R. 230(a)		
21 N.J.R. 231(a)		

Most recent update to Title 2: TRANSMITTAL 1989-1 (supplement January 17, 1989)

BANKING—TITLE 3

3:1-16	Mortgage loan practices
3:11	Lending and investments by State banks
3:24-5.1	Licensed check cashing
3:38-5	Repeal (see 3:1-16)

20 N.J.R. 1021(b)
21 N.J.R. 367(a)
20 N.J.R. 2353(a)
20 N.J.R. 1021(b)

Most recent update to Title 3: TRANSMITTAL 1988-7 (supplement November 21, 1988)

CIVIL SERVICE—TITLE 4

4:1-16.1-16.6, 24.2	Repeal (see 4A:8)
4:2-16.1, 16.2	Repeal (see 4A:8)
4:3-16.1, 16.2	Repeal (see 4A:8)

20 N.J.R. 2955(b)
20 N.J.R. 2955(b)
20 N.J.R. 2955(b)

Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)

PERSONNEL—TITLE 4A

4A:8	Layoffs
4A:8	Layoffs: change of public hearing dates

20 N.J.R. 2955(b)
20 N.J.R. 3171(a)

Most recent update to Title 4A: TRANSMITTAL 1989-1 (supplement January 17, 1989)

COMMUNITY AFFAIRS—TITLE 5

5:11	Relocation assistance and eviction
5:11	Relocation Assistance and Eviction rules: waiver of Executive Order No. 66(1978) expiration provision

21 N.J.R. 231(b)
21 N.J.R. 592(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:14-1.2	Neighborhood Preservation Balanced Housing Program: eligibility	21 N.J.R. 3(a)	R.1989 d.143	21 N.J.R. 750(a)
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-3.15	Uniform Construction Code: plumbing subcode	20 N.J.R. 2846(a)	R.1989 d.66	21 N.J.R. 288(a)
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:50	Administration of funds received under Higher Education Act of 1965	21 N.J.R. 367(b)		
5:80-3.3	Housing and Mortgage Finance Agency: return on housing sponsors' equity	21 N.J.R. 94(a)		
5:91-5.2, 6.2, 7.1, 7.3	Council on Affordable Housing: mediation process	20 N.J.R. 3050(a)		
5:92-1.3, 11.2, 14.3	Council on Affordable Housing: alternative living arrangements	21 N.J.R. 595(a)		
5:92-1.3, 12	Council on Affordable Housing: controls on affordability	21 N.J.R. 592(b)		
5:92-12.4	Council on Affordable Housing: initial pricing of units	20 N.J.R. 3051(a)	R.1989 d.125	21 N.J.R. 635(a)
5:92-14.4	Council on Affordable Housing: rental unit credit	21 N.J.R. 234(a)		
5:100	Ombudsman for the institutionalized elderly	21 N.J.R. 368(a)		

Most recent update to Title 5: TRANSMITTAL 1989-1 (supplement January 17, 1989)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

EDUCATION—TITLE 6

6:2	Appeals to State Board	20 N.J.R. 2615(a)	R.1989 d.67	21 N.J.R. 288(b)
6:3-5	Reporting of allegations of child abuse	21 N.J.R. 3(b)		
6:8-1.1, 4.3, 7.1	High school core proficiencies	21 N.J.R. 235(a)		
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:20-2	Bookkeeping and accounting in local districts	20 N.J.R. 2502(a)	R.1989 d.86	21 N.J.R. 292(a)
6:20-5.7	Reimbursement to nonpublic schools for asbestos removal and encapsulation	20 N.J.R. 2505(a)	R.1989 d.93	21 N.J.R. 635(b)
6:28	Special education	21 N.J.R. 239(a)		
6:39	High school core proficiencies	21 N.J.R. 235(a)		
6:46-4.1, 4.4-4.20, 5.2	Private vocational schools and correspondence schools	21 N.J.R. 262(a)		

