NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 23 NUMBER 2

January 22, 1991 Indexed 23 N.J.R. 145-248

(Includes adopted rules filed through December 28, 1990)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: NOVEMBER 19, 1990
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT DECEMBER 17, 1990

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

RULE ADOPTIONS

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **February 21, 199** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposa

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response 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 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 violati 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, unl otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the N Jersey Administrative Code.

RULEMAKING IN THIS ISSUE—Continued

Filing Deadlines

February 19 issue:
- **Adoptions ..... January 2**

March 4 issue:
- **Proposals ..... January 3**
- **Adoptions ..... February**

March 18 issue:
- **Proposals ..... February 1**
- **Adoptions ..... February 2**

April 1 issue:
- **Proposals ..... March**
- **Adoptions ..... March**

NEW JERSEY REGISTER

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

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publicati of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one ye $90 ($180 by First Class Mail); back issues when available, $10 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfi New Jersey.

The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscript rates for this 45-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one six volumes depending on the Department coverage desired.

RULE PROPOSALS

BANKING

(a)

IVISION OF REGULATORY AFFAIRS

eneral Provisions

roposed Readoption with Amendments: N.J.A.C. 3:6

uthorized By: Jeff Connor, Commissioner, Department of Banking.

uthority: N.J.S.A. 17:1-8 and 8.1; 17:9A-24G, 24a, 24b, 24b.1, 28.2, 31, 43, 62H, 71, 182.1, 195, 256A, 333, 334, 377, and 379.

oposal Number: PRN 1991-57.

Submit comments by February 21, 1991 to:

Robert M. Jaworski, Assistant Commissioner
Department of Banking
CN 040
Trenton, NJ 08625

ie agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 3:6 expires on arch 3, 1991. The Department of Banking has reviewed the rules and, general, determined them to be necessary, reasonable and proper for e purpose for which they were originally promulgated as required by e Executive Order.

Subchapter 1 gives savings banks parity with Federally chartered savgs banks. Any such power must be exercised upon the same terms and bject to the same conditions as are authorized for Federally chartered vings banks. N.J.A.C. 3:6-1.1 has been amended to reflect the change the title of the Federal regulating agency.

N.J.S.A. 17:9A-31 permits a qualified bank to create a fund to be held security for the performance of its obligations in fiduciary capacities r which security is required. These funds may be deposited in a Federal eserve bank, or another bank approved by the Commissioner. bchapter 2 permits such deposits in all banks, savings banks and tional banking associations domiciled in New Jersey which have total pital and surplus of at least $2,000,000 which are authorized to do a luciary business.

Subchapter 3 limits the amount of loans a bank may make to an ecutive officer to an amount not to exceed 2.5 percent of the capital nds of the bank or $25,000, whichever is greater, but in no event more an $100,000. In addition, loans may be made to finance the education an executive officer's children.

Subchapter 4 requires banks and savings banks to notify the Departent of apparent criminal acts involving or affecting the funds of such stitutions. In general, the institution must notify the Commissioner on the detection of any fraud, embezzlement, defalcation, misapplican or misuse of the institution's funds by any officer, director, attorney, ent or employee of the institution. Such acts by agents or employees volving $1,500 or less do not need to be reported. Suspected criminal tivity by unrelated persons must be reported when the actual or proble loss will exceed $2,500. It is proposed that the respective amounts increased to $5,000 and $9,000. In addition, it is proposed that institons be required to report suspected civil frauds above the applicable nounts.

Subchapter 5 concerns sales of Federal funds, which are defined as the mporary transfer and sale of immediately available funds either from ie member bank in the Federal Reserve System to another member bank to another bank not in the Federal Reserve System. The subchapter empts liabilities arising under Federal funds transactions from the loans one borrower limitations.

Subchapter 6 permits a qualified bank to invest in variable account ites of a single borrower on a short-term basis. The subchapter sets andards for these instruments, and requires that records be maintained.

Subchapter 7 currently permits a mutual savings bank to defer and nortize all gains and losses on any sale or other disposition of mortgage ans, redeemable ground-rent leases, mortgage-related securities, eferred stock that at the time of issuance provides for redemption ursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not qualify as liquid assets because of their maturities or that have remaining terms to maturity of at least five years. The Department proposes to repeal this subchapter. Immediately reflecting gains and losses of this type assist in providing a clearer picture of an institution's financial health.

Subchapter 8 is reserved. Subchapter 9 requires a person to file an application with the Department before acquiring control of a savings bank. Control of a savings bank is defined to include control of five percent or more of the outstanding shares of any class of voting securities; or controlling the election of a majority of the directors of a capital stock savings bank. The rules require notice of the application to be published, and public objections may be made. The filing fee for the application is $2,500, and the fee for filing an objection is $750.00. The rules also require that a hearing be held prior to approval.

Subchapter 10 provides that unsecured days funds may be transferred only to a commercial bank whose deposits are insured by the Federal Deposit Insurance Corporation. The total amount which may be sold to any one insured bank may not exceed 10 percent of the surplus of the savings bank. It is proposed that the allowable percentage be increased to 15 percent.

Subchapter 11 permits the investment on a short-term basis of cash held for various fiduciary accounts. In addition, the subchapter sets standards regarding these investments.

Subchapter 12 permits a bank to exercise any power, right, benefit or privilege which is now or hereafter authorized for national banks pursuant to Federal law or rules or regulations of the Federal supervising agencies, unless said power is contrary to State law. The Department deems it appropriate to give banks this parity so as to deny Federal institutions a competitive advantage.

Subchapter 13 provides the rules concerning Automated Teller Machines. The rules require a bank or savings bank to notify the Department before erecting an ATM on the premises or within 200 feet. A $10.00 fee must accompany each notice. In addition, the rules require an application before the institution may establish an ATM beyond 200 feet. The filing fee is set at $500.00, plus an additional $50.00 if one or more other financial institutions will share access. The rules also permit an application to share access, which must be accompanied by a $200.00 fee. Interstate access to ATMs is prohibited, except on a transactional fee basis.

It is anticipated that the Department will propose an amendment to subchapter 13 in the near future. Being considered is a proposal which would (1) eliminate the filing requirement for on-site ATMs; (2) standardize the rules for bank, savings bank and savings and loan ATM machines; and (3) allow for interstate deposit taking at ATMs. This proposal is not being submitted as part of this proposed readoption to allow for further study.

Subchapter 14 sets the fee schedule for foreign banks seeking a certificate of authority to transact business in New Jersey. The current biennial fee is $1,000. Other fees are as follows: (1) $50.00 for filing a certificate of incorporation or an amendment to the certificate; (2) $50.00 for filing a statement of financial condition; (3) $50.00 for filing a power of attorney; and (4) $50.00 for substitution of securities.

Subchapter 15 permits a savings bank to lend to its officers and managers to the same extent as banks are permitted to do so. A savings bank may not rely on parity with Federally chartered savings banks to expand this authority.

Subchapter 16 permits a qualified bank to acquire securities for one or more of its trust accounts from itself or an affiliate bank when the qualified bank or affiliate holds the security as a result of its being the underwriter or a member of the underwriting syndicate of the security, so long as specified conditions are met. Records of these securities shall be maintained for a minimum of two years. A qualified bank may not retain or purchase for its trust accounts or retain or sell to any of its affiliate banks for their trust accounts, securities which in the aggregate will exceed a total of more than 50 percent of an issue of securities regarding which it or any affiliate bank is an issuer.

Social Impact

The rules at N.J.A.C. 3:6, which the Department proposes to readopt, regulate vital activities of banks, savings banks and the Department. The rules give banks and savings banks substantial parity with their Federal counterparts, regulate investments, and deposits of banks and savings banks with other institutions, provide guidelines for loans to employees

and other related persons, require disclosure of criminal activity, require an application before obtaining control of a savings bank and set standards for ATM applications. The readoption of the rules on these vital subjects is necessary to prevent serious disruptions in both the private and public sectors.

Economic Impact

The proposed readoption of Chapter 6 substantially readopts existing provisions, and will not, therefore, cause any new economic impact on the State, consumers or private industry. The readoption will permit the Department to continue to collect the fees which are specified in subchapters 9 (savings bank change of control), 13 (ATM applications) and 14 (foreign bank charges). A failure to readopt these rules would either require the curtailment of State services or would shift the cost of services from users to other providers of State revenue.

Although the repeal of subchapter 7, Loss Deferral Accounting for Mutual Savings, results in a change in the accounting of certain gains and losses, the Department does not anticipate any direct economic impact to the institutions in that the overall economic well being of the institution is not altered by changing the accounting method. However, an indirect impact may result from the interpretation of the resulting figures by a potential investor and the subsequent decision to invest or not.

In addition, these rules give banks and savings banks flexibility in making their investment decisions, within specified standards. This allows these institutions to make these investment decisions to their economic benefit.

Regulatory Flexibility Analysis

The Department does not maintain records regarding the number of employees employed by banks and savings banks. However, it is estimated that less than 50 percent of these institutions are small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules impose recordkeeping, reporting and other compliance requirements on businesses as follows.

Subchapter 4 requires all institutions to notify the Department of apparent criminal activity involving $1,500 or more for agents or employees of the bank, and $2,500 for unrelated persons. These exemption amounts are increased to $5,000 and $9,000 respectively, to reduce the reporting burden. No differentiation is made based on business size because such a crime may have a greater relative impact on a smaller institution. Accordingly, it is imperative that these smaller depositories report these suspected crimes.

Subchapters 6 and 16 require qualified banks to maintain records of investments made under those subchapters. This requirement is consistent with prudent banking practice, and is necessary to permit the Department to perform an informed examination. Therefore, no differing standards based on business size are provided.

Subchapter 9 requires an application and hearing before a person acquires control of a savings bank. Because these institutions are entrusted with funds of the public regardless of their size, it is essential that the Department have an opportunity to examine the qualifications of the person acquiring the savings bank. These rules therefore do not provide a differing compliance standard based on the size of the institution.

The fees established in subchapters 9, 13, and 14 reflect reasonable reimbursement to the Department of Banking for administrative costs involved in providing certain services. No differing fee amounts based on business size are established because the cost to the Department for the provision of these services is the same regardless of the size of the institution.

Subchapter 13 requires notice upon establishing an on-site ATM machine, and an application before setting up such a machine more than 200 feet from a banking office. As mentioned above, the Department is examining the need for the notice requirement. However, it is necessary that the Department receive applications for off-site ATM offices regardless of the size of the institution so as to ensure compliance with branching laws.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:6.

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

3:6-1.1 Savings banks parity with Federally chartered savings banks

In addition to other authority granted by law, a savings bank may exercise any power which is now or hereafter authorized for Federal chartered savings banks pursuant to Federal law or rules or regulations of the [Federal Home Loan Bank Board] **Office of Thrift Supervision or any other appropriate Federal regulator.** Any such power shall be exercised upon the same terms and subject to the same conditions as are authorized for Federally chartered savings banks. Powers shall be automatically exercisable upon the expiration of 30 days from the date of adoption by the Federal regulatory agency except if the Commissioner of Banking within that 30 day period provides notice that the power shall not be granted to New Jersey savings banks. Such notice shall be provided to each savings bank and to the trade publications of the Savings Banks' Association of New Jersey, the New Jersey Bankers Association and the New Jersey Savings League for publication. The Commissioner of Banking may permit savings banks to begin exercise of a power prior to the expiration of the 30 day period by providing notice of permission to each savings bank and to the above mentioned trade publications.

3:6-4.2 Notice of crime by an officer, director, attorney, agent or employee

Every bank, capital stock savings bank or mutual savings bank of this State shall promptly notify the Commissioner of Banking upon the detection or discovery of any **civil** fraud, **criminal fraud**, embezzlement, defalcation, misapplication or misuse of the institution's funds on the part of any officer, director, attorney, agent or employee of the institution.

3:6-4.3 Exemption from notification requirements

Any fraud, embezzlement, defalcation, misapplication or misuse of the institution's funds committed by an agent or employee of the bank, capital stock savings bank or mutual savings bank which involves amounts of [$1,500] **$5,000** or less [are] **is** exempt from the requirements of this subchapter.

3:6-4.5 Notice of crime by other perpetrators

In the event of a crime against the bank, capital stock savings bank or mutual savings bank by one other than an officer, director, attorney, or agent or employee of the institution, including crimes for which no immediate loss or any loss is incurred by the bank, capital stock savings bank or mutual savings bank, the board of directors or managers shall promptly report the apparent criminal violation to the Commissioner of Banking if the suspected criminal activity involves an actual or probable loss in excess of [$2,500] **$9,000**. Appropriate criminal authorities must be notified in all cases, irrespective of amount. **For purposes of reporting to the Department pursuant to this section, a suspected civil fraud shall be treated like a crime.**

SUBCHAPTER 7. [LOSS DEFERRAL ACCOUNTING FOR MUTUAL SAVINGS BANKS] (**RESERVED**)

[3:6-7.1 Procedure for election of loss deferral accounting

(a) An institution, by resolution of its board of directors or managers, may elect to defer and amortize all gains and losses (net of related income taxes computed in accordance with generally accepted accounting principles) on any sale or other disposition, occurring in the fiscal year that the action to defer and amortize is taken, of mortgage loans, redeemable ground-rent leases, mortgage-related securities, preferred stock that at the time of issuance provides for redemption on a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not qualify as liquid assets because of their maturities or that have remaining terms to maturity of at least five years. Using the same procedure, an institution may revoke any prior election(s) to amortize gains and losses on the disposition of such assets.

(b) An institution making this election shall amortize as follows:

1. Demonstrate an intent to use the sale proceeds so as to improve the institution's future profitability and/or reduce interest-rate risk.

2. Account for such gains and losses as follows:

i. Such gains and losses (net of related income taxes computed in accordance with generally accepted accounting principles) shall be carried in a separate account and shall be readily identifiable in the institution's statement of condition;

ii. Such gains or losses shall be amortized by the straight-line or vel-yield methods over a period not to exceed the average of the maining terms of maturity of the disposed mortgage loans or quali- ng securities, or, in the case of redeemable ground-rent leases, a riod not to exceed 40 years, with the yield calculated to reflect the ngth of the amortization period. Amortization periods for gains all be established in the same manner as are amortization periods r losses deferred in the same fiscal year.

(c) The amortization of discounts and losses shall be matched as llows:

1. For purposes this subsection (c) only:

i. The term "long-term, deep-discount security" means any loan, ase or security identified in (a) above that has a remaining term maturity, at the time or purchase, of ten years or more, and is rchased at a price of less than 90 percent of its stated (par) value principal balance.

ii. The term "matching loss" is an amount determined by multi- ying (1) the net amount of loss deferred in accordance with an ction made pursuant to (a) above during a period beginning six onths prior to the purchase of a long-term, deep-discount security, d ending six months after the date of such purchase, by (2) a action (not to exceed one), the numerator of which is the total of ounts paid or other consideration given for long-term, deep-dis- unt securities during the twelve-month period described in (a) ove, and the denominator of which is the total proceeds (in cash any other consideration) from dispositions during the same period r which the election under (a) above is in effect.

2. When long-term, deep-discount securities are purchased or herwise acquired within six months preceding or subsequent to the sposition of a mortgage loan, mortgage-related security or debt curity with respect to which an election to defer and amortize any ss or gain has been made pursuant to (a) above, the resulting scount shall be amortized over the same period and by the same ethod used to amortize any matching loss: Provided, that:

i. The method used for the loss is also an appropriate method by hich to amortize a discount, and

ii. If the average of the remaining terms to maturity of the securi- s purchased is shorter than the period used to amortize the atching loss, then the average of the remaining terms to maturity the securities purchased may be used as the amortization period r the discount.

3. If necessary to meet the requirements of (c)2 above, an institu- on may change the method and period by which the matching loss being amortized. When making such a change, the amount of the atching loss shall be that portion of the loss that remains to be nortized as of the date of the change.

(d) For the purposes of this section, "disposition" includes, but not limited to:

1. Prepayment at a discount of an institution's mortgage loans by isting borrowers;

2. Sales of loans (including participation interests therein), leases id securities identified in (a) above; and

3. Exchanges of assets eligible for disposition under this section.

(e) The accounting treatment authorized by this section may be sed only for mortgages and qualifying securities sold or otherwise sposed of during fiscal years ending on or after July 31, 1984. The oard of directors of any institution that has a fiscal year ending prior December 31, 1985 must make the election authorized by (a) above ior to January 1, 1986.

(f) It is intended that this rule parallel for state-chartered mutual vings and loan associations and mutual savings banks those regu- tions adopted by the Federal Home Loan Bank Board for savings id loan associations and savings banks so that any interpretation these regulations shall refer to comments and interpretation of ose federal regulations unless otherwise determined by the com- issioner.]

6-10.2 Limitation on such investments

A savings bank may sell unsecured days funds (term federal funds) any insured bank, as defined in N.J.A.C. 3:6-10.1, provided the tal amount sold to any one insured bank does not exceed [10]**15** percent of the surplus of the savings bank as reported in the latest consolidated report of condition on file with the Department of Banking.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Pretreatment Program Requirements

Pre-Proposed Amendments: N.J.A.C. 7:14A-15

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:11-49 et seq., 58:10A-1 et seq., P.L. 1990, c.28.

DEP Docket Number: 052-90-12.

Pre-Proposal Number: PPR 1991-1.

Take notice that the Department of Environmental Protection is contemplating a proposed amendment to N.J.A.C. 7:14A to add subchapter 15, Industrial Pretreatment Requirements. These new rules would combine and clarify the requirements of the Federal Pretreatment Regulations, 40 CFR 403, the pretreatment requirements of the Clean Water Enforcement Act (CWEA), and the current pretreatment program requirements outlined in N.J.A.C. 7:14A. Establishment of State Pretreatment Regulations will also promote more uniform pretreatment implementation throughout the State.

Several Approved Programs have requested a workshop regarding the implications of the CWEA. In lieu of a workshop, the Department will hold **a public hearing** to provide opportunity for discussion on the above issues. The public hearing will be held on February 8, 1991 from 10:00 A.M. to 12:00 noon at:

N.J. State House Annex
Room 403
125 West State Street
Trenton, N.J.

Interested persons may submit, in writing, views, proposed regulatory language, or arguments relevant to this pre-proposal by February 15, 1991 to:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Office of Policy and Planning
Department of Environmental Protection
CN-402
Trenton, NJ 08625

This notice of pre-proposal is being published in order to obtain comments of interested persons on the Department's rulemaking. Comments are specifically sought on the topics identified below because they are impacted most by the CWEA or require interpretation/discussion with respect to implications to pretreatment programs.

1. Requirements for Control Mechanisms issued by Publicly Owned Treatment Works (POTWs) with Approved Industrial Pretreatment Programs

a. Scope of program: industrial users, trucked-in wastes

POTWs are required to issue control mechanisms to control discharges of pollutants entering their plant(s). At a minimum, control mechanisms must be issued to Significant Industrial Users (SIUs) based on the new definition in 40 CFR 403.3(t). The Department intends to continue to accept more stringent SIU definitions specified in Approved Program local Rules and Regulations or local Sewer Use Ordinances (SUOs).

In addition, the Department would require POTWs to establish written policies and procedures for all trucked-in wastes, including sludges, septage, and limited volume wastes (that is, trench de-watering, etc.). At a minimum, all haulers that would otherwise meet the POTW's SIU definition would be subject to the same controls as those facilities which are directly connected to the collection system because of the potential impact of such wastes on the treatment plant.

b. Control Mechanism Contents

The minimum control mechanism contents are outlined in 40 CFR 403.8(f)(1)(iii). Requirements in the CWEA [58:10A-6(f)] are generally consistent with the Federal Regulations. However, the CWEA also requires a condition that permittees must "maintain in good working order [and operate] as effectively as possible, any facilities or systems of control

installed to achieve compliance with the terms and conditions of the permit." The Department interprets this requirement to cover maintenance and housekeeping that could impact the discharge to the sewer throughout the entire facility, not just pretreatment equipment. The Department is considering requiring a general condition similar to the above excerpt from the CWEA in all permits issued to IUs by designated authorities. More explicit requirements similar to N.J.A.C. 7:14A-4.6 would be included case-by-case, based on the hazardous waste classification of the facility's wastewater or residue before pretreatment and/or any wastewater treatment residuals.

c. Industrial User Self-Monitoring and Reporting Requirements

i) 40 CFR 403.12 requires that SIUs and Categorical Industrial Users (CIUs) submit self-monitoring reports (SMRs) at least semi-annually. The CWEA notes "SIUs, major industrial dischargers . . . shall . . . report their monitoring results . . . monthly . . ." [58:10A-6(f)(5)]. As stated, the CWEA requires significant industrial users (as defined by the POTW) and CIUs to submit monthly monitoring results to the POTW.

The CWEA is unclear in its intention regarding the parameters which would be monitored monthly. This may be interpreted such that only parameters of concern be monitored monthly. Parameters of concern are defined as any pollutants which might reasonably be expected to be discharged to the POTW in quantities which could pass through or interfere with the POTW, contaminate the sludge, or jeopardize POTW worker health and safety. Alternatively, this may be interpreted to mean that all parameters are to be monitored monthly.

Because of the ambiguity of the CWEA, the Department is soliciting comments on the above interpretation.

ii) 40 CFR 403.12(p) requires an IU to notify the POTW of any discharge of RCRA-classified hazardous wastes and certify that the IU has a program in place to reduce the volume and toxicity of hazardous waste generated. Although these reports are to be submitted by existing IUs by February 28, 1991, new IUs or IUs that modify their processes may be required to submit these reports either with the permit application or as a permit requirement.

2. Monitoring and Inspections performed by POTWs with Approved Programs

a. Significant Industrial User monitoring/inspection frequency

The frequency for monitoring and inspection of SIUs and CIUs is once per year in both 40 CFR 403 and the CWEA [58:10A-6(l)]. However, the CWEA combines these activities and notes that inspections shall include sampling of the IU effluent. The Department is NOT considering requiring sampling to be done concurrently when inspecting, although both activities must be conducted at the minimum frequency.

The CWEA also requires additional inspection and sampling be performed by the POTW if an IU is found to be a significant noncomplier [58:10A-6(m)]. The inspection and sampling must be performed by the POTW within sixty days after receipt of an SMR which initially resulted in the permittee being identified as a significant noncomplier, if the IU had not been inspected (and sampled) within the previous six-month period. The Department interprets the CWEA to require complete facility inspections with sampling for this purpose. If only an inspection OR sampling had been performed within the previous six months, the other (sampling or inspection) would have to be performed within 60 days after receipt of the SMR to satisfy the CWEA.

40 CFR 403.8(f)(2)(v) now requires POTWs to evaluate the need for slug discharge control plans for each IU at least every two years. Minimum contents of these plans are clearly outlined. Additional guidan is available in EPA's "Guidance Manual for Control of Slug Loadin to POTWS", issued in September, 1988.

b. Other permitted user monitoring/inspection frequency

40 CFR 403 does not address sampling or inspection frequencies f non-SIU, non-CIU permittees. Some POTWs have been inspecting ar sampling these facilities once per permit term, that is once per five yea The CWEA specifies that the minimum frequency for inspection is on per year [58:10A-6(l)], while sampling must be done once per three yea [58:10A-6(l)(1)]. The Department is considering requiring non-SIU ar non-CIU facilities be inspected annually and sampled at least once p three years to be consistent with the CWEA.

3. Reporting Requirements for POTWs with Approved Programs

a. Annual Report

Delegated POTWs are required to submit an annual report on the IPP pursuant to 40 CFR 403.12(i). This report is utilized to review IF implementation at a six-month interval from the audit. Guidance c report contents will be provided.

b. Calendar Year Report

This report would contain information required by the CWEA [Ne Sections 9 and 10] and cover the January to December calendar yea The report is required for preparation of the Department's Annual R port to the Governor. Guidance on report contents will be provide

4. Enforcement Response

a. Enforcement Response Plans

40 CFR 403.8(f)(5) now requires a POTW with an approved progra to submit an Enforcement Response Plan (ERP). This plan must conta detailed procedures indicating how a POTW will investigate and respor to instances of IU noncompliance. The Department is considering usi "Guidance for Developing Control Authority Enforcement Respon Plans" issued by EPA, September 1989, for evaluating these plans.

The CWEA [58:10A-6(i)(2)] imposes additional enforcement response including increased IU self-monitoring requirements and POTW inspe tion requirements, which should be included in any ERP submitted f approval.

b. Penalties for IUs

The Department is considering requiring that stepped penalty matric be adopted Statewide for IU discharge and non-discharge violations

The Department is considering two separate matrices be used, one f discharge violations, and the other for non-discharge violations. Ste would be based on frequency, severity or impact of violation, and determination regarding negligent or willful conduct.

c. Monies Collected

The CWEA [58:10A-6(i)(2)] specifies that any penalty assessed or cc lected in an action brought by a local agency pursuant to 58:10A-10 58:11-55 must be distributed as follows: ten percent of all penalties cc lected must be deposited in the "Wastewater Treatment Operators' Trai ing Account"; the remaining 90% is to be used by the local agency sole for enforcement purposes, and for upgrading the treatment works.

d. Definition of Significant Noncompliance (SNC)

The CWEA (New Section 9) and 40 CFR 403.8(f)(2)(vii) requir POTWs to identify those facilities which meet or have met the SN criteria. The definition of SNC in the CWEA and the Federal Pretrea ment Regulations have some similarities. However, the SNC definitic in 40 CFR 403 is more extensive than that in the CWEA. The followir is a comparison of the two definitions:

CWEA	40 CFR 403
1. Violations of wastewater discharge limits	
a. Serious violation for the same hazardous pollutant or the same non-zardous pollutant at the same discharge point source, in any two nths of any six-month period.	a. Technical review criteria: 33 percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH).
b. Exceeding the monthly average or, in case of a pollutant for which monthly average has been established, the monthly average of the daily aximums of an effluent limitation for the same pollutant at the same scharge point source by any amount in any four months of any six-nth period.	b. Chronic violation: 66 percent or more of all of the measurements for each pollutant parameter taken during a six-month period exceed (by any magnitude) the average limit or the daily maximum limit.
c. No comparable criteria in the CWEA.	c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).
d. No comparable criteria in the CWEA.	d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge.
2. Non-Discharge Violations	
a. Failure to submit a completed discharge monitoring report in any o months of any six-month period.	a. Failure to provide, within 30 days after the due date, required reports such as BMRs, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.
b. No comparable criteria in the CWEA.	b. Failure to meet, within 90 days after the schedule date, a compliance milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.
c. No comparable criteria in the CWEA.	c. Failure to accurately report noncompliance.
d. No comparable criteria in the CWEA.	d. Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

The Department intends to utilize the Federal definition for SNC determinations because it appears to be more stringent and more inclusive an the CWEA definition. However, with respect to Non-discharge violations, as noted in 2. above, criteria 2(a) would incorporate both the Federal id the CWEA criteria, and thereby require that **complete reports** be submitted **within 30 days**. The Department seeks comments regarding this terpretation and its conclusions on the SNC criteria.

d. Penalties for Approved Programs

Because program implementation deficiencies are significantly different than discharge violations, the Department intends to develop a penalty atrix specifically for failure to implement the elements of an acceptable pretreatment program. Steps would be analogous to those in 7:14-8, based n seriousness, conduct, and degree of deviation from the approved program.

(a)

IVISION OF HAZARDOUS WASTE MANAGEMENT

etermining if a Solid Waste is Hazardous oxicity Characteristic

roposed Amendments: N.J.A.C. 7:26-8.2, 8.8, and 8.12

uthorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

uthority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

EP Docket Number: 050-90-12.

roposal Number: PRN 1991-51.

Submit comments, identified by the Docket Number given above, by arch 23, 1991 to:

Samuel A. Wolfe
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing to amend its hazardous waste management rules to replace the current Extraction Procedure (EP) toxicity characteristic with the Toxicity Characteristic (TC). The amendments at N.J.A.C. 7:26-8.2, 8.8, and 8.12 will conform to the Federal rules with respect to the Toxicity Characteristic.

In May 1980, the United States Environmental Protection Agency (EPA) adopted regulations implementing the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq. These regulations govern the identification, generation, transport, treatment, storage, and disposal of hazardous waste. The Federal program identified hazardous waste as waste which has been listed in 40 C.F.R. 261 Subpart D or which displays one or more hazardous characteristics identified in 40 C.F.R. 261 Subpart C. One of the hazardous characteristics identified was the characteristic of EP toxicity (40 C.F.R. 261.24). EP toxicity was designed to evaluate the concentrations, in a simulated municipal landfill leachate, of eight metals, four pesticides, and two herbicides. Wastes containing leachable concentrations of these compounds at or above the regulatory limits would be considered to fail the EP toxicity characteristic and have to be managed in accordance with the Federal hazardous waste regulations.

On March 29, 1990 (55 Fed. Reg. 11798), EPA replaced the EP toxicity characteristic with the Toxicity Characteristic and its corresponding methodology, the Toxicity Characteristic Leaching Procedure (TCLP) under the authority of the Hazardous and Solid Waste Amendments of

1984 (HSWA), P.L. 98-616. The Toxicity Characteristic expands by 25 organic compounds the list of constituents of concern identified by the EP toxicity characteristic. Regulatory levels for the newly added compounds also were established. If an extract of the waste (prepared by subjecting a sample of the waste to the TCLP) contains one or more of the 39 constituents at a concentration that exceeds the regulatory level established for Toxicity Characteristic, the waste is designated as hazardous waste. Regulations adopted pursuant to HSWA authority become effective in all states on the Federally effective date, which was September 25, 1990 for generators of greater than 1000 kilograms per month (Federal "large quantity generator") and March 29, 1991 for all other generators.

The amendments at N.J.A.C. 7:26-8.12 will bring Toxicity Characteristic wastes under State regulation by replacing the EP toxicity characteristic with the Toxicity Characteristic and adding 25 organics and their corresponding regulatory concentrations to Table 1. N.J.A.C. 7:26-8.12 cites Appendix II of 40 C.F.R. 261 Subpart D as the test method to be used and incorporates the TCLP methodology by reference.

The amendments at N.J.A.C. 7:26-8.2(a) will revise the exemption for wood and wood products failing the EP toxicity characteristic for arsenic to reflect the Toxicity Characteristic. A new exclusion will be added for petroleum contaminated media and debris that fail the Toxicity Characteristic for any of the twenty-five new organics but are subject to the corrective action regulations of 40 C.F.R. Part 280. This exemption is equivalent to its Federal counterpart at 40 C.F.R. 261.4(b)(10).

The amendment at N.J.A.C. 7:26-8.8 will replace the term "EP Toxic Waste" with "Toxicity Characteristic Waste."

Newly regulated generators who are not eligible for reduced requirements as a small quantity generator under N.J.A.C. 7:26-8.3 must obtain an EPA hazardous waste generator identification number from the Federal government and comply with the hazardous waste management rules under N.J.A.C. 7:26. The rules require hazardous waste to be manifested, by a licensed hazardous waste transporter, to an authorized hazardous waste facility as well as recordkeeping and reporting. Information on obtaining an EPA Identification number can be obtained by calling EPA Region II in New York at (212) 264-9880.

The amendments will subject facilities that currently handle or manage many wastes as non-hazardous under the current rules to the New Jersey hazardous waste management rules under N.J.A.C. 7:26. A person handling or managing wastes designated as hazardous as a result of these amendments would be regulated as a hazardous waste treatment, storage, and/or disposal (TSD) facility and would need to comply with N.J.A.C. 7:26-12.3(j) to obtain existing facility status to continue to accept wastes designated as hazardous. These facilities will have six months from the effective date of the amendments to notify the Department of their hazardous waste activities and submit a Part A facility application. The necessary forms are available from the Department's Division of Hazardous Waste Management or EPA Region II in New York.

Social Impact

The amendments will have a positive social impact in New Jersey. It will maintain the equivalence between New Jersey hazardous waste regulations and the corresponding Federal rules. New Jersey will also retain Federal authorization to implement the RCRA hazardous waste management program for the State. These amendments will simplify compliance for the regulated community and remove the need for the regulated community to comply with both Federal and State regulations on the toxicity characteristic by replacing the EP toxicity characteristic and the Extraction Procedure with the Toxicity Characteristic and the TCLP.

Economic Impact

Adoption of the Toxicity Characteristic rule will increase the cost of waste characterization when compared with the existing EP test because of the 25 additional contaminants subject to regulatory analysis. Generators and newly regulated facilities will be the most significantly affected. Generators whose waste is currently considered non-hazardous are not subject to hazardous waste management rules. However, the Toxicity Characteristic will subject many wastes which are presently considered non-hazardous under the EP toxicity characteristic to hazardous waste management rules. Generators of hazardous waste must handle and manage the waste in accordance with N.J.A.C. 7:26, including filling out a hazardous waste manifest and procuring a licensed hazardous waste transporter to transport the waste to an authorized hazardous waste facility (see N.J.A.C. 7:26-7.4). Generators are also subject to recordkeeping and reporting requirements. Since the Toxicity Characteristic is currently in effect for many generators in New Jersey under the Federal program (September 25, 1990 for generators of greater than 1,000 kilograms per month and March 29, 1991 for all other generators), tl additional costs are already being realized.

Facilities that manage wastes which will be considered hazardous a result of these amendments will either have to stop accepting suc wastes or become an "existing hazardous waste facility" by complyin with N.J.A.C. 7:26-12.3(j) and subsequently obtain a hazardous was facility permit. It is not possible to estimate the costs associated wi either of these options since costs may vary greatly depending on tl specific wastes and management activities involved.

The proposed rule will also have a positive eonomic impact in Ne Jersey due to reduction of risk for the general public because of the mo stringent management standards for wastes containing the organic cons tuents newly listed for the toxicity characteristic. There will be a positi economic impact through the reduction of needed resources to remedia contaminated sites resulting from inappropriate waste management.

Environmental Impact

The proposed amendments will have a positive environmental impac By requiring analysis for 25 additional contaminants, pollution groundwater through mismanagement of these wastes in non-hazardo land-based units, such as landfills and surface impoundments, will l minimized. Generation, transportation, treatment, storage and dispos of these wastes will be regulated under one set of regulations, eliminatir the need to comply with two different toxicity characteristic procedure

Regulatory Flexibility Analysis

These amendments would apply to generators of solid waste and faci ties handling solid waste which will be considered hazardous waste a result of the expanded hazardous characteristic of toxicity. It is est mated that many businesses impacted by these amendments will be "sma businesses" as defined by the New Jersey Regulatory Flexibility Ac N.J.S.A. 52:1B-16 et seq. In order to comply with the amendments, sma businesses will have to comply with the requirements set forth in tl Summary above. In so doing, it is likely that generators who are sma businesses will incur costs for sampling and analysis of the waste ar for transportation and disposal of the waste as hazardous. Howeve many generators may be eligible for conditional exemption provided f "small quantity generators" at N.J.A.C. 7:26-8.3. In the case of faciliti who are small businesses, the costs of becoming a hazardous waste facili may be substantial. Expected costs for facility compliance include consul ant and engineering services, possible equipment modification or upgrad recordkeeping and reporting. In developing these amendments, the D partment has balanced the need to protect the environment against tl economic impact of the amendments and has determined that to minimi the impact of the rule would endanger the environment, public heal and public safety. Furthermore, the Department could not lessen tl impact on small businesses and maintain equivalency with the Feder RCRA hazardous waste management program. Therefore, no exemptic from coverage is provided.

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

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous was for the purposes of this subchapter:

1.-8. (No change.)

9. Solid waste which consists of discarded wood or wood produc which fails the test for the characteristic of [EP] toxicity solely f arsenic and which is not a hazardous waste for any other reason the waste is generated by persons who utilize the arsenical-treate wood and wood products for these materials intended end use.

10.-21. (No change.)

22. Petroleum-contaminated media and debris that fail the test f the Toxicity Characteristic in N.J.A.C. 7:26-8.12 (Hazardous Was Codes D018 through D043 only) and are subject to the corrective actio regulations at 40 C.F.R. Part 280.

Recodify existing 22-25 as **23-26.** (No change in text.)

(b) (No change.)

7:26-8.8 Criteria for listing hazardous waste by category, class or type

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

(d) The Department will indicate its basis for listing the class or types of wastes listed in this section by employing one or mo of the following Hazard Codes.

Ignitable Waste (I)
Corrosive Wastes (C)
Reactive Wastes (R)
[EP Toxic] **Toxicity Characteristic Waste** (E)
Acute Hazardous Waste (H)
Toxic Waste (T)

26-8.12 Characteristics of [EP] toxicity
(a) A solid waste exhibits the characteristic of [EP] toxicity if, ing test methods described in Appendix II of 40 CFR 261, Subpart or equivalent methods approved by the Department, the extract om a representative sample of the waste contains any of the conminants listed in Table I, or Table I at 40 CFR 261.24 as amended, a concentration equal to or greater than the respective value given those tables. Where the waste contains less than 0.5 percent terable solids, the waste itself, after filtering, is considered to be e extract for the purposes of this section.
(b) A solid waste that exhibits the characteristic of [EP] toxicity, it is not listed as a hazardous waste in this subchapter, has the EPA azardous Waste Number specified in Table I, **or Table I at 40 CFR 61.24 as amended,** which corresponds to the toxic contaminant caus- g it to be hazardous.