Most recent update to Title 6: TRANSMITTAL 1989-1 (supplement January 17, 1989)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-1.2	Petition for rulemaking procedure	21 N.J.R. 102(a)		
7:7	Coastal Permit Program	21 N.J.R. 369(a)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)	R.1989 d.137	21 N.J.R. 750(b)
7:7-2.3	Waterfront development	21 N.J.R. 4(a)		
7:7-2.3	Waterfront development: extension of comment period	21 N.J.R. 267(a)		
7:7A-1.4, 2.5, 6, 7	Freshwater wetlands transition areas	21 N.J.R. 596(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A-G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)	R.1989 d.170	21 N.J.R. 750(c)
7:11-2.1-2.5, 2.8-2.14	Sale of water from Delaware and Raritan Canal, Spruce Run/Round Valley system	21 N.J.R. 103(a)		
7:13	Flood hazard area control	21 N.J.R. 371(a)		
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
7:13-7.1(d)	Redelineation of West Branch Rahway River, West Orange	21 N.J.R. 605(a)		
7:14	Water pollution control	21 N.J.R. 373(a)		
7:14A-5.12	Closure of hazardous waste facilities	20 N.J.R. 2650(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:25-2.18	New Sweden and Oyster Creek wildlife management areas	21 N.J.R. 267(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:25-7.13	Taking of blue crabs	21 N.J.R. 268(a)		
7:25-15.1	Relay of hard clams: correction to text			21 N.J.R. 751(a)
7:25-22.1-22.4	Harvesting Atlantic menhaden	21 N.J.R. 107(a)		
7:26-1.1, 1.4, 2.7, 2.11, 2.12, 2.13, 2A.8, 2B.4, 2B.8, 3.1-3.5, 3.7, 4.1-4.5, 4.7-4.10, 16.2, 16.3, 16.13	Solid waste facility and transporter registration fees	20 N.J.R. 2668(a)		
7:26-1.4, 9.8, 9.9, 9.10, 9.11, 9.13, App. A, 12.3, 12.5	Closure of hazardous waste facilities	20 N.J.R. 2650(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)		
7:26-7.4, 9.1, 12.1	Hazardous waste stored for reuse	20 N.J.R. 1329(a)	R.1989 d.141	21 N.J.R. 752(a)
7:26-12.4	Hazardous waste management: permit standards	21 N.J.R. 108(a)		
7:26B-1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 3.3, 5.2, 7.5, 9.2, 10.1, 13.1	Environmental Cleanup Responsibility Act rules	21 N.J.R. 402(a)		
7:27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)		
7:27-16.1, 16.3	Marine transfer of gasoline: vapor recovery program	20 N.J.R. 1866(a)	R.1989 d.62	21 N.J.R. 321(a)
7:27-23	Volatile organic substances in consumer products	20 N.J.R. 2002(a)	R.1989 d.119	21 N.J.R. 462(a)
7:27-25	Control and prohibition of air pollution by vehicular fuels	20 N.J.R. 1631(a)	R.1989 d.123	21 N.J.R. 483(a)
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)	R.1989 d.61	21 N.J.R. 324(a)

Most recent update to Title 7: TRANSMITTAL 1989-1 (supplement January 17, 1989)