Table I

Maximum Concentration of Contaminants for Characteristic of [EP] Toxicity

PA azardous aste umber	Contaminant	Chemical Abstract Service (CAS) Number	Maximum Concentration (milligrams per liter)
004	Arsenic	7440-38-2	5.0
005	Barium	7440-39-3	100.0
018	**Benzene**	71-43-2	0.5
006	Cadmium	7440-43-9	1.0
019	**Carbon tetrachloride**	56-23-5	0.5
020	**Chlordane**	57-74-9	0.03
021	**Chlorobenzene**	108-90-7	100.0
022	**Chloroform**	67-66-3	6.0
007	Chromium	7440-47-3	5.0
023	**o-Cresol**	95-48-7	200.0*
024	**m-Cresol**	108-39-4	200.0*
025	**p-Cresol**	108-44-5	200.0*
026	**Cresol**		200.0*
016	**2,4-D**	94-75-7	10.0
027	**1,4-Dichlorobenzene**	106-46-7	7.5
028	**1,2-Dichloroethane**	107-06-2	0.5
029	**1,1-Dichloroethylene**	75-35-4	0.7
030	**2,4-Dinitrotoluene**	121-14-2	0.13**
012	**Endrin**	72-20-8	0.02
031	**Heptachlor (and its epoxide)**	76-44-8	0.008
032	**Hexachlorobenzene**	118-74-1	0.13**
033	**Hexachlorobutadiene**	87-68-3	0.5
034	**Hexachloroethane**	67-72-1	3.0
008	Lead	7439-92-1	5.0
013	**Lindane**	58-89-8	0.4
009	Mercury	7439-97-6	0.2
014	**Methoxychlor**	72-43-5	10.0
035	**Methyl ethyl ketone**	78-93-3	200.0
036	**Nitrobenzene**	98-95-3	2.0
037	**Pentachlorophenol**	87-86-5	100.0
038	**Pyridine**	110-86-1	5.0
010	Selenium	7782-49-2	1.0
011	Silver	7440-22-4	5.0
039	**Tetrachloroethylene**	127-18-4	0.7
015	**Toxaphene**	8001-35-2	0.5
040	**Trichloroethylene**	79-01-6	0.5
041	**2,4,5-Trichlorophenol**	95-95-4	400.0
042	**2,4,6-Trichlorophenol**	86-06-2	2.0
017	**2,4,5-TP (Silver)**	93-72-1	1.0
043	**Vinyl chloride**	75-01-4	0.2
[D012	Endrin (1,2,3,4,10,10-hexachloro-6 7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1 4-endo, endo-5,8-diamethano naphthalene) ..		0.02
D013	Lindane (1,2,3,4,5,6- hexachlorocyclohexane, gamma isomer)		0.4
D014	Methoxychlor (1,1,1,-Trichloro, 2,2,-bis [p-methoxyphenyl]ethane)		10.0
D015	Toxaphene (C_{10} H_{10} Cl_8 Technical chlorinated camphene, 67-69 percent chlorine)		0.5
D016	2,4-D (2,4-Dichlorophenoxyacetic acid)		10.0
D017	2,4,5-TP Silvex (2,4,5- Trichlorophenoxypropionic acid)		1.0]

***If o-, m- and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/L.**

****Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.**

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Hazardous Waste From Non-Specific Sources Description of F019 Listing

Proposed Amendment: N.J.A.C. 7:26-8.13

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.
DEP Docket Number: 049-90-12.
Proposal Number: PRN 1991-41.

Submit written comments, identified by the Docket Number given above, by March 23, 1991 to:

Samuel A. Wolfe
Administrative Practice Officer
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing to amend N.J.A.C. 7:26-8.13(a) to conform to final regulations adopted by the United States Environmental Protection Agency (USEPA) on February 14, 1990 at 55 Fed. Reg. 5340 and codified at 40 C.F.R. 261.31. The Department is amending the F019 listing to exclude wastewater treatment sludges from the zirconium phosphating step, when such phosphating is an exclusive process in the aluminum can washing process. This amendment does not affect any other wastewater treatment sludges from the chemical conversion coating of aluminum. This amendment is equivalent to the description of F019 in the Federal regulations at 40 C.F.R. 261.31.

USEPA originally listed wastewater treatment sludges from the chemical conversion coating of aluminum as F019 due to the belief that these processes used complex cyanides and chromium and resulted in hazardous sludges. However, USEPA later learned that the chemical conversion coating process of zirconium phosphating performed during the washing of aluminum cans is not expected to result in hazardous wastewater treatment sludges. USEPA has determined that these wastes do not pose a substantial hazard to human health or the environment. This exclusion would apply only to sludges from processes that exclusively use zirconium phosphating solutions that do not contain chromium or cyanides. The Department concurs with USEPA's determination and incorporates by reference 55 Fed. Reg. 5340, February 14, 1990.

Social Impact

The amendment to N.J.A.C. 7:26-8.13(a) will not have a negative social impact since the wastes excluded from the F019 description do not pose

a threat to human health or the environment when managed as non-hazardous waste.

Economic Impact

Since the material excluded from the listing description of F019 will not be required to be handled and managed as a hazardous waste, a positive economic impact can be expected by those currently managing these materials as hazardous waste.

Environmental Impact

The Department does not anticipate a negative environmental impact from this amendment. The Department has determined, based on information presented by the USEPA in the Federal Register at 55 Fed. Reg. 5340, February 14, 1990, that the wastewater sludge excluded from the description of F019 by this amendment does not pose a present or potential hazard to human health or the environment. The sludge excluded by this amendment is not expected to contain any hazardous constituents, nor exhibit any characteristics of hazardous waste.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined by the Act since it excludes materials from hazardous waste management. Although there may still be costs related to properly disposing of such wastes, it is anticipated to be less costly than management as a hazardous waste. Therefore, no regulatory flexibility analysis is required.

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

7:26-8.13 Hazardous waste from non-specific sources

(a)

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
Generic			
...			
	F019	Wastewater treatment sludges from the chemical conversion coating of aluminum **except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.**	(T)
...			

(b) (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Hazardous Waste From Specific Sources Listing of Methyl Bromide Production Wastes

Proposed Amendment: N.J.A.C. 7:26-8.14

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 051-90-12.

Proposal Number: PRN 1991-50.

Submit comments, identified by the Docket Number given above, by March 23, 1991 to:

Samuel A. Wolfe
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) is proposing to amend its hazardous waste management rules at N.J.A.C. 7:26-8.14 to list two methyl bromide production wastes as hazardous. This amendment is equivalent to changes made by the United States Environmental Protection Agency (USEPA) in implementing the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq. The State must demonstrate that its hazardous waste management program is at lea as stringent as the Federal program to retain Federal authorization implement the RCRA program for the State. The USEPA has determin that two methyl bromide production wastes should be added to the li of hazardous wastes from specific sources because they are capable posing a substantial present or potential hazard to human health or t environment when improperly managed. For a detailed discussion these listings, see 50 Fed. Reg. 16432, April 25, 1985 and 54 Fed. Re 41402, October 6, 1989.

The amendment to N.J.A.C. 7:26-8.14 will add to the list of hazardo wastes from specific sources two wastes generated in the production methyl bromide. These two wastes are: 1) wastewater from the react and acid dryer from the production of methyl bromide (USEPA Hazar ous Waste Number K131), and 2) spent absorbent and wastewater sepa ator solids from the production of methyl bromide (USEPA Hazardo Waste Number K132).

Unless the conditionally exempt "small quantity generator" standar at N.J.A.C. 7:26-8.3 are applicable, generators of these wastes will required to arrange for transportation, treatment, and disposal of the wastes by licensed hazardous waste transporters and hazardous was treatment, storage, and disposal (TSD) facilities. Generators are al subject to manifesting, recordkeeping, reporting, and on-site manageme requirements set forth at N.J.A.C 7:26-7. Any generator who stor hazardous waste on-site for longer than 90 days is considered a hazardo waste facility and must comply with the TSD facility standards N.J.A.C. 7:26. However, the Department is not aware of any meth bromide production processes in this State.

Facilities which accept these wastes for treatment, storage or dispos will be considered hazardous waste facilities as a result of these wast being listed as a hazardous waste. Any facility currently handling the wastes will be required to: (1) Notify USEPA under RCRA, Section 301 (2) File a hazardous waste facility Part A application within 180 da of becoming subject to the hazardous waste laws of this State to obta "existing facility" status; and (3) Operate the facility in accordance wi N.J.A.C. 7:26-9 and 11. (See N.J.A.C. 7:26-12.3(j)).

Social Impact

There will be a positive social impact from the amendment. The reg lation of these additional wastes will reduce the threat to human healt and the environment through the additional controls that will be place on those who manage these materials. Also, the public will be bett informed about the risks involved in using these chemicals. Increase public knowledge of the hazards associated with these substances ma help insure that they are managed properly.

Economic Impact

There will be an economic impact associated with the amendment du to compliance costs incurred in managing these wastes as hazardou Generators may incur increased transportation costs when sending the wastes to hazardous waste facilities instead of handling these materia as non-hazardous solid waste. The precise costs incurred will depend o such factors as the volume of waste generated and the distance it mu be transported for treatment, storage, or disposal. However, the Depar ment is not aware that either of the wastes proposed to be listed produced in this State.

Facilities which currently handle these wastes may incur substanti costs in becoming hazardous waste treatment, storage or disposal facil ties, if they are not presently permitted as a TSD facility. These cos may include consultant and engineering services, possible equipmer modification or upgrade, recordkeeping and reporting.

Environmental Impact

There will be a positive environmental impact from the amendmen The additional controls placed on methyl bromide and the wastes a sociated with its production will reduce the potential hazard or thre to the environment that improper treatment, storage, or disposal of the substances may pose. Since these wastes may persist in the environmer and reach susceptible environmental receptors in harmful concentration any reduction in the possible mismanagement or introduction of the substances into the environment is beneficial.

Regulatory Flexibility Statement

This amendment would apply to generators of methyl bromide pr duction wastes and any person who handles or manages these waste It is estimated that few businesses, if any, impacted by this amendmer are "small businesses" as defined in the New Jersey Regulatory Flexibilit Act, N.J.S.A. 52:14B-16 et seq. In order to comply with this amendmen

e small businesses will have to comply with the requirements set forth the Summary above. In so doing, generators will incur costs of man-ging these wastes as hazardous including the use of hazardous waste ansporters, hazardous waste facilities, recordkeeping and reporting. enerators may qualify for the conditionally exempt "small quantity nerators" requirements at N.J.A.C. 7:26-8.3.

Any person who treats, stores, or disposes of these wastes will be bject to hazardous waste facility standards. A facility which is currently cepting these wastes and is not a hazardous waste facility must file a rt A facility application in accordance with N.J.A.C. 7:26-12.3(j) in der to continue accepting these wastes. The costs of becoming a hazard-us waste facility may be substantial. Expected costs for facility com-iance include consultant and engineering services, possible equipment odification or upgrade, recordkeeping and reporting. In developing the nendments, the Department has balanced the need to protect the en-ronment against the economic impact of the amendments and has termined that to minimize the impact of the rule would endanger the vironment, public health and public safety. Furthermore, the Depart-ent could not lessen the impact on small businesses and maintain quivalency with the Federal RCRA hazardous waste management pro-am. Therefore, no exemption from coverage is provided.

Full text of proposal follows (additions indicated in boldface **us**):

26-8.14 Hazardous Waste from Specific Sources

dustry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
sticides	K031-K126	(No Change.)	
	K131	**Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.**	**(C,T)**
	K132	**Spent absorbent and wastewater separator solids from the production of methyl bromide.**	**(T)**

CORRECTIONS

(a)

HE COMMISSIONER

iscal Management

xpenditure of Inmate Welfare Funds

roposed New Rules: N.J.A.C. 10A:2-3

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

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

roposal Number: PRN 1991-44.

Submit comments by February 21, 1991 to:

Elaine W. Ballai, Esq.
Regulatory Officer, Division of Policy and Planning
Department of Corrections
CN 863
Trenton, New Jersey 08625

he agency proposal follows:

Summary

"Inmate welfare funds" are monies derived from sources other than ie State revenues (budget) and which have long been established by the arious correctional facilities in financial institutions, for the purpose of curing and independently managing those funds which are meant for ems and services to specifically benefit the correctional population. Inmate trust funds" are also established by the correctional facilities for ie deposit of inmates' personal monies such as earnings and individual ifts.

The proposed new rules specify the sources from which income for mate welfare funds may be derived, the role of the institutional Boards f Trustees and the purposes for which profits from sales at commissaries nd interest on inmate welfare funds savings may and may not be spent.

The Department of Corrections proposes these new rules in order to identify the sources of income for inmate welfare funds and establish guidelines for the appropriate expenditure of such funds.

Social Impact

The proposed new rules will permit the establishment of inmate welfare funds within correctional facilities which will generate income which may be used for the benefit and general welfare of the inmate population as a whole, such as the purchase of recreation equipment, books, movies, etc. These funds will be used to purchase items or services which are unavailable or in short supply because of limited public funds. The Department of Corrections does not anticipate adverse reaction to the proposed new rules because these funds are used to establish or supplement activities and programs for inmates.

Economic Impact

The proposed new rules will have no economic impact on the public because additional public financial assistance resources are not required to implement or maintain these rules. These rules will have an economic impact within correctional facilities because the income generated by the inmate welfare funds will contribute to the purchase of items and services which will provide more programs and activities for inmates.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

Full text of the proposed new rules follows.

SUBCHAPTER 3. EXPENDITURE OF INMATE WELFARE FUNDS

10A:2-3.1 Sources of income for inmate welfare funds

(a) Money for inmate welfare funds shall be derived from the following sources:

1. Profits from sales at commissaries;
2. Interest on inmate welfare fund savings;
3. Gifts from individuals, corporations and charitable foundations; and
4. Interest on inmate trust fund savings.

10A:2-3.2 Accountability and expenditure

(a) As required by N.J.S.A. 30:4-1.1k, the institutional Boards of Trustees are trustees of public funds.

(b) The institutional Boards of Trustees shall be responsible for the maintenance of proper accounts and the appropriate expenditure of inmate welfare funds.

(c) Inmate welfare funds shall be spent only for the use, benefit and general welfare of the inmate population as a whole, such as recreation equipment, books, or movies.

(d) Inmate welfare funds shall not be used for the payment of employee salaries or the purchase of any item or service which is not intended for use by the inmate population, such as security equipment, automobiles, or typewriters.

(e) The appropriate Assistant Commissioner shall be contacted when there are questions regarding the use of inmate welfare funds.

(f) Gifts from individuals, corporations and charitable foundations shall be spent as designated by the donor, or when undesignated, at the discretion of the institutional Board of Trustees. The monies from these gifts shall be identified separately in the inmate welfare fund so that expenditures can be directly related to the source of funds.

(g) Inmate welfare funds shall not be spent for any purpose which is not consistent with the rules outlined in this subchapter.

(a)

THE COMMISSIONER

Medical and Health Services

Distribution of Money and Personal Belongings of Deceased Inmates

Proposed Amendment: N.J.A.C. 10A:16-7.4

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

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

Proposal Number: PRN 1991-45.

Submit comments by February 21, 1991 to:

Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:16-7.4 to specify that the money and personal property of a deceased inmate will be turned over to the Executor or Administrator of the inmate's estate when the value of the money and/or personal property exceeds $2,000. The proposed amendment also specifies that the money and personal property of a deceased inmate, which does not exceed $2,000 in value, may be turned over to the verified next of kin as shown in the most recent classification records when no official will is in existence.

Social Impact

The proposed amendment will provide the administrative flexibility that is necessary to permit the Superintendent or his or her designee to turn over the money and personal belongings of a deceased inmate directly to the verified next of kin, when the value of such money and personal belongings do not exceed $2,000. This proposed amendment will expedite the disposition of a deceased inmate's money and personal belongings when the value does not exceed $2,000.

Economic Impact

The proposed amendment will reduce the costs of storing quantities of inmate personal property which have not been given to relatives of deceased inmates because these persons have lacked financial resources to enable them to qualify as executors/administrators, and because most inmates do not leave wills. Permitting administrators to give small amounts of cash and personal property to relatives will alleviate hardship for these relatives as well as reduce the liability and the cost of storage.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does 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. The proposed amendment impacts on inmates and the New Jersey Department of Corrections and has no effect on small businesses.

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

10A:16-7.4 Distribution of money and personal belongings of deceased inmates

[(a) When an inmate dies, the Superintendent or his or her designee shall turn over all money and personal belongings to the Executor or Administrator of the inmate's estate in exchange for an itemized receipt.

(b) Before such assets or items are released, and pursuant to N.J.S.A. 3A:6 et seq., the claimant must present to the Superintendent or his or her designee a certified, filed copy of Letters Testamentary, Letters of Administration, or a filed Affidavit in which one is entitled to assets without administration.]

(a) When an inmate dies and the amount of money in his or her account and/or the value of his or her personal property is $2,000 or less, such money and personal property may be turned over to the next-of-kin shown in the most recent classification records. The next-of-kin shall be required to sign an itemized list-receipt of such money and personal property, and a statement in which the next-of-kin certifies that he or she knows of no official will in existence. The Superintendent or his or her designee shall take the necessary steps to verify the identity of the next-of-kin.

(b) When an inmate dies and the amount of money in his or her account and/or the value of his or her personal property exceeds $2,000 these assets may be released to the inmate's relative or other claimant only after the relative or claimant presents to the Superintendent or his or her designee a certified, filed copy of Letters Testamentary, Letters of Administration, or a filed Affidavit from the Office of County Probate which entitles claimant to assets without administration (see N.J.S.A. 3B:10-3, 4).

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

(b)

THE COMMISSIONER

Alternatives to Juvenile Incarceration Grant Program

Proposed New Rules: N.J.A.C. 10A:35

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

Authority: N.J.S.A. 30:1B-6 and 30:1B-10; N.J.S.A. 30:1B-26 through 32 and 30:1B-3a(2) and (3).

Proposal Number: PRN 1990-564.

Submit comments by February 21, 1991 to:

Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 30:1B-26 et seq., the Legislature has appropriated $750,000 to enable counties to reduce their juvenile populations in detention facilities by means of alternative non-custodial programs, designed to promote rehabilitation, while still ensuring the juvenile's presence at the next court proceeding. These proposed new rules establish procedures under which non-profit public and private entities such as social service organizations, religious organizations and civic organizations may submit proposals and receive a funding grant to initiate a non-custodial juvenile program. These proposed new rules define the eligibility requirements, scope of proposals, forms to be utilized, objectives for the programs and procedures by which the Department of Corrections will evaluate applications. The proposed new rules also contain contract information, a procedure for evaluation and monitoring of the program when implemented and quarterly reporting requirements.