HEALTH—TITLE 8

8:8	Collection, processing, storage and distribution of blood	21 N.J.R. 407(a)		
8:31B-2.2, 2.4	Hospital reimbursement: DRG classification of newborns	20 N.J.R. 3057(a)	R.1989 d.154	21 N.J.R. 752(a)
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.51-3.55, 3.58, 3.59, 3.73, App. II, IX, 5.1-5.3	Hospital reimbursement: extension of comment period for proposed changes published January 17, 1989	21 N.J.R. 606(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	Hospital reimbursement: 1989 rate setting	21 N.J.R. 135(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	1989 hospital rate setting: correction to Summary statement	21 N.J.R. 413(a)		
8:31B-3.19	Hospital reimbursement: burn care unit reporting	20 N.J.R. 2541(a)	R.1989 d.77	21 N.J.R. 295(a)
8:31B-3.19, 3.38, 3.45	Hospital reimbursement: newborn DRGs; outlier categories	20 N.J.R. 3057(b)	R.1989 d.153	21 N.J.R. 753(a)
8:31B-3.43	General acute care hospitals: implementation of proposed schedule of rates	20 N.J.R. 2542(a)	R.1989 d.79	21 N.J.R. 296(a)
8:31B-3.44	Hospital reimbursement: DRG outliers	20 N.J.R. 2542(b)	R.1989 d.80	21 N.J.R. 296(b)
8:31B-3.51-3.55, 3.58, 3.59	Hospital reimbursement: appeals	21 N.J.R. 131(a)		
8:31B-3, App. II	Hospital reimbursement: laundry and linen cost center	20 N.J.R. 2543(a)	R.1989 d.78	21 N.J.R. 297(a)
8:31B-4.41	Hospital reimbursement: uncompensated care audit functions	20 N.J.R. 2959(a)	R.1989 d.152	21 N.J.R. 754(a)
8:31B-5.1, 5.2, 5.3	Hospital reimbursement: Diagnosis Related Groups	21 N.J.R. 138(a)		
8:31C	Residential alcoholism treatment: facility rate setting	20 N.J.R. 2960(a)		
8:33-1.5, 2.8	Applications to convert licensed acute care beds to non-acute categories	21 N.J.R. 272(a)		
8:33E-1.2, 1.11	Cardiac diagnostic facilities: pediatric patients; new facilities	20 N.J.R. 2847(a)	R.1989 d.102	21 N.J.R. 498(a)
8:33E-2.3, 2.4	Cardiac surgery centers: pediatric patients; surgery teams	20 N.J.R. 2848(a)	R.1989 d.105	21 N.J.R. 499(a)
8:33J	Nuclear magnetic resonance services	21 N.J.R. 416(a)		
8:33J-1.1-1.2	Magnetic resonance imaging services	21 N.J.R. 413(b)		
8:33K	Residential alcoholism treatment facilities: bed standards	21 N.J.R. 150(a)		
8:33N	Advanced life support programs: mobile intensive care units and critical care transport units	21 N.J.R. 268(a)		
8:38-1.1, 1.4	HMOs and vision care services	21 N.J.R. 6(a)		
8:39-19.7	Hot water temperature in long-term care facilities	21 N.J.R. 417(a)		
8:39-41.3, 42.2	Long-term care facilities: excessive heat emergency plan	20 N.J.R. 2543(b)	R.1989 d.104	21 N.J.R. 500(a)
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)		
8:43B-1.10	Hospital facilities: confidentiality of patient information	20 N.J.R. 2221(b)	R.1989 d.87	21 N.J.R. 297(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
8:61-2.4	Retrovir reimbursement program	21 N.J.R. 606(b)		
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 1710(b), 2376(d), 2768(b); 21 N.J.R. 63(a))	20 N.J.R. 871(a)	R.1989 d.166	21 N.J.R. 757(a)
8:71	Interchangeable drug products (see 20 N.J.R. 2769(a); 21 N.J.R. 63(b))	20 N.J.R. 1766(a)	R.1989 d.165	21 N.J.R. 756(b)
8:71	Interchangeable drug products (see 21 N.J.R. 63(c))	20 N.J.R. 2356(a)	R.1989 d.164	21 N.J.R. 756(a)
8:71	Interchangeable drug products	20 N.J.R. 3078(a)	R.1989 d.163	21 N.J.R. 755(b)
8:71	List of Interchangeable Drug Products	21 N.J.R. 7(a)	R.1989 d.142	21 N.J.R. 755(a)

Most recent update to Title 8: TRANSMITTAL 1989-1 (supplement January 17, 1989)

HIGHER EDUCATION—TITLE 9

9:1	Licensing and degree approval standards	20 N.J.R. 2965(a)	R.1989 d.118	21 N.J.R. 444(a)
9:6A-4.3	Managerial employees at State colleges: annual salary increases	20 N.J.R. 3079(a)		
9:7-3.2	1989-80 Tuition Aid Grant Award Table	21 N.J.R. 109(a)		
9:7-4.4	Garden State Scholarships supplemental awards eligibility	21 N.J.R. 110(a)		
9:7-6.4	Garden State Graduate Fellowships: approved programs	20 N.J.R. 2624(a)		
9:7-8.1	Vietnam Veterans Tuition Aid: eligibility	20 N.J.R. 2625(a)		
9:11	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)		
9:11-1.6, 1.8, 1.9, 1.20	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		
9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)		
9:12	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:12-2.6, 2.9	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		

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HUMAN SERVICES—TITLE 10

10:3-1.14	Contract administration: prohibited vendor activity	20 N.J.R. 2849(a)		
10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)		
10:37-5.6-5.11, 5.16-5.24	Repeal (see 10:31)	21 N.J.R. 273(a)		
10:39	Group homes for mentally ill: operating standards	20 N.J.R. 2547(a)	R.1989 d.120	21 N.J.R. 504(a)
10:41-2	Services to developmentally disabled: confidentiality of client records	20 N.J.R. 2435(a)	R.1989 d.134	21 N.J.R. 757(b)
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)		
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:46	Services for developmentally disabled: determination of eligibility	20 N.J.R. 2008(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)		
10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:49-1.1, 1.7-1.10, 1.14, 1.17, 1.19, 1.20, 1.22, 1.24, 1.26	Medicaid Administration Manual	21 N.J.R. 417(b)		
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)	R.1989 d.162	21 N.J.R. 761(a)
10:54-4.5	Medicaid reimbursement for physician's services	20 N.J.R. 2558(a)	R.1989 d.135	21 N.J.R. 760(a)
10:56-3.7, 3.10	Medicaid reimbursement for dental services	20 N.J.R. 2558(a)	R.1989 d.135	21 N.J.R. 760(a)
10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)	R.1989 d.162	21 N.J.R. 761(a)
10:61-3.2	Medicaid reimbursement for independent laboratory services	20 N.J.R. 2558(a)	R.1989 d.135	21 N.J.R. 760(a)
10:63-3.9-3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)	R.1989 d.162	21 N.J.R. 761(a)
10:66-3.2	Medicaid reimbursement for independent clinic services	20 N.J.R. 2558(a)	R.1989 d.135	21 N.J.R. 760(a)
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	21 N.J.R. 207(a)	R.1989 d.174	21 N.J.R. 763(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:81-4.5	AFDC program: voluntary restricted payments	21 N.J.R. 7(b)		
10:81-11.4	Direct child support payments to AFDC clients	21 N.J.R. 423(a)		
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)		
10:83-1	Special Payments Handbook for SSI recipients	20 N.J.R. 2563(a)	R.1989 d.98	21 N.J.R. 511(a)
10:85-3.2	General Assistance: residency in therapeutic care facility	20 N.J.R. 2968(b)	R.1989 d.161	21 N.J.R. 764(b)
10:85-3.3	Medically Needy eligibility	20 N.J.R. 2688(b)	R.1989 d.138	21 N.J.R. 765(a)
10:87	Food Stamp Program	20 N.J.R. 2689(a)	R.1989 d.121	21 N.J.R. 511(b)
10:97	Vending Facility Program for blind and visually impaired	21 N.J.R. 424(a)		
10:100-App. A	Supplemental Security Income (SSI) payment levels (Recodified to 10:83-1.11)	21 N.J.R. 208(a)	R.1989 d.172	21 N.J.R. 764(a)
10:100-3, App. A	Special Payments Handbook for SSI recipients (Recodified to 10:83-1)	20 N.J.R. 2563(a)	R.1989 d.98	21 N.J.R. 511(a)
10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)		
10:121-1.1	Approval of adoption agencies: correction to text			21 N.J.R. 765(b)
10:122	Requirements for child care centers	20 N.J.R. 3079(b)		
10:123-3.2	Residential health care facilities/boarding homes: personal needs allowance	Emergency (expires 4-29-89)	R.1989 d.171	21 N.J.R. 788(a)
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		
10:141	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 8(a)	R.1989 d.132	21 N.J.R. 636(a)
10:141-1.4	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 610(a)		

Most recent update to Title 10: TRANSMITTAL 1989-1 (supplement January 17, 1989)