Social Impact

The proposed new rules provide a financial basis on which to promote the rehabilitation of juvenile offenders in a community setting, thereby creating opportunities for the development of job related skills and therapeutic treatment in a less restrictive environment than is afforded in a correctional facility. The proposed new rules will also reduce the current overcrowding in county juvenile detention centers of participating counties.

Economic Impact

The New Jersey Legislature has appropriated $750,000 to be awarded to eligible agencies and organizations by the Commissioner of the Department of Corrections pursuant to procedures set forth herein. It is anticipated that juveniles who have participated in these new programs will develop educational and vocational skills so as to avoid further delinquent behavior, thus resulting in a reduction in costs to governmental entities. In addition, by placing these youths into alternative programs, the higher costs of institutional incarceration are avoided.

Regulatory Flexibility Analysis

The proposed new rules apply to non-profit community based organizations which may be considered small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., such as civic religious and social service organizations. Although the proposed new

les impose record keeping and reporting requirements on entities which erate juvenile programs, those entities which are selected to participate ll receive a grant of funds designed to cover their costs of operation. us, it is not anticipated that record keeping and reporting requirements ll have any adverse effect on these entities and no differing standards r small and large businesses need be established.

Full text of the proposed new rules follows:

CHAPTER 35
ALTERNATIVES TO JUVENILE INCARCERATION GRANT PROGRAM

UBCHAPTER 1. INTRODUCTION

)A:35-1.1 Purpose

(a) Pursuant to N.J.S.A. 30:1B-26 et seq., the purpose of this apter is to:

1. Establish guidelines for the development of community based ograms for the placement of juveniles who have been adjudicated delinquent or who are awaiting delinquency adjudication;

2. Specify the types of agencies and organizations that are eligible submit proposals to the Department of Corrections for funding provide placement for juveniles who have been adjudicated as linquent or who are awaiting delinquency adjudication;

3. Specify the types of information which must be included in oposals that are submitted to the Department of Corrections;

4. Establish the process for the submission, evaluation and award- g of funding for the placement of juveniles who have been ad- idicated as delinquent or who are awaiting delinquency adjudica- on;

5. Specify that funds shall not be awarded for the operation or pansion of secured facilities for juveniles;

6. Establish the requirement of ongoing evaluation and monitor- g of the agencies that are awarded contracts for the provision of acement of juveniles who have been adjudicated as delinquent or ho are awaiting deliquency adjudication; and

7. Establish the requirement that agencies that have been awarded ntracts must prepare and submit quarterly reports to the Division Juvenile Services Project Coordinator and Contract Administrator well as the Human Services Evaluation and Monitoring Unit of e specific county program.

)A:35-1.2 Scope

This chapter is applicable to the New Jersey Department of Correc- ons and the community agencies which provide placement for juve- iles awaiting delinquency adjudication or who have been ad- idicated delinquent.

)A:35-1.3 Definitions

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

"Delinquency" means the commission of an act by a juvenile hich, if committed by an adult, would constitute:

1. A crime;

2. A disorderly persons offense, or petty disorderly persons of- nse; or

3. A violation of any other penal statute, ordinance or regulation.

"Department" means the New Jersey Department of Corrections.

"Human Service Evaluation and Monitoring Unit" means a unit tablished in each county by the Human Service Advisory Council monitor, evaluate and prepare ongoing reports, for submission to e Council, on the delivery of services by county human service gencies.

"Juvenile" means an individual who is under the age of 18 years ursuant to N.J.S.A. 2A:4-43(a).

)A:35-1.4 Forms

(a) The following forms related to the Alternatives to Juveniles ncarceration Grant Program may be obtained by each agency by ntacting the Assistant Commissioner, Division of Juvenile Services, lew Jersey Department of Corrections:

1. A-1 FUNDING PROPOSAL COVER SHEET;

2. A-2 BUDGET INFORMATION FORM;

3. A-3 STATE AGENCY CONTRACT INFORMATION FORM;

4. AA302 AFFIRMATIVE ACTION EMPLOYEE INFORMATION SHEET; and

5. AR 50/54 STATE OF NEW JERSEY INVOICE.

SUBCHAPTER 2. AGENCY AND ORGANIZATION ELIGIBILITY

10A:35-2.1 Types of agencies and organizations

(a) Agencies and organizations that are eligible to submit proposals to provide placement for juveniles who have been adjudicated as delinquent or who are awaiting delinquency adjudication, include the following:

1. Public entities, except administrative units and ongoing programs of the New Jersey Department of Corrections;

2. Non-profit community organizations;

3. Non-profit social service organizations;

4. Non-profit religious organizations; and

5. Civic organizations.

(b) The types of agencies and organizations listed in (a) above must be located and/or operated within the State of New Jersey.

(c) An agency or organization may be county-wide or regional in scope.

(d) A joint proposal from two or more agencies or organizations is encouraged where the joint contribution makes for a stronger, more coordinated and comprehensive project than a single agency or organization project.

(e) Proposals must offer new services or expand existing funded resources.

(f) Proposals to replace funds for an existing program shall not be approved.

SUBCHAPTER 3. PROPOSAL DEVELOPMENT

10A:35-3.1 Content of proposals

(a) The following information must be submitted within proposals in order to be considered eligible for funding of an Alternatives to Juvenile Incarceration Grant Program:

1. A completed Form A-1 Funding Proposal Cover Sheet;

2. A project abstract of 300 words or less that states the objectives and summarizes the operation of the proposed project;

3. A project narrative not to exceed 20 double spaced typewritten pages;

4. A completed Form A-2 Budget Information Form;

5. A completed Form A-3 State Agency Contract Information Form, if applicable;

6. A copy of the most recent Table of Organization;

7. Resumes of principal staff involved in the project;

8. A copy of the most recent organization wide audit report, or other sources which indicate the fiscal viability of the organization;

9. A completed Form AA302 Affirmative Action Employee Information Sheet; and

10. Letters of support (no more than 10) from the community.

10A:35-3.2 Program goals

(a) The project proposals should specifically address the objectives stated below:

1. The reduction of the rate of incarceration from the county in which the Alternatives to Juvenile Incarceration Grant Program is located;

2. The reduction of the overcrowding of county detention centers by reducing the utilization of secure detention through alternatives;

3. The provision of community based alternatives to secure detention and incarceration for juveniles especially between the ages of 12 and 15; and

4. The provision of community based alternatives to detention and incarceration which represent a collaboration of services with the following:

i. The New Jersey Department of Corrections;

ii. The Division of Juvenile Services, New Jersey Department of Corrections;

iii. The Family Court Judges;
iv. The County Probation Office;
v. The New Jersey Division of Youth and Family Services (D.Y.F.S.); and
vi. Other social service and community agencies.

10A:35-3.3 Project narrative

(a) The project narrative shall provide information which shall include a brief description of the provider agency's history, purpose, goals, and objectives.

(b) The project narrative shall provide a need justification which shall state the basis for the provider agency's conclusion that each of the proposed services is needed in the community, and the factors that make the agency the most capable to provide these services. The need justification shall include, but is not limited to:

1. The nature of the problem;
2. The existing services;
3. Relevant statistical data;
4. Relevant discussions or studies within the community;
5. The provider agency's capability to successfully provide the appropriate services;
6. The target population and characteristics; and
7. The geographic areas to be served.

(c) The project narrative shall specify the service goals and objectives of the provider agency including the impact on the target populations to be served and how the services will affect the nature of the problem.

(d) The project narrative shall provide information regarding the accessibility of services which shall:

1. Explain referral mechanisms and processes (formal and informal) and community outreach procedures;
2. Describe the priorities for accepting clients into the program and the procedure(s) to be followed to ensure that all clients meet the eligibility requirements for admission;
3. Explain intake procedures;
4. Describe the hours and days that each service will be available to clients and identify how emergencies are handled; for example, closing crisis, after hours contacts, etc.;
5. List and describe the location(s) where each service will be provided to clients, including in-home provision, if that is an option;
6. Describe transportation options for clients in obtaining each service; and
7. Describe client and program initiated termination procedures and follow-up services, as appropriate, and list the various reasons for termination.

(e) The narrative shall provide information regarding the coordination of services by:

1. Indicating other relevant services and ancillary agencies that will be frequently utilized in combination with the service being proposed for funding;
2. Indicating and describing existing relationships with these services and agencies;
3. Listing agencies which will be referral sources for services to be provided; and
4. Indicating how formal coordination and referral agreements with other community agencies will be accomplished.

(f) When volunteers are used by the provider agency, the project narrative shall:

1. Describe how volunteers are recruited and screened to determine suitability for use in the agency;
2. Describe how volunteers will be used in the agency;
3. Describe how community members and clients will participate in the functioning of the agency including:
i. The delivery of services;
ii. The planning for service provisions; and
iii. The evaluation of services.

(g) The project narrative shall indicate the timetable for the initiation of program activities and implementation of services.

(h) The project narrative shall identify current programs managed by the provider agency, the funding sources utilized and whether the agency is currently receiving, or has in the past received, state contracts. In addition to the narrative, Form A-3 shall be utilized for this information if the provider agency is currently receiving or ha in the past received State contracts.

(i) The project narrative shall list the name and address of thos entities providing support and/or money to help fund the progra for which the proposal is being made.

(j) The project narrative shall include a program summary whic describes how the services will be implemented and the time fram involved. The program summary shall:

1. Clearly identify the client population to be served;
2. Clearly identify the geographic area to be served;
3. Define each service to be provided and include the purpose an goal of each;
4. Indicate the number of staff positions created for each servic provided;
5. Describe the service activities or methods that staff will emplo to achieve the service objectives;
6. Describe the established personnel policy which requires sta to disclose other employment or interests which have the potenti for creating a conflict of interest;
7. Indicate the number, qualification and skills of the staff tha will perform the above service activities and include a table of o ganization for administration and personnel;
8. Describe the management and supervision methods that will b utilized in the operation of programs and the monitoring of th service activities; and
9. Indicate the methods to be used to measure and evaluate th quality of services.

SUBCHAPTER 4. PROPOSAL SUBMISSION, EVALUATION AND AWARD

10A:35-4.1 Proposal submission

(a) The Commissioner, New Jersey Department of Correction shall select an advisory group, chaired by the Assistant Com missioner, Division of Juvenile Services, to evaluate proposals.

(b) Eight single sided copies of each proposal shall be submitte to:

Assistant Commissioner, Division of Juvenile Services
New Jersey Department of Corrections
Whittlesey Road
CN 863
Trenton, NJ 08625
Attention: Alternatives to Juvenile Incarceration Grants Progran

(c) An additional copy of each proposal should be submitted t the appropriate County Youth Services Commission.

10A:35-4.2 Proposal evaluation

(a) The advisory group shall evaluate proposals in accordance wit the criteria set forth in N.J.A.C. 10A:35-4.3 and make a recommer dation to the Commissioner, New Jersey Department of Correction

(b) Final decisions to fund proposals shall be made by the Com missioner, New Jersey Department of Corrections.

10A:35-4.3 Criteria for proposal evaluation

(a) The proposal will be evaluated and judged by its responsivene to the following criteria:

1. The potential of the grant recipient to implement a successfi Alternatives to Juvenile Incarceration Grant Program for the plac ment of pre-adjudicated delinquents into non-secure settings whic will ensure the pre-adjudicated delinquents' presence at the next cou proceeding;
2. The potential of the grant recipient to implement a successfi Program for adjudicated delinquents which will prevent further i volvement into the juvenile justice system;
3. The financial and managerial capability of the grant recipie to accomplish the development of a successful Program;
4. Demonstrations of the agency's ability and willingness to con prehensively address the multi-problem needs of the juveniles in th population within the time frame of the proposal;
5. The potential for the project staff to work collaboratively wit
i. The New Jersey Department of Corrections;
ii. The Division of Juvenile Services, New Jersey Department Corrections;

iii. The Family Court;
iv. Judges;
v. The Probation Department;
vi. The New Jersey Division of Youth and Family Services D.Y.F.S.);
vii. Other social service and community agencies; and
viii. Community residents;
6. The cost efficiency of the project budget plan based on the umber of juveniles to be served and kinds of services rendered; and
7. The intended immediate outcome and long range outcome for ıe population to be served.

0A:35-4.4 Notification of award
(a) The Division of Juvenile Services, New Jersey Department of :orrections, shall notify the applicants, in writing, of the Com-ıissioner's decision to award or reject a proposal within one month ·om the applicant's deadline, whenever feasible.
(b) The New Jersey Department of Corrections reserves the right ɔ reject any and all proposals or to negotiate separately in any matter ecessary to serve the best interests of the Division of Juvenile ervices and the objectives of the Alternative to Juvenile Incarcera-on Grant Program.

UBCHAPTER 5. CONTRACT INFORMATION

0A:35-5.1 Funding policies
(a) Agencies seeking the award of a contract from the Alternative ɔ Juvenile Incarceration Grant Program should contact the New ɜrsey Department of Corrections to ascertain the availability of ınds.
(b) No funds shall be disbursed pursuant to a proposal which has een approved, until the parties have entered into a formal contract.
(c) No funds shall be awarded for the operation or expansion of ɜcured facilities for juveniles.
(d) All contracts shall provide for a term of up to one year, subject ɔ renegotiations and renewal depending on availability of funds.
(e) If, at anytime, it is found that the provider agency awarded ıe contract is incapable of providing the necessary services or has ıisrepresented its ability to provide services, the award may be ɜscinded.
(f) A contract shall be awarded within 30 to 45 days prior to the ffective date of the contract.
(g) Counties awarded contracts from the Alternatives to Juvenile ıcarceration Grant Program shall conduct their intra-county request ɔr proposal (R.F.P.) process and report back within 60 days to the lew Jersey Department of Corrections the names of those agencies warded subcontracts.
(h) Payment will be made as follows:
1. Agencies awarded contracts will receive start-up costs equal to ne-quarter of the total agreement approved budget; and
2. After the initial award, the provider agency shall be required ɔ submit quarterly vouchers on Invoice AR 50/54 as well as quar-ɜrly budget expenditure reports to receive continued payment.
(i) Agencies awarded contracts shall obtain an audit by an inde-endent Certified Public Accountant (C.P.A.) within 30 days after ıe contract period expires. The audit shall be forwarded directly to ıe New Jersey Department of Corrections.

UBCHAPTER 6. EVALUATION AND MONITORING

0A:35-6.1 State and county evaluation and monitoring
(a) Program agencies awarded contracts shall be monitored and valuated on site by both the Human Services Evaluation and Ionitoring Unit and the New Jersey Department of Corrections :valuation and Monitoring Team.
(b) All evaluation and monitoring shall be performed under poli-ies and guidelines established by the New Jersey Department of :orrections.

0A:35-6.2 Quarterly reports
(a) The contracting agency shall provide quarterly reports to the luman Services Evaluation and Monitoring Unit and the New Jersey)epartment of Corrections Project Coordinator and Contract Administrator on the effectiveness of the Alternative to Juvenile Incarceration Grant Program. These reports shall include the following statistical information:
1. The number of youths detained in the juvenile detention center;
2. The number of county juveniles incarcerated or pending transfer to State juvenile correctional institutions;
3. The number of juveniles receiving services from the Grant Program and the level of service;
4. The number of juveniles successfully completing the Grant Program;
5. The transitional or aftercare services the juveniles received upon completion of the Grant Program;
6. The number of juveniles terminated from the Grant Program and reasons for termination;
7. The court disposition of the juveniles negatively terminated from the Grant Program; and
8. The budget expenditure for the period.

INSURANCE

(a)

DIVISION OF PROPERTY/LIABILITY

Commercial Lines Insurance: Policy Form Standards Reproposed New Rules: N.J.A.C. 11:13-7

Authorized By: Samuel F. Fortunato, Commissioner, New Jersey Department of Insurance.
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:29AA-29.
Proposal Number: PRN 1991-60.

Submit comments by February 21, 1991 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
20 West State Street
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

These reproposed rules set forth standards for disapproval of commercial lines policy forms that are required to be filed pursuant to N.J.S.A. 17:29AA-6. They interpret the provisions of N.J.S.A. 17:29AA-11, which authorize disapproval of policy forms that are unfair, inequitable, misleading or contrary to law, or which produced rates that are excessive, inadequate or unfairly discriminatory. Rules on this subject were previously proposed October 2, 1989 (see 21 N.J.R. 3057(a)). The rules then proposed set forth standards for aggregate policy limits, defense costs within pc'icy limits, other provisions regarding policy limits of liability, claims made policy forms, exclusions from coverage and the right of an insured to a listing of claims upon request. The Department received a significant amount of adverse comment to that proposal. After due consideration of those comments, the Department reproposes these rules limited to standards for defense costs within policy limits. Other subjects for commercial policy form standards will be reviewed, however, and amendments to this subchapter regarding other standards for commercial lines policy forms may be proposed in the future.

Other comments relating to the rules now reproposed have also been addressed by changes in the text. For example, many of the commenters expressed concern about the breadth of the lines of insurance to which the proposed standards would apply. Other commenters inquired whether the rules would apply to policies issued by eligible surplus lines insurers, noting that N.J.S.A. 17:22-6.43(c) prohibits surplus lines policy forms from providing different coverage than the majority of forms in actual use. The Department did not intend the rules to provide standards for any policies not required to be filed pursuant to N.J.S.A. 17:29AA-6, which with some exceptions exempts "special risks" as defined in N.J.S.A. 17:29AA-3k. The prior proposed rules expressed this intent by limiting the applicability of most standards to those forms "required to be filed pursuant to N.J.S.A. 17:29AA-6" (see 21 N.J.R. 3058-60). Nevertheless, these reproposed rules contain textual changes that more clearly state that intent. As reproposed, the rules set forth standards for policy forms

required to be submitted for approval to the Department in accordance with N.J.S.A. 17:29AA-6.

These reproposed rules limit the use of provisions that include defense costs within policy limits. Defense of claims has traditionally been afforded to purchasers of commercial liability insurance and is reasonably expected by most insureds when purchasing the policy. It would be unfair, inequitable and misleading to include defense costs within policy limits, except in certain circumstances when the need to do so can be demonstrated. Defense costs within policy limits lawyers professional liability are established by this reproposed rule because legal defense costs represent a significant portion of insurer payments and the relative sophistication of the insureds purchasing these coverages.

Proposed N.J.A.C. 11:13-7.1 sets forth the purpose and scope of the rules.

Proposed N.J.A.C. 11:13-7.2 defines certain words and terms used throughout the subchapter.

Proposed N.J.A.C. 11:13-7.3 sets forth standards for the use of policy provisions that include defense costs within policy limits.

Proposed N.J.A.C. 11:13-7.4 directs insurers with policy forms inconsistent with the standards to amend those forms and refile them within 180 days.