CORRECTIONS—TITLE 10A

10A	Names of correctional institutions: administrative change			21 N.J.R. 558(a)
10A:3-5.10	Collection of urine samples from inmates	21 N.J.R. 10(a)	R.1989 d.140	21 N.J.R. 765(c)
10A:4-6.1, 6.3, 6.4	Chronic violator units	21 N.J.R. 10(b)	R.1989 d.136	21 N.J.R. 766(a)
10A:4-11.9, 12	Inmate appeals to Office of Administrative Law: public hearing	20 N.J.R. 880(b)		
10A:6-3.2	Notification of inmate's change of name	21 N.J.R. 11(a)	R.1989 d.139	21 N.J.R. 766(a)
10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
10A:16-2.9	Infirmity care	20 N.J.R. 2969(a)		
10A:16-6.6	Infants born to female inmates	20 N.J.R. 2747(a)	R.1989 d.68	21 N.J.R. 299(a)
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 277(a)		
10A:18-4.7	Inspection of outgoing publications	21 N.J.R. 277(b)		
10A:71-2.1, 3.4, 3.28	Parole Board rules	20 N.J.R. 2129(a)	R.1989 d.151	21 N.J.R. 767(a)
10A:71-3.21, 6.4	State Parole Board: juvenile inmates; conditions of parole	20 N.J.R. 2747(b)	R.1989 d.145	21 N.J.R. 768(a)

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11:1-5.1	FAIR plan surcharge: repeal rule	20 N.J.R. 2507(a)		
11:1-10	Foreign and alien property and casualty insurers: admission requirements	21 N.J.R. 426(a)		
11:2-1, 19	Repeal (see 11:17-3, 5.7)	20 N.J.R. 1152(a)		
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		
11:3-13.5, 14.1, 14.3, 14.5, 14.6, 14.7, 15.1-15.8	Private passenger automobile coverage: standards for written notice to buyers	20 N.J.R. 2984(a)	R.1989 d.117	21 N.J.R. 558(b)
11:3-16	Private passenger automobile rate filings	21 N.J.R. 611(a)		
11:3-22.1, 22.3, Forms A, B	Automobile coverage option survey: PIP and tort threshold	21 N.J.R. 619(a)		
11:3-24	Automobile coverage: policy constants	20 N.J.R. 3104(a)		
11:3-25	Automobile coverage: residual market equalization charges	21 N.J.R. 278(a)		
11:4-30	Hospital preadmission certification programs (HPCPs)	20 N.J.R. 880(c)		
11:4-31	Term life insurance comparison survey	20 N.J.R. 2990(a)	R.1989 d.122	21 N.J.R. 566(a)
11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)		
11:5-1.18	Supervision of real estate offices	20 N.J.R. 1160(a)		
11:5-1.23	Real estate offers and broker's obligations	20 N.J.R. 2186(a)		
11:5-1.34	Discriminatory commission—split policies	20 N.J.R. 1163(a)		
11:14	Auto body repair facilities: licensure rules	21 N.J.R. 280(a)		
11:17-2.1	Term of insurance producer license: administrative correction			21 N.J.R. 637(a)
11:17-3, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 1152(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	20 N.J.R. 2010(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: correction	20 N.J.R. 2186(b)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: public hearing	20 N.J.R. 2478(d)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: extension of open hearing record	20 N.J.R. 2855(a)		

Most recent update to Title 11: TRANSMITTAL 1989-1 (supplement January 17, 1989)

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12:16-4.7, 10, 13.4, 13.7, 22	Employer wage reporting, penalty abatement requests, hearings	21 N.J.R. 281(a)		
12:17-1.6	Unemployment insurance benefits: temporary separation from work	20 N.J.R. 1333(a)		
12:17-2.4, 2.5	Requalification for unemployment insurance benefits	20 N.J.R. 1522(a)		
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:46-12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:100-4.2	Public employee safety and health: access to exposure and medical records	20 N.J.R. 2995(a)	R.1989 d.82	21 N.J.R. 299(b)
12:100-4.2, 5.2, 6.2, 7	Public employee safety and health: toxic and hazardous substances	20 N.J.R. 2013(a)		
12:100-9.18	Public employee safety and health: work in confined spaces	20 N.J.R. 2855(b)	R.1989 d.83	21 N.J.R. 299(c)
12:100-11	Public employee safety and health: control of hazardous energy sources	21 N.J.R. 620(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		

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12A:55	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)		
12A:80-1	Urban Small Business Incubator Program	20 N.J.R. 2524(b)	R.1989 d.91	21 N.J.R. 299(d)
12A:81-1	Urban Development Program	20 N.J.R. 2527(a)	R.1989 d.92	21 N.J.R. 302(a)
12A:82-1	Neighborhood Development Corporation	20 N.J.R. 2530(a)	R.1989 d.90	21 N.J.R. 304(a)
12A:100-1.2, 1.3, 1.4	Commission on Science and Technology: Innovation Partnership program	21 N.J.R. 433(a)		

Most recent update to Title 12A: TRANSMITTAL 1989-1 (supplement January 17, 1989)

LAW AND PUBLIC SAFETY—TITLE 13

13:4-3.4, 3.5, 8.2	Discrimination complaints: confidentiality of parties' identities	20 N.J.R. 499(a)	Expired	
13:10	Multiple dwelling reports concerning racial composition	21 N.J.R. 11(b)		
13:21-22	Certificates of title for salvage motor vehicles	20 N.J.R. 2675(a)	R.1989 d.157	21 N.J.R. 768(a)
13:27-4.5, 4.6, 4.7, 4.8, 4.10, 4.12, 4.13	Architectural practice and responsibility	21 N.J.R. 433(b)		
13:27-8.16, 9.5	Architects and certified landscape architects: change of address; service of process	21 N.J.R. 114(b)		
13:29-6	Practice of accountancy: continuing education	20 N.J.R. 2532(a)		
13:29-6	Continuing professional education for accountants: public hearing and comment period	20 N.J.R. 3114(a)		
13:30-8.5	Board of Dentistry: access to complaint history of licensees	20 N.J.R. 2680(a)	R.1989 d.63	21 N.J.R. 338(a)
13:38-1, 2.1, 2.3, 2.5, 2.7, 6.1	Practice of optometry: advertising; access to optometrist; patient records	20 N.J.R. 2361(b)		
13:38-2.11	Practice of optometry: delegation of duties to ancillary personnel	20 N.J.R. 2363(a)		
13:38-2.11	Practice of optometry: public hearing on delegation of duties to ancillary personnel	20 N.J.R. 2995(b)		
13:38-2.11	Practice of optometry: public hearing on delegation of duties to ancillary personnel	21 N.J.R. 284(a)		
13:39	Board of Pharmacy rules	20 N.J.R. 1648(a)		
13:39A-3.2	Unlawful practices and arrangements by physical therapists: preproposal	20 N.J.R. 2242(a)		
13:39A-5.1	Educational requirements for licensure as physical therapist	20 N.J.R. 2243(a)		
13:40-10.1	Professional engineers and land surveyors: contract to provide services	20 N.J.R. 2243(b)	R.1989 d.64	21 N.J.R. 339(a)
13:44-1.1	Qualified graduate of veterinary medicine	20 N.J.R. 2680(b)	R.1989 d.111	21 N.J.R. 446(a)
13:44D	Public movers and warehousemen	20 N.J.R. 2364(a)		
13:44D	Public movers and warehousemen: public hearing and extension of comment period	20 N.J.R. 2681(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:45A-2	Motor vehicle advertising practices	21 N.J.R. 115(a)		
13:45A-11.1	Advertising and sale of new merchandise	20 N.J.R. 2247(a)		
13:45A-26	Automotive dispute resolution: Lemon Law implementation	20 N.J.R. 2681(b)	R.1989 d.65	21 N.J.R. 339(b)
13:45B-4, 5	Temporary help service firms; booking agencies	20 N.J.R. 2684(a)		
13:47A-2.10	Investment advisory contracts: performance fee compensation	21 N.J.R. 12(a)		
13:47B	Commercial weighing and measuring devices	20 N.J.R. 2856(a)	R.1989 d.112	21 N.J.R. 446(b)
13:49	State Medical Examiner: standards and procedures	20 N.J.R. 2856(b)	R.1989 d.110	21 N.J.R. 447(a)
13:70-1.30	Thoroughbred racing: horsemen's associations and surplus funds	20 N.J.R. 2995(c)	R.1989 d.106	21 N.J.R. 451(a)
13:70-5	Thoroughbred racing: registration of colors	20 N.J.R. 2536(a)	R.1989 d.74	21 N.J.R. 344(a)
13:70-9.29	Thoroughbred racing: apprentice jockey weight allowance	20 N.J.R. 2996(a)	R.1989 d.108	21 N.J.R. 451(b)
13:70-9.30	Thoroughbred racing: apprentice jockey contracts	20 N.J.R. 2996(b)	R.1989 d.107	21 N.J.R. 451(c)
13:70-14.5	Thoroughbred racing: testing for illegal devices	20 N.J.R. 3114(b)	R.1989 d.155	21 N.J.R. 774(a)
13:71-1.25	Harness racing: horsemen's associations and surplus funds	20 N.J.R. 2997(a)	R.1989 d.109	21 N.J.R. 451(d)
13:75-1.7	Violent crimes compensation: prosecution of offender	20 N.J.R. 736(b)		
13:78	Advocacy fund for crime victims and witnesses	20 N.J.R. 2997(b)	R.1989 d.156	21 N.J.R. 774(b)
13:80-1	Hazard Waste Management Information Awards	20 N.J.R. 507(b)	Expired	