Social Impact

Since these reproposed rules articulate standards currently being applied for the acceptance of commercial insurance policy forms filings, the primary impact is to notify insurers which file the forms what policy language is not acceptable. The standards themselves set forth policy form language consistent with the reasonable expectation of coverage for insureds who purchase commercial liability insurance on forms filed with the Department. This prohibits in certain instances policy provisions that include defense costs within policy limits.

Economic Impact

These rules will affect the Department and insurers which file commercial insurance policy forms. Initially, some additional administrative work will be required by insurers to refile policy forms and the Department to review those forms. This is limited, however, to those forms currently in use that may be inconsistent with the standards set forth in the rule. Over time, however, clear standards about what form language is acceptable to the Department will reduce the work of insurers and the Department in submitting and disapproving policy forms that do not meet these standards.

It should be noted that the Commercial Insurance Deregulation Act authorizes insurers to price policies appropriately based on expenses and expected losses, limited by N.J.S.A. 17:29AA-10 which prohibits rates that are excessive, inadequate or unfairly discriminatory.

Regulatory Flexibility Analysis

These reproposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" consist of insurance companies authorized to write commercial lines insurance.

Since the purpose of these rules is to establish minimum standards for policy forms used by all insurers, it would be inconsistent to establish different standards based upon company size. It should be noted, however, that the economic impact of these proposed rules is minimal, in that they merely require the filing or refiling of policy forms consistent with the standards. All insurers regardless of size are required to file certain commercial lines policy forms with the Department pursuant to N.J.S.A. 17:29AA-6. Most insurers either have in-house staff to develop their own policy forms, or use standard policy forms developed by a rating organization of which they are a member or subscriber. Thus it would appear that there are no additional costs of professional services required to comply. Furthermore, it should be noted that by setting forth these standards in an administrative rule, insurers that qualify as small businesses will avoid the cost of submitting and having disapproved policy forms inconsistent with the standards.

The rule provides a six-month period after adoption during which policy forms that are inconsistent with the standards must be amended and refiled. This should be more than sufficient time to allow all insurers, regardless of size, to comply with the requirements of these reproposed rules.

Full text of the reproposed new rules follows:

SUBCHAPTER 7. COMMERCIAL LINES INSURANCE: POLICY FORM STANDARDS

11:13-7.1 Purpose and scope

(a) These rules interpret provisions of the Commercial Insuranc Deregulation Act, N.J.S.A. 17:29AA-1 et seq. and set standards fc the acceptable or disapproval of policy forms submitted pursuant t N.J.S.A. 17:29AA-6. These standards are established pursuant t N.J.S.A. 17:29AA-11, which prohibits forms which are unfair, in quitable, misleading or contrary to law, or which produce rates th are excess, inadequate or unfairly discriminatory.

(b) These rules do not apply to policy forms not required to b submitted by N.J.S.A. 17:29AA-6, which with some exceptions do not require the filing of policy forms insuring "special risks" a defined in N.J.S.A. 17:29AA-3k. These rules do not apply to polic forms issued by eligible surplus lines insurers in accordance with th Surplus Lines Law, N.J.S.A. 17:22-6.40 et seq. Nothing in these rul shall, however, authorize the acceptance or use, or prohibit the disa proval, of a policy form that is otherwise prohibited by another la or rule.

(c) These rules apply to all insurers which file policy form pursuant to N.J.S.A. 17:29AA-6.

11:13-7.2 Definitions

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

"Commercial lines insurance" includes all property-casualty in surance policies except those excluded by N.J.S.A. 17:29AA-3a an N.J.A.C. 11:18-1.1.

"Commissioner" means the Commissioner of the New Jersey De partment of Insurance.

"Cost of legal defense" or "defense costs" means allocated a torney and all other litigation expenses that can be separately ide tified as arising from the defense of a specific claim.

"Day" means calendar day.

"Insurer" means any person, corporation, association, joint unde writing association subject to N.J.S.A. 17:29AA-22, partnership c company licensed under the laws of this State to transact the busine of insurance and rating organizations that file policy forms on beha of their members and subscribers.

"Liability insurance policy" means any insurance policy th provides coverage for legal liability, even if it contains other typ of coverage.

"Policy" or "insurance policy" includes all endorsements.

11:13-7.3 Defense costs within policy limits

(a) No commercial insurance policy shall be issued or renewed o a form required to be filed pursuant to N.J.S.A. 17:29AA-6 whic contains a provision that includes defense costs within policy limit except as provided in this section.

(b) Lawyers professional liability insurance policies may contai a provision that includes defense costs within policy limits provide it conforms to the standards set forth in (c) below.

(c) Lawyers professional liability insurance policy forms includin the defense costs within policy limits shall contain policy provision which may be in the form of a mandatory endorsement, so as t incorporate the standards set forth below into the terms of eac policy:

1. The policy form shall provide a minimum limit of liability c $1,000,000.

2. Defense costs shall not reduce the portion of the limit of liabili that remains available to pay claims until defense costs have bee incurred in an amount that equals or exceeds 50 percent of the polic limit of liability. The portion of the limit of liability that remair available to pay claims may be reduced only by the portion c incurred defense costs greater than 50 percent of the policy limit c liability.

3. The portion of the limit of liability available to pay claims sha not be reduced to an amount less than 50 percent of the policy lim of liability, regardless of the amount of defense costs incurred.

4. No defense costs shall be charged against any deductible nount.

:13-7.4 Refiling policy forms

(a) Insurers with policy forms containing provisions inconsistent ith the standards set forth in this subchapter shall amend those rms and refile them in accordance with N.J.S.A. 17:29AA-6 within 0 days of the effective date of this subchapter.

(b) Policy forms refiled as set forth in (a) above shall comply with e standards set forth in this subchapter.

(c) Policy forms refiled in accordance with this rule shall be accom- anied by a certification of an officer of the insurer that the policy rm is being refiled in accordance with the standards set forth in is subchapter and that the refiling has been done within the time ovided by (a) above.

LAW AND PUBLIC SAFETY

(a)

OARD OF MEDICAL EXAMINERS

rofessional Practice Structure
rofessional Fees and Investments, Prohibition of Kickbacks

roposed Repeal: N.J.A.C. 13:35-6.4
roposed New Rules: N.J.A.C. 13:35-6.16 and 6.17

uthorized By: The State Board of Medical Examiners, Michael B. Grossman, D.O., President.
uthority: N.J.S.A. 45:9-2, P.L. 1989, c.19.
roposal Number: PRN 1991-58.

Submit comments by February 21, 1991 to:
Charles A. Janousek, Executive Director
State Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

If warranted by comments submitted, the Board may schedule a public aring on any or all aspects of the rules. Persons interested in making presentation at such hearing should notify the Board at the time of bmitting written material prior to the date set forth above. Notice shall provided, including to all such persons, if a public hearing is scheduled.

The agency proposal follows:

Summary

The Medical Board proposes two rules to aid the public and Board ensees in recognizing ethical forms of professional practice and provid- g assurance of quality control in the variety of health care settings which ve proliferated in recent years and in which Board licensees sometimes ve direct or indirect beneficial monetary interests. The objectives are:) to permit full and fair development of services which respond to health re needs in the private sector and which may generate profits ultimately nefitting the investing practitioner and (2) to require that they be ructured so that full disclosure is made to patients in a way which allows em to compare services and fees and to be aware of the licensee's onetary interest in the referral, as required by P.L. 1989, c. 19. One le, N.J.A.C. 13:35-6.16, Professional practice structure, recognizes that ere is a developing interest throughout the country in establishing neral business corporations offering health care services; this business rmat has usually been either frowned upon or prohibited outright by w or agency rules because of the fear that non-professionals will direct intrude upon the making of professional decisions. Such businesses e nevertheless being established since some kinds of health care services ve traditionally functioned in corporate circumstances, avoiding most the criticisms of non-professional interference. This rule would clarify e legal status of corporate practices involving Board licensees in this ate, establishing the limited contexts in which they will be permitted, id setting forth policies (including fee information for consumers) that ust be observed in order to maintain professional integrity and quality surance.

The rule identifies certain kinds of practice specialties (laboratory, ysical therapy, radiology, ophthalmology) which the Board believes quire special formats because of their referral or dispensing nature, especially when prescribing and then charging for prescribed products or services. The rule also addresses ethical and quality care issues affecting the variety of managed medical care plans now developing (HMO, PPO, IPA, CMP, etc.). The rule would prohibit participation in a plan which is structured to establish either specific economic disincentives or incentives tending to adversely affect the exercise of professional judgment in treating or making referrals to other health care providers including specialists or hospitals. The prohibition would not affect the ability of a consumer to elect to utilize the plan, after making an informed decision on treatment options.

The second rule, N.J.A.C. 13:35-6.17, Professional Fees and Investments, Prohibition of Kickbacks, establishes definitions both of "financial interest" and "significant beneficial interest" and the manner in which such interests shall be disclosed to patients, consistent with P.L. 1989, c. 19. It includes the elements of the Board rule N.J.A.C. 13:35-6.4 (which will be repealed with adoption of these new rules) prohibiting receipt of kickbacks, but this new rule also attempts to address new varieties of abuses or potential abuses which the Board has encountered in general or disciplinary inquiries. It sets forth what the Board shall require of licensees who prescribe and sell medical devices in the office, or who prescribe or recommend purchase or lease of durable medical equipment for home use, etc. It permits licensees to sell items to their patients for the convenience of the patient, but emphasizes that the licensee's primary responsibility is the provision of professional and not commercial services. To reduce the possibility of overreaching and abuse, the rule prohibits licensees from making a profit on the cost of the item sold. (The Board may propose separately an amendment to N.J.A.C. 13:35-6.6, its rule on prescribing and dispensing of medication, to address ethical and quality care issues relating to the sale of medications by the prescribing physician.) It also prohibits indirect profits to the licensee based upon the fact of a referral. For the same reason, the rule prohibits a licensee from contracting with another licensee to charge or pay a percentage of patient revenue as rent, although ordinary commercial leasing arrangements will not be affected. The rule also addresses ethical and quality care issues affecting remuneration to licensees who participate in HMO, PPO, IPA, CMP-type plans. The rule would prohibit receipt of income from plans structured to establish economic incentives or disincentives tending to adversely affect the exercise of professional judgment but, as with N.J.A.C. 13:35-6.15, the prohibition would not affect the ability of a consumer to elect to utilize the plan, after making an informed decision on treatment options.

Social Impact

These rules are intended to address the ever-increasing numbers of questions being submitted to the Board by licensees, by attorneys and by the public, inquiring about myriad varieties of business investments by licensees alone or with non-licensees. These rules are, in part, the product of a specific petition for rulemaking filed with the Board by a former Commissioner of the Department of Health, who asked the Board to prohibit any referral arrangements by licensees who might later profit from the referral. The Commissioner later modified the request, suggesting that such investments not be prohibited but instead closely regulated. The Board is aware that Congress has enacted legislation which would outright prohibit certain types of referrals to Medicare patients with regard to physician-owned clinical laboratories, unless the referral meets certain requirements imposed by Federal rules designed to prevent program or patient abuse. The Board believes that its current proposed rules, which are not inconsistent with any Federal requirement, will prohibit the most flagrant abuses, while allowing the private sector to provide investment funds for new forms of health care. Licensees who have been practicing in an impermissible business format will be allowed a specified time within which to transfer to a permitted format.

Economic Impact

These proposed new rules may inhibit practitioners wishing to invest in forms of business entities which dilute or ignore professional quality control issues, in contrast to the traditional solo practice, partnership, or professional association. Some economic burden will be incurred for quality control purposes when conducting the profession on premises which the licensee does not utilize as a personal practice setting. Such practitioners will have to provide a licensed practitioner "director" on the premises to assure that quality control is met at all times and that abusive or exploitative practices do not occur. Some entities, in order to operate in a general business corporation format, may have to be separately licensed by the State Department of Health.

Licensees will have to disclose their monetary interests in the places to which they wish to refer patients, and some patients may then compare services and fees and choose to seek the prescribed services elsewhere. The Board believes that the monetary costs imposed on practitioners are negligible and are in any event significantly outweighed by the needs of the public for full and fair disclosure of private monetary interests in referrals. These rules in no way limit the proper performance of the regulated professions; the rules simply require that side-business interests of the licensees not affect professional recommendations in a way which poses the potential for conduct not in the patient's interest, in circumstances where the patient would otherwise be ignorant of the need to be alert and informed. Licensees would be forbidden to participate in certain managed medical care plans which have a structural conflict of interest between the physician's personal monetary interest and the physician's responsibility to make referrals to specialists in the patient's best interests. Consumers will also be protected from being charged higher prices for medical devices because of hidden profit to the prescriber. These rules provide interpretation of P.L. 1989, c.19, as required by Section 6 of that Act.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., requires the agency to give a description of the types and estimates of the number of small businesses to which the proposed rules will apply. The Medical Board presently issues professional licenses to physicians and surgeons, podiatrists, bioanalytical laboratory directors and specialty laboratory directors, acupuncturists, athletic trainers, hearing aid dispensers and midwives, and registrations to certified nurse midwives. The total number of these licensees believed to be practicing in this State (not counting athletic trainers) is approximately 32,000. At least some aspects of the two rules proposed herewith will affect all of these licensees. Most of them will be classified as conducting "small business" as that term is used in the statute. There are reporting, recordkeeping and other compliance requirements in the two proposed rules.

N.J.A.C. 13:35-6.16 imposes requirements on Board licensees who conduct a professional practice directly and personally or who will invest in business entities offering professional services. These requirements include establishment of policies and procedures to provide ethical, honest, competent and lawful provision of services by themselves and their employees. The licensee may employ administrative staff to carry out some portions of these requirements, but the licensee will still carry ultimate responsibility for the practices to the extent specified in the rule. A licensee employed in a practice setting, who discovers that the premises do not have and will not establish professional quality control mechanisms, is required to terminate that employment and to notify the Board.

The same rule requires that a licensee having specified types of monetary interests in a facility must notify the Board. The licensee who chooses to refer patients to the owned facility is required to inform patients of that interests pursuant to the new law. The rule requires special reporting by a radiology service which is owned by investors who are encouraged by the nature of their practice to refer patients to that service. Certain other types of specialists are specified and required to observe disclosure provisions when prescribing services for which they bill. The rule requires that licensees presently working in settings specified as impermissible under law or rule shall transfer to permitted settings within specified periods of time.

N.J.A.C. 13:35-6.17, Professional Fees and Investments, Prohibition on Kickbacks, defines the types of monetary interests which require disclosure to the Board and, in certain circumstances, to patients. A licensee who does not refer patients to a self-owned facility is not required to disclose business investments to patients. A licensee who chooses to specifically bill for sale of devices which the licensee prescribes, is required to keep records sufficient to document the cost basis of the charges to the patient.

Licensees may accomplish these requirements personally, or may employ office staff for certain tasks. Any costs incurred will presumably be at the election of the licensee who chooses to develop commercial business interests which contain an abuse potential from which the public needs Board protection. The required reporting of owned businesses need be done only once after acquisition; subsequent reporting will be included in the regular registration form which is already required by law. The more detailed reporting required of radiology services requires no more than simple data already available to the entity and routinely identified under basic business management practices.

The Board cannot at this time estimate initial costs or make an estimate of the annual cost of compliance, since certain types of records have always been required of Medical Board licensees and the more detaile reporting, noted above, required of radiology services should involve onl collation of existing office data. Those licensees who do not refer patien to other health care enterprises in which the referring doctor holds a economic interest will have no costs associated with these rules.

The rule is designed to minimize any adverse economic impact on sma businesses by having most of the responsibilities carried out by licensee within and in the course of their regular professional communicatior with their patients, and by reporting the radiology data to the Board on once a year.

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

13:35-6.4 [Prohibition of kickbacks, rebates or receiving payment for services not rendered] **(Reserved)**

[(a) It shall be unprofessional or unethical conduct for any license or registrant of the State Board of Medical Examiners to:

1. Receive directly or indirectly from any person, firm or corpo ation any fee, commission, rebate, gift or other form of compensatic for prescribing, ordering or promoting the sale of a device, applianc or other prescribed item or service when such device, appliance c prescribed item or service is provided by another;

2. Directly or indirectly charge or bill the recipient of a devic appliance or prescribed item, or directly or indirectly charge or bi any third party when such device, appliance or prescribed item delivered by the licensee or registrant without disclosing to the recip ent and third party, if any, the actual cost to the licensee or registra for such device, appliance or prescribed item which the licensee c registrant paid or shall pay to the provider of such device; applianc or prescribed item;

3. Receive directly or indirectly from any person, firm or corpo ation any fee, gift, commission, rebate, free saleable products, an thing of value or any form of compensation for purchasing c prescribing or promoting the sale of any drug, commodity or proc uct;

4. Sell "free samples" or "samples" or other similar items obtaine from any person, firm or corporation by such licensee or registran

5. Render any bill or invoice or receive any monies from ar person, firm, corporation or governmental entity for the performanc of services which were not, in fact, performed; provided, howeve that this shall not be construed to prohibit an agreed charge fc appointment made or services ordered notwithstanding subsequer patient or consumer cancellation.]

13:35-6.16 Professional practice structure

(a) A licensee of the Board of Medical Examiners may engage professional practice in this State only when in possession of a curre registration issued by the Board. The name of the professional practi entity shall be composed of the actual last names of one or more the owning licensees, partners or shareholders or composed of a phra or words reasonably descriptive of the type of professional practice. Tl term "professional practice" is deemed to include the offering opinions on matters of professional practice (including testimony ar professional review organization service), whether or not the offeror h provided direct patient care, where the holding of a professional boa license is a significant component or foundation for the offering of tl professional opinion.

(b) The practice shall be conducted in a business form consistent wi the principles set forth in this rule and, where so noted, only in a cordance with the designated special conditions pertaining to that forn There shall be policies and procedures with respect to professional licensed personnel. These topics shall include, but not be limited to, tl following:

1. Responsibility of a licensed practitioner for review and approv of hiring professional staff and timely demand for and verification current licensing credentials and any other educational credentials r quired by law or pertinent agency rule (for example, recertification continuing professional education, cardiopulmonary resuscitation, etc.