Most recent update to Title 13: TRANSMITTAL 1989-1 (supplement January 17, 1989)

PUBLIC UTILITIES—TITLE 14

14:3-7.14	Discontinuance of residential service to tenants	20 N.J.R. 1668(a)		
14:3-9.6	Solid waste: filing contracts for service (preproposal)	20 N.J.R. 1669(a)		
14:3-10.3, 10.5, 10.15	Solid waste: out-of-state solid waste collectors (preproposal)	20 N.J.R. 1669(c)		
14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	20 N.J.R. 2629(a)		
14:3-10.20	Solid waste: itemized billing (preproposal)	20 N.J.R. 1670(a)		
14:3-10.21	Solid waste: violations, penalties (preproposal)	20 N.J.R. 1670(b)		
14:3-10.22	Solid waste: contracts (preproposal)	20 N.J.R. 1669(b)		
14:9-4.3	Solid waste: decals for vehicles (preproposal)	20 N.J.R. 1671(a)		
14:9-4.4	Solid waste: container identification (preproposal)	20 N.J.R. 1671(b)		
14:10-6	Telecommunications: Alternative Operator Service (AOS) providers	20 N.J.R. 3115(a)		
14:17	Office of Cable Television: practice and procedure	21 N.J.R. 440(a)		
14:18-14.6	Alteration of channel allocation: correction to text			21 N.J.R. 775(a)
14:18-15.1	Preproposal: Statewide cable TV access channel for educational and public affairs programming	20 N.J.R. 1063(a)		

Most recent update to Title 14: TRANSMITTAL 1988-2 (supplement December 19, 1988)

ENERGY—TITLE 14A

14A:14	Certificate of need for electrical facilities	20 N.J.R. 2188(b)	R.1989 d.124	21 N.J.R. 573(a)
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Most recent update to Title 14A: TRANSMITTAL 1988-3 (supplement November 21, 1988)

STATE—TITLE 15

15:2-2, 3	Preclearance of corporation documents and adoption of corporation name	20 N.J.R. 2998(a)	R.1989 d.89	21 N.J.R. 452(a)
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Most recent update to Title 15: TRANSMITTAL 1988-2 (supplement September 19, 1988)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1987-1 (supplement April 20, 1987)

TRANSPORTATION—TITLE 16

16:5-2.2, 3.1	Property acquisitions: appraisal; payments	21 N.J.R. 13(a)	R.1989 d.130	21 N.J.R. 637(b)
16:7-1.3	Auctions of buildings and excess land parcels	21 N.J.R. 13(b)	R.1989 d.131	21 N.J.R. 638(a)
16:20A-1.1, 1.3-1.5, 2.1, 2.2, 2.4, 3.1, 4.1-4.4, App. I, II	New Jersey Transportation Trust Fund: county and municipal aid	21 N.J.R. 623(a)		
16:20B-1.1-1.4, 2.1, 3.1, 3.2, 4.1-4.3, 5.1, App. I, II	New Jersey Transportation Trust Fund: municipal aid	21 N.J.R. 626(a)		
16:21-1.2, 3.1	State aid to counties and municipalities	20 N.J.R. 2999(a)	R.1989 d.71	21 N.J.R. 307(a)
16:21A-1.3, 3.1	State aid for bridge rehabilitation	20 N.J.R. 3000(a)	R.1989 d.70	21 N.J.R. 307(b)
16:22-1.3, 3.1	State aid for urban revitalization, special demonstration and emergency projects	20 N.J.R. 3000(b)	R.1989 d.69	21 N.J.R. 307(c)
16:26-3	Reimbursed highway safety lighting	21 N.J.R. 628(a)		
16:28-1.17	Speed limit zones along Route 147 in Cape May County	21 N.J.R. 119(a)		
16:28-1.25	Speed limit zones along Route 23 in Sussex County	21 N.J.R. 119(b)		
16:28-1.72, 1.75	Speed limit zones along U.S. 206 in Atlantic and Burlington counties, and Route 36 in Monmouth County	21 N.J.R. 435(a)		
16:28-1.79	Speed limits along Route 94 in Sussex County	20 N.J.R. 3116(a)	R.1989 d.114	21 N.J.R. 453(a)