2. Medical policies at the office or place where services shall l rendered;

3. Cleanliness of premises;

l. Maintenance, registration and inspection of professional equipnt as necessary;
5. Standards for recordkeeping as to patient medical records, billing ords, and such other records as may be required by law or rule luding Controlled Dangerous Substance inventories, as applicable;
5. Security, including drug storage, prescription pad control, conentiality of patient records;
7. Periodic audit of patient records and of professional services to ure quality professional care on the premises;
3. Responsibility for the professional propriety of billing and of ertising or other representations including disclosure of financial erest in health care services offered to the public; and
). Preparation and maintenance of a written list of current fees for ndard services, which list shall be available to patients on request.
(c) The licensee shall post a conspicuous notice in the waiting room ting: "INFORMATION ON PROFESSIONAL FEES IS AVAILBLE TO YOU ON REQUEST."
(d) A licensee, alone or with the other investing licensees, may emy a licensee of the Board of Medical Examiners as director of the ofessional entity to carry out those policies and procedures designated the licensee(s). The director must be licensed to conduct all services ered at the premises. Either the director, one of the investing ensees, or another licensee authorized to render the services, must on the premises at all times when patients or clients are receiving ofessional services, except as specified herein or otherwise permitted rule of the Board. With regard to health care entities whose services e performed away from the primary office address (for example, tities providing house calls, mobile medical services, or provision and nagement of services relating to durable medical equipment, etc.), e director need not be present at all times, provided that patients or ents are receiving professional services from an investing or employed ofessional who is a licensee of a professional health care board of is State, except as may be limited by law or by another rule of this ard.
(e) A licensee may invest in a health care service as defined in J.A.C. 13:35-6.17(a). Said service shall be owned solely by one or ore licensed health care professionals. Whether or not any or all of e owners, partners or shareholders all regularly practice on the emises or within the entity, each such person who is a licensee of is Board shall be responsible to the Board for requiring maintenance all professional practice standards and control set forth in this rule, cept as excused by (g) below. A licensee who has invested in a health re service to which he or she refers patients shall assure that prossional justification for the referred service is documented in the tient record maintained at that entity. Referred services include but e not limited to prescriptions for devices such as hearing aids, eyeasses, intraocular lenses, requests for radiologic studies, etc.
(f) Acceptance professional practice forms are as follows:
1. Solo: A practitioner may practice solo and/or may employ or herwise remunerate other licensed practitioners to render professional rvices within the scope of practice of each employee's license, but hich scope shall not exceed that of the employer's license. The practioner may employ ancillary non-licensed staff in accordance with oard rules, if any, and accepted standards of practice.
2. Partnership or professional association: A practitioner may practice in a partnership or professional association, but such entity shall e composed solely of licensed health care professionals. The prossional services offered by each practitioner, whether a partner or areholder, shall be the same or in a closely allied medical or prossional health care field. If the scope of practice authorized by law r each such person differs, any document used in connection with rofessional practice including but not limited to professional staonery, business cards, advertisements or listings and bills, shall designate the field to which such person's practice is limited. Prescriptions all list only those practitioners authorized by law to prescribe; shall esignate the practice of each listed prescriber as required by N.J.A.C. 3:35-6.1; and shall comply with the data requirements of N.J.A.C. 3:35-6.6.
3. Associational relationship with other practitioner or professional ntity: For the purpose of this rule, the term "employment" shall clude an ongoing associational relationship between a licensee and professional practitioner(s) or entity on the professional practice premises for the provision of professional services, whether the licensee is denominated as an employee or independent contractor, for any form of remuneration.
i. A practitioner may be employed, as so defined, within the scope of the practitioner's licensed practice and in circumstances where quality control of the employee's professional practice can be and is lawfully supervised and evaluated by the employing practitioner. Thus, a practitioner with a plenary license shall not be employed by a practitioner with a limited scope of license, nor shall a practitioner with a limited license be employed by a practitioner with a more limited form of limited license. By way of example, a physician with a plenary license may be employed by another plenary licensed physician, but an M.D. or D.O. may not be employed by a podiatrist (D.P.M.) or chiropractor (D.C.) or midwife or certified nurse midwife (R.M., C.N.M.), nor may a podiatrist employ a chiropractor. This section shall not preclude any licensee from employing licensed personnel such as nurses, x-ray technologists, physical therapists, ophthalmic dispensers and ophthalmic technicians, etc., as appropriate to the primary practice of the employer.
4. Shareholder or employee of a general business corporation: A licensee may offer health care services as an employee of a general business corporation in this State only in one or more of the following settings. Any such setting shall have a designated medical director licensed in this State who is regularly on the premises and who (alone or with other persons authorized by the State Department of Health, if applicable) is responsible for licensure credentialing and provision of medical services.
i. The corporation is licensed by the New Jersey Department of Health as a health maintenance organization, hospital, long or short-term care facility, ambulatory care facility or other type of health care facility or health care provider. The above may include a licensed facility which is a component part of a for-profit corporation employing or otherwise remunerating licensed physicians.
ii. The corporation is not in the business of offering treatment services but maintains a medical clinic for the purpose of providing first aid to customers or employees and/or for monitoring the health environment of employees. The provisions of N.J.A.C. 13:35-6.5 regarding preparation, maintenance and release of treatment and health monitoring records shall apply to persons receiving care or evaluation in this setting.
iii. The corporation is a non-profit corporation sponsored by a union, social or religious or fraternal-type organization providing health care services to members only.
iv. The corporation is an accredited educational institution which maintains a medical clinic for health care service to students and faculty.
5. A licensee may also have an equity or employment interest in a professional practice (including a professional service corporation) which is a limited partner to a general business corporation which, in turn, has a contractual agreement with the professional service entity, in the following circumstances only. The general business corporation may contract to provide the professional practice with services exclusively of a non-professional nature such as but not limited to routine office management, hiring of non-professional staff, provision of office space and/or equipment and servicing thereof, and billing services. The licensee shall nevertheless be responsible, at all times except as excused by (g) below, to assure that an appropriate licensed health care professional determines and carries out all services and medical care policies set forth in (b) and (c) above, including retention of sole discretion regarding establishment of patient fees and modification or waiver thereof in an individual case. The licensee shall assure, as a condition of such contractual arrangement, that the general business corporation makes no representations to the public of offering, under its own corporate name, health care services which require licensure.
(g) A licensee employed or having an equity interest in any of the practice forms listed in (f) above shall terminate such employment or sever professional affiliation upon acquiring personal knowledge that the entity regularly fails to provide or observe any of the quality control mechanisms listed in (b) and (c) above and refuses, upon request, to implement such mechanisms. A licensee terminating employment or affiliation with a general business corporation for reasons required by this section shall so notify the Board.

(h) In addition to the practice forms set forth above, a licensee may participate in organized managed health care plans including, but not limited to, those involving wholly or partially pre-paid medical services. By way of example, this includes plans commonly described as health maintenance organizations, preferred provider organizations, competitive medical plans, individual practice associations, or other similar designations. Such plans typically cover certain types of health care services but only when the services are rendered by licensees who are provider-members of the plan; or the patient has been referred to a specialist by a provider-member and has secured the approval of the plan administration. Such plans usually permit coverage for referrals in situations of emergency or other special conditions. A licensee may participate in any such plan which complies with the following professional requirements:

1. The licensee retains authority at all times to exercise professional judgment within accepted standards of practice regarding care, skill and diligence in examinations, diagnosis and treatment of each patient.

2. The licensee retains authority at all times to inform the patient of appropriate referrals to any other health care licensees:

i. Whether or not those persons are provider-members of the plan; and

ii. Whether or not the plan covers the cost of service by such non-member providers to the patient.

3. Plan patients are informed that they may be personally responsible for the cost of treatment by a provider who is not a member-provider within the plan, or for treatment not having the approval of the plan administration.

4. Provisions for remuneration to the licensee shall not be inconsistent with the principles listed in N.J.A.C. 13:35-6.17(f).

(i) The following pertain to laboratory service:

1. A Board-licensed physician having a financial interest in a laboratory for the performance of bioanalytical tests may prescribe and/or perform such tests on the physician's primary medical office premises solely for the patients of the prescribing licensee. The licensee is responsible for establishing and maintaining a protocol for quality and cost control and for compliance with the provisions of the Clinical Laboratory Improvement Act, N.J.S.A. 45:9-42.26 et seq. Billing shall be done only in the name of the practitioner's medical office.

2. A Board-licensed physician having a financial interest in a laboratory offering services only to patients of the owning licensee(s) but conducted at a site other than the office premises of the owners shall assure that such laboratory has a director and that the laboratory is licensed under the New Jersey Clinical Laboratory Improvement Act. The physician shall assure compliance with P.L. 1989, c. 19 and the name of the laboratory shall be accompanied at all times by the name(s) of the owning licensee(s).

3. A Board licensee having a financial interest in a laboratory which accepts referrals from physicians who are not owners/investors shall assure that such laboratory is licensed under the New Jersey Clinical Laboratory Improvement Act and is directed by a bioanalytical laboratory director licensed pursuant to N.J.S.A. 45:9-42 et seq. who shall establish and maintain quality and cost control. The physician shall assure compliance with P.L. 1989, c. 19 and the name of the laboratory shall be accompanied at all times by the name(s) of the owning licensee(s).

(j) The following pertain to physical therapy:

1. A physician may perform and/or prescribe physical therapy to be administered in the physician's office. Billing shall be done only in the name used by the physician's office.

2. A physician having a financial interest in a physical therapy entity at a location other than the physician's office, whether conducted under the physician's name or under another name, shall establish quality control provisions as required by (b) and (c) above. The physician shall assure compliance with P.L. 1989, c. 19 and the name of the entity shall be accompanied at all times by the name(s) of the owning licensee(s).

(k) The following pertain to radiology:

1. A physician may prescribe and/or perform radiologic services on the physician's office premises. Billing shall be done only in the name of the prescriber or office.

2. A physician having a financial interest in a radiologic serv facility at a location other than the physician's fixed office premis whether conducted under the physician's name or under another nan shall establish quality control provisions as required by (b) and above. The physician shall assure compliance with P.L. 1989, c. 19 a the name of the facility shall be accompanied at all times by the name of the owning licensee(s).

3. The physician-investor (or representative, such as the medi director) shall file an annual report with the Medical Board as December 31 of each year, providing the following information:

i. The identity of the medical director, who must be a physici licensed and practicing in this State, specializing in radiology;

ii. The identity of investor-doctors;

iii. The number of studies performed during the calendar ye grouped by major category of procedure;

iv. The fees for each usual type of procedure; and

v. A statement of the basis on which dividends are paid (doll amounts need not be disclosed).

(l) The following pertain to ophthalmology:

1. A physician may prescribe eyeglasses or external contact lens and may offer to sell the devices. Billing shall be done only in the nai of the physician or office.

2. A physician having a financial interest in a service entity for t selling of eyewear at a location other than the physician's office, co ducted under the physician's name or another name, shall establi quality control provisions as required by (b) and (c) above. The physici shall assure compliance with P.L. 1989, c. 19 and the name of the enti shall be accompanied at all times by the name(s) of the owni licensee(s).

(m) The provisions of this rule shall be effective upon promulgatic except that the requirements of managed health care plans in (h) abo laboratory in (i)2 and 3 above, and radiology in (k)3 shall be effecti one year after the date of adoption. Licensees who have been providi professional services in a business format which does not comply wi the present codification of Board interpretation of permissible practi formats shall complete a transfer to an acceptable format as soon possible but no later than the sixth month after adoption of the rul

13:35-6.17 Professional fees and investments, prohibition of kickbacks

(a) For the purposes of this rule, the following words and terms sha have the following meanings:

1. "Health care service" means a business entity which provides c an in-patient or out-patient basis: testing for or diagnosis or treatmei of human disease or dysfunction or dispensing of drugs or medic devices for the treatment of human disease or dysfunction. Health ca service includes, but is not limited to, a bioanalytical laboratory, pha macy, home health care agency, rehabilitation facility, nursing hom hospital, or a facility which provides radiologic or other diagnost imagery services, physical therapy, ambulatory surgery, or ophthalm services. Health care service includes the business of provision by Medical Board licensee, individually or as a member or shareholder a business entity, of diagnostic or treatment equipment and supplie

2. "Financial interest" means a monetary interest of any amou held by a practitioner personally or through immediate family, defined herein, in a health care service owned in whole or in part. includes the offer or receipt, directly or indirectly, by the practitione or immediate family of anything of more than negligible value as a resu of a patient's purchase of a prescribed service, goods or device fro the person or entity providing this. It includes rent from a building component thereof (for example, condominium) owned, in whole or i part, by the practitioner or immediate family, and rent in any for for the use of professional medical equipment or supplies. "Financi interest" includes a licensee's financial interest in a contractual a rangement with a health care facility (such as a hospital, nursing hom or clinic, etc.), whereby the licensee agrees to provide health ca services on referral, for example, cardiac or radiologic diagnosti testing, to patients including those receiving Emergency Room care admitted to the health care facility. The extent of the financial intere shall be measured by the monies the facility agrees to pay the license estimated on an annualized basis, or by the monies paid by patien

r service from the contracted referrals which are estimated to result om the contract on an annualized basis, whichever is greater. Financial interest" does not include a straight salary.

3. "Immediate family" means the practitioner's spouse and children, ıe practitioner's siblings and parents, the practitioner's spouse's sib-ngs and parents, and the spouses of the practitioner's children.

4. "Practitioner" means a physician, podiatrist, bioanalytical lab-ratory director or specialty laboratory director, acupuncturist, mid-ife, certified nurse midwife, and all other categories of licensees now henceforth under the jurisdiction of the State Board of Medical xaminers.

5. "Significant beneficial interest" means any financial interest com-rising: five or more percent of the whole, or $5,000, whichever is less. his interest does not include ownership of a building or component ıereof wherein the space is leased to a person at the prevailing rate ıder a straight lease agreement (that is, a fixed fee for a fixed term), r any interest held in securities publicly traded in the United States. significant beneficial interest shall be deemed to include an interest ıvolving an equity or ownership interest in a practice or in a commercial ıtity or any investment or similar interest of a financial nature in a ractice or commercial entity.

(b) A practitioner shall not refer a patient or direct an employee of ıe practitioner to refer a patient to a health care service in which the ractitioner or the practitioner's immediate family, or the practitioner ı combination with the practitioner's immediate family, has a signifi-ant beneficial interest, unless the practitioner discloses that interest the patient as required herein. Disclosure shall be made by the ractitioner in ways appropriate to the professional circumstances in-luding conspicuous posting of a written disclosure form prepared as et forth below, at least 8½ by 11 inches in size, in the practitioner's aiting room in all office locations. The patient shall also be provided ith a personal copy of the notice. The notice format shall be as follows:

Public law/rule of the State of New Jersey/Board of Medical Exam-ıers mandates that a physician, podiatrist and all other licensees of ıe Board of Medical Examiners inform patients of any significant nancial interest held in a health care service.

Accordingly, take notice that the practitioners in this office do have financial interest in the following health care service(s) to which atients are referred:

(LIST APPLICABLE HEALTH CARE SERVICES)

You may, of course, seek treatment at a health care service provider f your own choice. A listing of alternative health care service providers an be found in the classified section of your telephone directory under he appropriate heading.

1. In any inquiry regarding the applicability of the financial dis-losure provisions of this rule, including the holding of a significant eneficial interest or exemption therefrom, the Board may require a oard licensee to submit financial and familial information sufficient o determine the financial interest in an investment.

2. With regard to durable medical equipment, a physician having a ignificant beneficial interest as defined in (a) above, who prescribes ınd refers a patient to a source for said product, shall provide the ersonal notice copy to a patient in any setting, including the practi-ioner's office and prior to the time of patient discharge from a hospital, ıursing home or free standing health care facility (for example, urgent are offices or ambulatory surgery centers).

3. The disclosure requirements of this rule do not apply in the case f a practitioner providing health care services pursuant to a prepaid apitated contract with the Division of Medical Assistance and Health ervices in the Department of Human Services. In addition, disclosure s not required of practitioners having a significant beneficial interest n the provision of services pursuant to a hospital contract to inpatients r patients receiving hospital Emergency Room services, notwithstand-ng that the practitioner has made the referral for the service, provided hat a designated committee of the hospital reviews and confirms the nedical justification and the reasonableness of the fee for each such eferred service of the practitioner. Disclosure is mandatory for all other npatient settings and situations.

(c) The following pertain to miscellaneous monetary arrangements:

1. A licensee shall not, directly or indirectly, give to or receive from ıny source a gift of more than nominal (negligible) value, or any fee, commission, rebate or bonus or other compensation however denominated, which a reasonable person would recognize as having been given or received in appreciation for or to promote conduct by a licensee including: purchasing a medical product, ordering or promoting the sale or lease of a device or appliance or other prescribed item, prescribing any type of item or product for patient use, or making or receiving a referral to or from another for professional services. For example, a licensee who refers a patient to a health care service (such as a cardiac rehabilitation service or a provider of durable medical equipment or a provider of testing services) shall not accept from nor give to the health care service a fee directly or indirectly in connection with the referral, whether denominated as a referral or prescription fee or consulting or supervision fee or space leasing in which to render the services (other than as permitted in (h) below), or by any other name, whether or not the licensee has a financial interest as defined in (a) above.

i. This section shall be construed broadly to effectuate its remedial intent. It shall not, however, prohibit a flat-fee payment by a licensee for regular advertising services (including placement on a commercially-sponsored "referral list" of licensed health care providers) nor shall it prohibit receipt of reasonable payment for bona fide participation as a speaker at a professional workshop or seminar, nor prohibit receipt of normal, commercially reasonable discounts for volume purchases from vendors, nor prohibit compensation for the sale of medical equipment by a licensee of the Board, in the disclosed capacity of a salesman, to another licensed health care professional.

2. A laboratory director licensee may bill either the patient or the prescribing physician who submits the specimen, as permitted by P.L. 1977, c.323, section 1, N.J.S.A. 45:1-10. All other licensees who bill for professional services shall submit the bill directly or via a named designee entity to the patient or patient representative if for treatment services, or to the recipient of the professional services in a non-patient capacity, as applicable. Services provided by any staff employed by the licensee shall be billed only in the name of the licensee.

3. A licensee may bill for prescribed professional/technical services (including, for example, laboratory services, fabrication of eyeglasses, orthotics, etc.) ordered by or through the licensee, with the patient's consent, provided that the name and address of the provider of the professional/technical services and the cost as billed to the licensee, are disclosed to the patient.

(d) A licensee shall not charge for "free samples" or other similar items obtained by the licensee from any source.

(e) Acting within the scope of lawful practice, a licensee may offer to and provide to a patient medications, including a prescription drug or an over-the-counter preparation or vitamin or food supplement, but only in accordance with the requirements of N.J.A.C. 13:35-6.6. A licensee may also offer to and provide to a patient medical goods and devices under certain circumstances, as set forth in this rule and defined as follows: medical goods and devices include, but are not limited to, such items as hearing aids, eyeglasses, contact lenses, prosthetic devices, orthotics, etc.

1. A Board licensee shall derive his or her net professional income from the rendering of professional service. The practitioner may recoup the cost of those goods and devices which are ancillary to the primary professional services, but shall not charge for those items a fee intended to generate a profit.

2. When the practitioner bills the patient separately for a prescribed item, the following shall be observed. The practitioner shall assure that written information is given to the patient regarding the alternative availability of the medical goods or device, as required in (b) above. The practitioner shall disclose to the patient in advance of purchase and again on the bill the unit acquisition cost of the goods, device, etc., to the practitioner. This section applies, for example, to an ophthalmologist providing eyeglasses or external contact lenses which have been purchased by the physician from a supplier or fabricator; to an ophthalmologist providing an intraocular lens; to an orthopedist supplying and implanting an artificial hip or other prosthetic service; to a cardiologist supplying and implanting a pacemaker; to a physician providing a cervical collar, girdle, or prescribed shoe support; etc. This section would not apply to a licensed health care facility providing and billing for the medical device. This section also does not apply to x-rays ordered, taken and interpreted by the prescribing licensee; the fee

to be charged for such service, if itemized separately, shall be reasonable.

3. Where items are prescribed by a licensee, and the consumer elects to fill the prescription elsewhere, the prescriber's obligation to the patient shall include, if requested by the patient, follow-up to ascertain that the item prescribed is appropriate and/or the fit is acceptable (for example, as in the prescribing of eyeglasses or external contact lenses), and that the result of the prescribed service is properly evaluated and integrated into the treatment plan for the patient.

(f) As addressed in N.J.A.C. 13:35-6.16(h), a licensee may participate in and receive remuneration from organized managed health care plans including, but not limited to, those involving wholly or partially pre-paid medical service. By way of example, this includes plans commonly described as health maintenance organizations, preferred provider organizations, competitive medical plans, individual practice associations or other similar organizations, provided that the remuneration to the licensee is entirely and exclusively derived from plan-member payments and/or co-payments, and that the licensee's remuneration is not scheduled for reduction by the licensee's exercise of medical discretion in referring a patient to another category of health care providers. For example, a licensee shall not participate in a plan agreement that establishes by its structure an economic disincentive to the exercise of responsible professional judgment by the licensee on behalf of the patient. A prohibited disincentive includes a plan agreement whereby the per capita fee for service by a primary care provider is expected to be reduced by virtue of a referral to another health care provider such as a specialist or a hospital; or a plan agreement whereby a monetary benefit above the agreed per capita service fee—whether denominated as a "bonus" or other terminology—is promised if the licensee refrains from referring the patient to another health care provider such as a specialist or a hospital.

1. These restrictions do not preclude a licensee from entering into a plan agreement which provides interim remuneration to licensees by making provisional allocation of percentages of plan-member fees, whether denominated as reserves, pools, withholds, holdbacks, etc., for the purpose of funding all portions of the health care services plan.

2. A licensee may participate in a managed health care services plan which requires a purchase of shares for the purpose of providing start-up funds, provided that any profits of the plan are paid solely in accordance with the principles listed in (g) below.

(g) No licensee shall invest in an entity, including a managed health care plan, offering health care services or devices or durable medical equipment where the dividends or any other forms of remuneration are paid on any basis other than return on monetary investment. This prohibition does not preclude the issuance of shares in exchange for rendition of personal professional services at the entity premises, or licensing of patents in lieu of financial investment, provided that the investor's return is based on his/her capital interest.

(h) The following pertain to real estate arrangements:

1. A Board licensee may be an owner/investor in real estate utilized for the conduct of a professional practice, provided that rent, dividends or any other forms of remuneration are received solely on the basis of the investment or fair market value, as applicable to the circumstances.

2. A Board licensee may lease professional space from a commercial entity on any arrangements consistent with standard business practice in the community, provided that the arrangement does not affect the licensee's professional discretion in matters including choice of patients, professional services offered, or fees.

3. A Board licensee may lease space to or from another licensed health care professional only where rent is a fixed fee determined by the fair market value, or less, and is for a regular term and not for sporadic use of the space.

4. Any monetary arrangement other than as set forth above shall require Board approval for good cause shown.

(i) A Board licensee may be an owner/investor or a lessee of medical equipment utilized in the conduct of a professional practice. Irrespective of the financial arrangements for the transaction, the lessee shall be at all times responsible to assure that an appropriate licensed health care professional determines and carries out all services and medical care policies set forth in N.J.A.C. 13:35-6.16(b) and (c), including retention of sole discretion regarding medical indications for use of the equipment, and establishment of patient fees and modification or waive thereof in an individual case. (See also (b) above regarding mandator disclosure to referred patients, as applicable.)

(j) A licensee having a significant beneficial interest, as defined i (a) above, in a health care service including a professional servic corporation or a general business corporation (see N.J.A.C 13:35-6.16(f)) shall notify the Board of such interest no later than on year after the date of adoption of this rule. Notice is not required fo a practice conducted under the practitioner's own name.

(a)

STATE BOARD OF OPTOMETRISTS

Requirements for Application for Licensure

Proposed Repeal and New Rule: N.J.A.C. 13:38-3.11

Authorized By: The State Board of Optometrists, Susan Gartland, Acting Executive Director.

Authority: N.J.S.A. 45:12-4.

Proposal Number: PRN 1991-38.

Submit comments by February 21, 1991 to:
Susan Gartland, Executive Director
State Board of Optometrists
1207 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The current N.J.A.C. 13:38-3.11 is proposed for repeal and replacemen with proposed new rule N.J.A.C. 13:38-3.11, Requirements for appli cation for licensure, which includes as an application requirement th passing of the optometric clinical skills assessment test administered b the North East Region Clinical Optometric Assessment Testing Servic (NERCOATS). The Board's reasons for using a testing service rather thar continuing to administer the clinical skills tests itself are twofold. First the Board wishes to have the benefits of a psychometrically validatec testing system in order to ensure that truly qualified individuals ar licensed to practice optometry. Second, since New Jersey does not hav a school of optometry, New Jersey residents necessarily attend an out of-State school. The Board has found that upon graduation almost al of these individuals seek licensure, and therefore must take the clinica skills test, both in the state where they attended school and in New Jersey often, individuals will apply in a third state as well. Use of a regiona test will enable these individuals to take the clinical skills test only once since successful completion of the regional test qualifies an individual tc seek licensure in the four northeast states which use the NERCOATS test.

Although the Board will no longer administer the clinical skills test it will accept scores from board-administered tests taken within the pas five years since test scores are valid for five years.

Social Impact

The Board will benefit from use of the NERCOATS testing service by having in place a scientifically accurate testing system. This system will ensure that only competent individuals are licensed to practice optometry and thus will protect the public health and welfare. Use of the NERCOATS test in place of a Board-administered clinical skills test will also benefit applicants for licensure in that they will qualify for licensure in four states upon successful completion of the test.

Economic Impact

While the fee for the NERCOATS test is higher than the fee for the board-administered test, it is likely that applicants for licensure will, in fact, realize a cost savings. Almost all applicants seek licensure in several states and thus have been required to incur the expense of taking the clinical skills test more than once. Since successful completion of the NERCOATS test will qualify individuals for licensure in four states, these individuals will save the costs involved in taking the test multiple times. The proposed amendment will have no economic impact upon the public.

Regulatory Flexibility Statement

The proposed amendment to N.J.A.C. 13:38-3.11 will affect only individual applicants. A regulatory flexibility analysis is, therefore, not required.

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

:38-3.11 Applicants required to pass all parts of the examination conducted by the National Board of Examiners in Optometry

a) After February 25, 1976, all applicants for licensure by the New sey State Board of Optometrists are required to pass all parts of examination conducted by the National Board of Examiners in tometry.

b) Applications will be accepted under the following conditions:

1. Verification of scores must be received from the National Board Examiners in Optometry prior to the date of the examination given the New Jersey State Board of Optometrists.

2. The applicant must, in the judgment of the New Jersey State ard of Optometrists, be acceptable in all respects as to character, ucation and all legal requirements of the optometry law of the State New Jersey, N.J.S.A. 45:12-1 et seq.

3. The applicant must pass a clinical examination given by the w Jersey State Board of Optometrists.]

:38-3.11 Requirements for application for licensure

(a) Applications for licensure will be accepted under the following nditions:

1. The applicant shall satisfy the character and education require-nts set forth in N.J.S.A. 45:12-1 et seq.;

2. The applicant shall have passed the basic science and clinical ence written examination conducted by the National Board of Exam-rs in Optometry, and the New Jersey State Board of Optometrists all have received verification of the scores from the National Board Examiners in Optometry; and

3. The applicant shall have passed an optometric clinical skills sessment test administered either by the New Jersey State Board of tometrists on or before July 18, 1990 or by the North East Region inical Optometric Assessment Testing Service (NERCOATS) on or er July 11, 1990, and the State Board of Optometrists shall have ceived verification of test scores from NERCOATS.

(a)

DVISORY BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

uration of Temporary License For Individuals Participating in a Clinical Internship

roposed Amendment: N.J.A.C. 13:44C-5.3

uthorized By: Patricia A. Royer, Director, Division of Consumer Affairs.

uthority: N.J.S.A. 45:3B-24.

roposal Number: PRN 1991-37.

Submit comments by February 21, 1991 to:
Richard Weisman, Executive Director
Advisory Board of Audiology and Speech-Language Pathology
1207 Raymond Boulevard
Newark, NJ 07102

he agency proposal follows:

Summary

The purpose of this proposed amendment is to bring the rules of the dvisory Board of Audiology and Speech Language Pathology into con-rmity with actual administrative practice regarding the duration of a mporary license issued to a qualified participant in a clinical internship. he Advisory Board believes that any present confusion as to the period f validity will be eliminated by the language now proposed to be added, hich states that such a license is valid for eighteen months or until the older completes his or her internship, whichever comes first. The roposed wording also comports with that currently contained in the mporary license for clinical interns.

Social Impact

The proposed amendment, which merely adds clarifying language, will ave a beneficial effect upon clinical interns holding temporary licenses, r whom confusion as to their period of validity will be eliminated.

Economic Impact

There will be no economic impact upon any party as a result of this proposal.

Regulatory Flexibility Statement

Inasmuch as this proposed amendment affects only individual holders of temporary licenses who are engaged in a clinical internship, there is no impact upon any small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is, therefore, not required.

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

13:44C-5.3 Limits on temporary licensure

(a) (No change.)

(b) A temporary license for individuals participating in a clinical internship is valid for 18 months [and] **or until such time as the holder completes his or her clinical internship, whichever comes first. The temporary license** cannot be renewed.

(b)

VIOLENT CRIMES COMPENSATION BOARD

Counseling Fees

Proposed New Rule: N.J.A.C. 13:75-1.27

Authorized By: Violent Crimes Compensation Board, Jacob B. Toporek, Chairman.

Authority: N.J.S.A. 52:4B-9.

Proposal Number: PRN 1991-39.

Submit comments by February 21, 1991 to:
Cindy R. Merker, Esq.
Violent Crimes Compensation Board
60 Park Place
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed new rule provides for a fee schedule which includes maximum payments to be paid by the Violent Crimes Compensation Board to psychiatrists, Psy.D's, Ph.D.'s, Ed.D's, psychologists, ACSW's, Ed.S's, licensed marriage and family therapists, M.S.W.'s and M.A.'s.

The purpose of the new rule is to have greater parity in paying out-of-pocket counseling and therapy expenses incurred by crime victims.

Social Impact

The addition of this new rule to the Board's rules will put counseling and therapy specialists on notice as to maximum payments they can expect from the Board. Prior to this new rule, the only standard used in payment of this type of fees was "reasonable."

Economic Impact

The proposed amendment will provide greater parity in paying out-of-pocket counseling and therapy expenses and provide a savings to the Board, thereby allowing it to pay more claims in a given fiscal year.

Regulatory Flexibility Statement

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys may make claims for compensation.

The proposed amendment imposes no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since they establish compensation eligibility criteria for individual victims. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

13:75-1.27 Counseling Fees

(a) For all incidents occurring after adoption of this rule and for services performed after adoption of this rule on claims filed prior to adoption of this rule, the Board will pay out-of-pocket unreimbursable counseling and therapy expenses for each of the listed category of providers not to exceed the following amounts:

1. Psychiatrist	$150.00	per hourly session
2. Psy.D., Ph.D., Ed.D.	$110.00	per hourly session
3. Psychologist (Licensed)	$110.00	per hourly session
4. ACSW, Ed.S.	$90.00	per hourly session
5. Licensed Marriage and Family Therapist	$90.00	per hourly session
6. MSW, M.A.	$80.00	per hourly session

(b) For counseling disciplines not covered by the fee schedule in (a) above, the Board may, within its discretion pursuant to N.J.S.A. 52:4B-9, set an amount which shall not exceed $90.00 per hourly session.

(a)

VIOLENT CRIMES COMPENSATION BOARD

Secondary Victim Eligibility

Proposed New Rule: N.J.A.C. 13:75-1.28

Authorized By: Violent Crimes Compensation Board, Jacob B. Toporek, Chairman.
Authority: N.J.S.A. 52:4B-9.
Proposal Number: PRN 1991-39.

Submit comments by February 21, 1991 to:
Cindy R. Merker, Esq.
Violent Crimes Compensation Board
60 Park Place
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed new rule defines the term secondary victim as determined by the Violent Crimes Compensation Board. The proposed new rule also provides for limiting payments to secondary victims so that more funds will be available to assist direct victims of violent crimes. Lastly, the new rule explains the amount of psychotherapy available to secondary victims and the criteria used to establish if loss of earnings will be awarded.

Social Impact

The addition of this proposed new rule to the Board's rules will allow the Board to retain and reserve funds for payment of current and future costs incurred by direct victims and put secondary victims on notice that the Board is now limiting payments to them.

Economic Impact

Since money used to compensate direct victims is continually evaporating due to cutbacks in funding, increased medical costs and an ever increasing number of applications, the Board is limiting payments to secondary victims and reserving money for payments to direct victims.

Regulatory Flexibility Statement

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys may make claims for compensation.

The proposed amendment imposes no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since they establish compensation eligibility criteria for individual victims. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

13:75-1.28 Secondary victim eligibility

(a) A secondary victim means anyone who has sustained an injury or pecuniary loss as a direct result of a crime committed upon any member of said secondary victim's family or upon any person in close relationship to such secondary victim as the terms are, hereinafter, defined.

1."Family", as used herein, is defined as spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents.

2."Person in close relationship", as used herein, is defined as:

i. Any person, whether related by blood or adoption or not, who was actually domiciled with the direct victim on the date of the crime for which assistance is sought;

ii. Any person who is no longer living together with the dire victim but who has the legal responsibility to care for a child th have in common by birth or adoption solely where the treatment presence of said person is medically required for the successful tre ment of the child;

iii. Any person who has publicly announced his or her engageme to become married to the direct victim prior to the commission the criminal act and who remains engaged to the direct victim at t time of the crime; or

iv. Any other individual who the Board deems under all the c cumstances of a particular case to have had a close personal rel tionship with the direct victim.

(b) Secondary victims need not be present during the actual cor mission of the crime.

(c) In assessing the eligibility of secondary victims, the Board w be guided by N.J.S.A. 52:4B-10 and 18 and N.J.A.C. 13:75-1.6(c

(d) Any loss for which the Board may reimburse a seconda victim or group of secondary victims shall not exceed a maximu of $7,000.

(e) Psychotherapy in the case of secondary victims shall not exce 24 sessions per secondary victim. However, where said seconda victim was physically present at the scene of the crime as a witne or present immediately following its commission, the maximu counseling sessions permitted shall not exceed 30. Said sessions sh not include initial evaluation or impartial examinations authoriz by the Board. All costs for psychotherapy sessions will be subje to the provisions of N.J.A.C. 13:75-1.27.

(f) Loss of earnings may only be awarded to a secondary victi where said loss is solely related to the care of the direct victim durir the direct victim's medically determined period of disability due the criminal incident, which has resulted in the direct victim's i capacity to carry out reasonable and normal day-to-day function

HEALTH

(b)

EPIDEMIOLOGY AND COMMUNICABLE DISEASE CONTROL

Retail Food Establishments and Food and Beverage Vending Machines

Proposed Amendments: N.J.A.C. 8:24

Authorized By: The Public Health Council, Louise C. Chut, Ph.D., M.P.H., Chairwoman.
Authority: N.J.S.A. 26:1A-7.
Proposal Number: PRN 1991-47.

A **public hearing** concerning this proposal will be held on:
Monday, February 11, 1991 from 1:00 to 4:00 P.M. at:
New Jersey Department of Health
Health and Agriculture Building
Room 106 (Auditorium)
John Fitch Plaza
Trenton, New Jersey

Submit written comments by February 21, 1991 to:
William N. Manley
Coordinator, Health Projects
Retail Food Project
Food and Milk Program
CN 364
Trenton, NJ 08625-0364

The agency proposal follows:

Summary

On May 2, 1988, the Public Health Council, pursuant to its authorit delegated in N.J.S.A. 26:1A-7, readopted without change Chapter XI of the State Sanitary Code, pertaining to retail food establishments N.J.A.C. 8:24. As was indicated in the readoption notice, the Departmen of Health planned to revise the rules to address current food sanitatio issues, since these revisions could not be completed before the rules wer to expire.

A comprehensive review of this Chapter has been completed by the)epartment of Health, with input from a committee comprised of rep-esentatives of local, State and Federal health authorities, the food service)dustry, academic authorities on food science, and recommendations :om the United States Food and Drug Administration. The proposed mendments will update the rules by addressing many of the current food anitation issues and incorporate the most recent United States Food and)rug Administration food service sanitation interpretations relative to ie classification of potentially hazardous foods, including shell eggs. The roposed amendments will place greater emphasis on control measures f hazards that contribute to foodborne illnesses. A number of technical hanges have also been included.

The following summarizes the major provisions which are being mended:

N.J.A.C. 8:24-1.3 will define the term "bed and breakfast." This new efinition is being proposed to establish the parameters to be used to egulate persons operating meal service facilities in residential (home etting) places of lodging described in subchapter 13 (explained under ame heading). The Department has received requests from local health uthorities to establish a policy for this rapidly growing industry in the tate. This definition is consistent with that of the Department of Com-nunity Affairs, which regulates bed and breakfast facilities under the 'Hotel and Multiple Dwelling Law."

N.J.A.C. 8:24-1.3 will also define the term "bulk food." The term has een in the New Jersey Administrative Code but never defined. This has esulted in problems of interpretation regarding the classification of cer-ain foods, particularly since the rules provided specific provisions which elate to the dispensing of bulk foods.

N.J.A.C. 8:24-1.3 will define the term "community residence." This iew definition is necessary in order to define the types of food service acilities operating in residential settings, such as group homes, that will e required to meet the provisions set forth in subchapter 13, Community Residences and Bed and Breakfast Retail Food Establishments.

N.J.A.C. 8:24-1.3(a) defines the term "Mobile Retail Food Establish-nent". The definition is being amended to include "watercraft" as a type)f movable unit which will be considered as a mobile retail food establish-nent. These types of operations were not previously covered under the :urrent definition.