(CITE 21 N.J.R. 808)

NEW JERSEY REGISTER, MONDAY, MARCH 20, 1989

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28A-1.20	Parking restrictions along Route 29 in Lambertville	20 N.J.R. 3001(a)	R.1989 d.76	21 N.J.R. 308(a)
16:28A-1.21, 1.51, 1.53, 1.68	Parking restrictions along U.S. 30 and Route 168 in Camden County, Route 179 in Lambertville, and Route 93 in Leonia	20 N.J.R. 3001(b)	R.1989 d.75	21 N.J.R. 308(b)
16:28A-1.53	Parking along Route 179 in Lambertville	20 N.J.R. 3117(a)	R.1989 d.115	21 N.J.R. 453(b)
16:28A-1.55	Time limit parking zones along U.S. 202 in Bernardsville	21 N.J.R. 436(a)		
16:28A-1.105	Bus stop zones along Route 54 in Atlantic County	21 N.J.R. 120(a)		
16:30-3.6	Exclusive bus and HOV lanes along Routes 3 and 495 into Manhattan	20 N.J.R. 737(b)		
16:30-9	Use restrictions on bridges along highway system	20 N.J.R. 3117(b)	R.1989 d.113	21 N.J.R. 453(c)
16:30-9.1	Use of Route 35 bridge over Manasquan River in Point Pleasant and Brielle	21 N.J.R. 437(a)		
16:31-1.11	Turn restrictions along Route 21 in Newark	20 N.J.R. 3120(a)	R.1989 d.116	21 N.J.R. 455(a)
16:41-2.4	Permits for highway access: correction to text			21 N.J.R. 775(b)
16:44-1.2	Classification of prospective bidders for department projects	20 N.J.R. 3004(a)	R.1989 d.88	21 N.J.R. 309(a)
16:49-1.3, 1.5, 1.6, 2.1, App.	Transportation of hazardous materials: intrastate shipments of combustible liquids	20 N.J.R. 3005(a)	R.1989 d.101	21 N.J.R. 456(a)
16:51-1.3, 1.4, 1.6, 3.1, 4.3-4.7	Practice and procedure before Office of Regulatory Affairs concerning autobus operations, companies, and services	20 N.J.R. 2635(b)	R.1989 d.144	21 N.J.R. 776(a)
16:53D	Regular route autobus carriers: zone of rate freedom	20 N.J.R. 2374(b)	R.1989 d.56	21 N.J.R. 310(a)
16:62-1.1, 1.2, 3.2, 3.5, 5.1, 9.1, 10.1	Land use within airport hazard areas	20 N.J.R. 3007(a)		
16:62-5.1, 9.1	Land uses within airport hazard areas: preproposal	20 N.J.R. 1534(a)		
16:76	NJ TRANSIT: private carrier capital improvement	20 N.J.R. 2638(b)	R.1989 d.73	21 N.J.R. 310(b)
16:77-1.1, 1.4, 1.5	NJ TRANSIT: fees charged to municipalities	21 N.J.R. 13(c)	R.1989 d.133	21 N.J.R. 688(b)
16:82	NJ TRANSIT: availability of public records	21 N.J.R. 284(b)		

Most recent update to Title 16: TRANSMITTAL 1989-1 (supplement January 17, 1989)

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