N.J.A.C. 8:24-1.3 defines the term "potentially hazardous food." The definition is being amended to include cooked vegetables and similar 'oods because of the ability of such foods to support the rapid growth)f disease-causing organisms following the cooking process. These foods nust therefore be handled as other potentially hazardous foods, such as neat and poultry products. This definition is consistent with the recent United States Food and Drug Administration (FDA) expansion of the :raditional definition of potentially hazardous foods.

The definition of potentially hazardous food will also include shell eggs, which were previously exempt. This amendment is necessary due to the :urrent evidence indicating that whole uncracked shell eggs can be con-taminated with *Salmonella enteritidis (S.e.)*. According to statistics provided by the Centers for Disease Control, eggs have been implicated in 189 *S.e.* disease outbreaks from January 1985 to October 1989, which have caused 6,604 illnesses and 43 deaths. New Jersey has also ex-perienced a sharp increase in *S.e.* egg-related outbreaks during the same period. The association of eggs to *S.e.*-related illnesses has led the FDA and the Department to conclude that it is necessary to redesignate shell eggs as a potentially hazardous food requiring time/temperature controls. Also, studies recently conducted revealed that whole eggs contaminated with *S.e.* in the yolk support the rapid growth of the microorganism. This rapid growth rate further demonstrates the crucial need to restrict the use of raw eggs in uncooked products and to minimize time/temperature abuse by redesignating eggs as a potentially hazardous food. This amend-ment is consistent with the most recent interpretation issued by the FDA entitled "Potentially Hazardous Food—Shell Eggs".

N.J.A.C. 8:24-1.3 will define safe temperatures as applied to potentially hazardous foods. This definition and N.J.A.C. 8:24-3.2(b) will be amended to require that frozen foods be kept at such temperatures as to remain frozen. This is a relaxation of the current rules, which require that frozen foods be kept at zero degrees Fahrenheit. This change will serve to maintain consistency with the FDA Model Food Code, and to reduce regulatory actions based on the strict enforcement of the zero degree Fahrenheit requirement. The relaxation of the current requirement may affect the shelf life of some frozen foods; however, the change will have no impact on the safety of these foods.

N.J.A.C. 8:24-2.1(b) is being expanded to include the provisions cur-rently listed in N.J.A.C. 8:24-7.4(e) "Housekeeping". Considering the primary public health concerns addressed under this section, which pertain to the prohibition of private residences for use as retail food establishments, it is more appropriate to reference these requirements under the category of "Food Source" than under "Housekeeping". This section has also been expanded to indicate that bed and breakfast and community residence operations shall meet the specific regulatory re-quirements established in subchapter 13.

N.J.A.C. 8:24-2.2(b) will reference N.J.A.C. 8:21-7, Rules Governing Frozen Desserts, which establishes the specific requirements for handling frozen dessert products in retail food establishments.

N.J.A.C. 8:24-2.5(b) is being added, to prohibit the mass breaking of whole shell eggs. When the comingling of shell or shell membrane with the liquid contents of eggs is permitted, there is an increased risk of contamination of the edible product with *salmonellae*, which can be found on shells of even cleaned and sanitized whole eggs. This subsection would prohibit mechanical egg breaking devices, such as centrifugal egg break-ers, and other methods which result in this comingling.

N.J.A.C. 8:24-2.5(c) is being added to prohibit the pooling of shell eggs to prepare foods such as scrambled eggs, unless the food is going to be immediately cooked and served. It is estimated that one in ten thousand eggs is contaminated with *Salmonella enteritidis*. Therefore, the pooling of the eggs increases the chances for exposure to a contaminated egg. Pooling 500 eggs, for example, increases the risk of exposure from 1 in 10,000 (0.01 percent) to 1 in 20 (five percent). Pasteurized eggs may be substituted for shell eggs in recipes which require the pooling of eggs. This amendment is consistent with the most recent interpretation issued by the FDA entitled "Potentially Hazardous Food—Shell Eggs".

N.J.A.C. 8:24-3.1(d) is being amended to clarify the food temperature monitoring provisions to specifically require that food temperatures be checked during all phases of cooking, holding, cooling and reheating of potentially hazardous foods. Monitoring is considered to be a critical control used in the prevention of growth and survival of foodborne disease causing organisms. Most outbreaks of foodborne disease have been traced to a failure to monitor one or more of these major food preparation phases.

N.J.A.C. 8:24-3.2(a) is being amended to delete shell eggs from the list of perishable foods for the reason stated under N.J.A.C. 8:24-1.3, Defi-nitions, "Potentially hazardous food."

N.J.A.C. 8:24-3.2(c) amends and revises the time/temperature rela-tionship for the cooling of potentially hazardous foods to require that the foods be cooled from 120 degrees Fahrenheit to 70 degrees Fahrenheit within two hours, while retaining the public health acceptance cooling rate of 45 degrees Fahrenheit in four hours. The range between 120 degrees Fahrenheit and 70 degrees Fahrenheit had been scientifically shown to be the most critical temperature range allowing the rapid rate and progressive growth of disease causing organisms. Achieving a rapid rate of cooling through this critical temperature range is of utmost im-portance. Retail food operators can successfully meet this requirement with existing equipment if the methods recommended are applied, such as the use of shallow pans of less than four inches in depth, and the prohibition against tightly covering or stacking containers of potentially hazardous food while cooling the food.

N.J.A.C. 8:24-3.2(d) is being amended to prohibit the use of uncracked shell eggs for the preparation of hollandaise and other sauces which otherwise may be exempt from the temperature requirements in this subsection for the reasons stated above, regarding the addition to N.J.A.C. 8:24-1.3, in the definition for "Potentially hazardous food."

N.J.A.C. 8:24-3.3(a) is being amended to add unpasteurized liquid eggs to the list of raw foods, such as raw meat and poultry, which are con-sidered to be naturally contaminated with pathogens. These foods require special handling procedures to reduce the opportunity for cross con-tamination of ready-to-eat foods which are not cooked prior to service.

N.J.A.C. 8:24-3.3(b) is being amended to replace the term "handling" with a more specific term "direct manual contact". This change is being proposed in order to reduce the confusion associated with the more general term "handling" and to focus attention on the need to minimize the touching of foods.

N.J.A.C. 8:24-3.3(d) is being amended to require a minimum cooking temperature of 140 degrees Fahrenheit for all potentially hazardous foods and includes a limitation on the pre-stuffing of raw poultry. Because of the increased difficulty in attaining minimum internal cooking temperatures needed to kill disease causing organisms, particularly *salmonella*, the size of the poultry product is being limited. This proposed

rule will discourage the poor practice of prestuffing, except in products where minimum required temperatures are readily achievable. In addition, a section is being proposed to increase the minimum cooking temperatures for pork and beef when these meats are cooked in microwave ovens. It has been shown that microwave ovens do not cook food evenly, often resulting in undercooking portions of the product. The higher temperatures indicated for beef and pork would insure thorough cooking and safe temperatures throughout the product and are consistent with the FDA Model Food Code.

N.J.A.C. 8:24-3.3(e) is being amended as a point of clarification in order to establish that cooked foods that are subsequently "frozen" shall comply with the same reheating temperature requirements as cooked foods which are subsequently "refrigerated".

N.J.A.C. 8:24-3.3(g) is being amended to replace the term "refrigerated at" with the term "cooled to". This amendment will serve to insure that pastry fillings and custard or cream filled pastries are handled as other potentially hazardous foods and in a manner which is consistent with the requirements of N.J.A.C. 8:24-3.2(c) "Food Temperatures".

N.J.A.C. 8:24-3.5(c) is being amended to limit the depth of containers used in the dispensing of bulk foods in order to minimize manual contact by the consumer of the food contact surfaces when having to reach into deep bulk food containers. This addition is consistent with the guidelines governing the dispensing of bulk foods established by the United States Food and Drug Administration.

N.J.A.C. 8:24-3.5(d) is being amended to require the use of individual dispensing utensils for potentially hazardous food to minimize contamination from one food to another.

At N.J.A.C. 8:24-3.6, the temperature requirement for frozen food during transport from a retail food establishment is being changed from the current requirement to keep frozen foods at or below zero degrees Fahrenheit to such temperatures as to remain frozen, in order to be consistent with the proposed amendment to N.J.A.C. 8:24-1.3.

N.J.A.C. 8:24-4.1(c) is being amended because of the increased number of inquiries received related to specific communicable diseases that are considered transmissible through foods. This section will reference the latest edition of the American Public Health Association's report, *Control of Communicable Diseases in Man,* as the authoritative reference establishing guidelines for the control of foodborne diseases.

N.J.A.C. 8:24-4.3(a) is being amended to require handwashing after handling raw foods of animal origin in order to minimize cross contamination of raw foods such as poultry and beef to those that are ready-to-eat. The rule is being further amended to prohibit food preparation sinks from being used for handwashing in order to minimize cross contamination of ready-to-eat foods that may be placed in the sinks.

N.J.A.C. 8:24-5.5(d)7viii is being added to require that dishwashing machines converted from hot water to chemical sanitizing units be approved by the health authority, in order to insure that the conversion is made in accordance with existing requirements and results in proper sanitization.

N.J.A.C. 8:24-6.3(e) the requirement for ice storage bins to have an indirect waste drain has been deleted from this section because the requirement has been more appropriately incorporated under N.J.A.C. 8:24-6.7(a) "Drains".

N.J.A.C. 8:24-6.6(a)5 will require plumbing to be installed in such a manner as to preclude the possibility of backflow and backsiphonage. This requirement was inadvertently deleted when the rule was last revised in 1982. This provision is necessary in order to protect the water supply, utensils, food, washing sinks, and other food equipment from contamination if proper backflow and backsiphonage prevention devices are not installed.

N.J.A.C. 8:24-6.7(c) is being amended to no longer require floor drains in walk-in refrigerators because newly manufactured refrigerators meeting National Sanitation Foundation (NSF) standards no longer are equipped with such drains. The Department believes that walk-in refrigerators can be adequately cleaned without a floor drain.

N.J.A.C. 8:24-6.9(g) this section is being added to prohibit the use of handwashing facilities for other purposes in order to prevent opportunities for the cross contamination of foods and equipment, and to encourage the use of these facilities for employee's handwashing.

N.J.A.C. 8:24-6.10(b) is being amended to include the phrase "while being stored" to the provision of the rule requiring covers on garbage containers in order to clarify that covers are not required when containers are in use in the facility, such as "working containers."

N.J.A.C. 8:24-7.4(e), which establishes the requirements for the operation of retail food establishments in private residences, is being moved to N.J.A.C. 8:24-2.1(b) because the requirements are more appropriat for reference under the subchapter that establishes requirements fo "Food Supplies" rather than the "Housekeeping" section unde Subchapter 7.

N.J.A.C. 8:24-9.7 is being amended to reference the specific statute N.J.S.A. 26:1A-10, which provides the authority to issue monetary penal ties for violations of the rules.

N.J.A.C. 8:24-9.12, a new rule entitled "Interpretations", clarifies tha the State Department of Health is the policy-setting agency whic provides interpretations of these rules, in order to promote uniform enforcement of the rules throughout the State.

N.J.A.C. 8:24-10.1 is being amended to eliminate the term "extensivel remodeled", which has resulted in confusion regarding its meaning as i relates to structure, layout, or operations of retail food establishments The term "altered" is being proposed as a substitution. In addition, description of operations and proposed food menu submission require ment is being proposed in order to provide the health authority with more thorough understanding of the operation, while the requirement fo a "model," which is often impractical to provide will be deleted. Further plans will be required to be approved by the health authority prior t the person or company initiating construction.

N.J.A.C. 8:24-11.1 has been deleted and the relevant definitions hav been included in N.J.A.C. 8:24-1.3.

Subchapter 12 is being added and will include the requirements tha were previously and inappropriately cited in the vending machin subchapter, at N.J.A.C. 8:24-11.15. Included are requirements for ap proved boiler water additives and chemical sanitizers. Added t subchapter 12 are requirements for the posting of choke preventio posters and the designated smoking/non-smoking areas required b N.J.S.A. 26:3E-1 and 26:3D-22, respectively.

Subchapter 13 is being added. This new subchapter will provide specific requirements for those operations defined as "community residence" an "bed and breakfast" establishments which could not otherwise meet al the provisions of the rules because of structural limitations of the kitcher facilities. Since community residence and bed and breakfast establish ments generally operate from a home setting, these new rules will b tolerant of the structural limitations inherent in these types of facilities For example, the requirement for a three compartment sink or com mercial dishwasher for the sanitizing of foodservice equipment a provided in N.J.A.C. 8:24-5.5 will be relaxed, provided that unsafe o insanitary conditions are not created. At the same time, the rules wil identify and require the application of the critical controls related to food safety and sanitation, as provided in the other sections of this chapter In addition, because of the often-limited capabilities of residential equip ment and facilities, foods being prepared and served will be limited t food items that require only minimal handling and/or heating immedi ately prior to service. The preparation of food in advance (one day o more) of service is prohibited. Establishments which prepare and/or serve only continental style meals, such as coffee/tea and rolls/pastry, without the preparation of potentially hazardous foods, would be exempt from these rules.

Social Impact

The amended rules will provide reasonable standards which will serve to prevent food related morbidity and mortality; avoid cost associated adversities resulting from foodborne illnesses; and create and maintain a safe and clean environment in which foods are produced, processed, stored or prepared by the retail food industry in New Jersey. Compliance with the sanitation standards established under these rules is an indispensable part of the Department's efforts to ensure the service of safe food in New Jersey. The adoption of these revisions will enable the Department and local health departments to enforce the latest techniques and standards for the safe handling of food in retail food establishments. The public benefits which would be derived are the prevention of foodborne illness and clean and sanitary retail food establishments.

Economic Impact

Illness and outbreaks of foodborne disease cause economic losses and problems for patients and their families, for the establishment that prepared the implicated food, for the food industry in general, and for governmental agencies responsible for food protection and disease surveillance. For example, the estimated national economic impact of foodborne salmonellosis alone has been as high as $2,000,000,000 annually. The promulgation of these amendments, and industry compliance with them, would significantly reduce the number of foodborne outbreaks, particularly those associated with salmonella contamination. The

imended rules will require food service establishments to modify the iandling of eggs, egg-containing foods and other types of foods which vere not previously classified as "potentially hazardous," possibly caus- ng increased operating costs and loss of revenue. The preparation of :ertain foods, such as Caesar salad and chocolate mousse, which were)reviously allowed, would have to be modified because of the proposed)rohibition against using raw eggs. The Department believes that menu ubstitutions, proper use of existing equipment and the availability of)asteurized egg products would mitigate any severe economic impact ipon the food service industry. To the contrary, the rules would provide 'or the identification of hazards and the implementation of controls in 'ood service operations, thereby aiding the industry in directing resources :o those areas which have been shown to be the most cost beneficial in :ontrolling foodborne disease.

The proposed new rules for bed and breakfast establishments and :ommunity residences will have a positive economic impact upon this segment of the food service industry. The rules currently require these establishments to be in full conformance with this chapter. The relaxation of certain provisions, through subchapter 13, will allow these establishments to avoid thousands of dollars in equipment costs. Also, in some instances because of space limitations, certain community residences such as group homes could be restricted from operating if the full provisions of this chapter were enforced, thus placing additional burdens on the community and the State to find alternative housing for the residents or potential residents, of such facilities.

Regulatory Flexibility Analysis

A large number of retail food establishments operating in the State are considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The rules impose compliance requirements for both large and small businesses. Businesses falling within the scope of the Act engage professional services, such as extermination and laboratory services. The operators of retail food establishments are responsible for maintaining their establishments in a sanitary condition regardless of whether their facilities are considered large or small businesses. Also, both large and small firms falling within the purview of these rules have the same responsibility to prevent illnesses related to food processed or handled on the retail level; therefore, the Department has determined that no differentiation based on business size should be made in these amendments. Although the Department has determined that there should be no differentiation in the requirements based solely on size of the business, the rules are tolerant of the limitations of facilities provided for the operation of temporary food establishments, mobile food vendors, community residences and bed and breakfast food establishments, which, for the most part, are small businesses as defined under the Act. The proposed rule revisions relax the requirements for equipment installations under N.J.A.C. 8:24-5.1, 8:24-5.2 and 8:24-5.4 for these types of establishments.

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

8:24-1.3 Definitions

For the purpose of this chapter, the following words, phrases, names and terms [mean] **shall have the following meanings, unless the context clearly indicates otherwise**:

. . .

"Bed and breakfast" means any private residence which has been adapted or converted to offer a homestyle place of lodging that provides 10 or fewer separate dwelling units for transients and individual sleeping accommodations for 25 or fewer persons, is occupied by the owner of the facility as his or her place of residence during any time that the facility is used for the lodging of guests, does not allow any guest to remain for more than 30 successive days or more than 30 days of any period of 60 successive days, does not offer food to the general public, and in which the only meal served to guests is breakfast.

"Bulk food" means any unpackaged or unwrapped food in aggregate containers from which quantities desired by the customer are withdrawn, provided that fresh fruits and vegetables, nuts in the shell, salad bars and potentially hazardous foods are not included in this definition.

. . .

"Community residence" means any community residential facility regulated by N.J.A.C. 10:44A, Standards for Licensed Community Residences for the Developmentally Disabled and N.J.S.A. 55:13B-1 et seq., Rooming and Boarding House Act of 1979; provided that, shelter and food for 16 or fewer residents exclusive of the owner and his or her family and the operator and employees are provided in a family style setting; and, provided further, that food prepared or served is not offered to the public. Community residences include, but are not limited to, licensed or regulated group homes, halfway houses, rooming houses, boarding houses, and similar residences. Licensed or regulated foster homes, skill development homes, family care homes, respite care homes and similar private residences are not considered community residences under this definition.

. . .

"Mobile retail food establishments" means any movable restaurant, truck, van, trailer, cart, bicycle, **watercraft,** or other movable unit including hand carried, portable containers in or on which food or beverage is transported, stored, or prepared for retail sale or given away at temporary locations.

. . .

"Potentially hazardous food" means any food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, **raw seed sprouts, heat treated vegetables and vegetable products,** or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, **or the slower growth of *C. botulinum*.** The term does not include [clean, whole, uncracked, odor-free shell eggs or] foods which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less.

. . .

"Retail food establishment" means any fixed or mobile restaurant; coffee shop; cafeteria; short-order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; night club; roadside stand; industrial feeding establishment; private, public or nonprofit organization, institution, or group preparing, storing or serving food; catering kitchen; commissary; box lunch establishment; retail bakery; meat market; delicatessen; grocery store; public food market, or any similar place in which food or drink is prepared for retail sale or service on the premises or elsewhere, and any other retail eating or drinking establishment or operation where food is served, handled or provided for the public with or without charge; except that agricultural markets, covered dish suppers or similar type of **infrequent** church or nonprofit type institution meal services shall meet the special provisions of N.J.A.C. 8:24-8; provided that any food and beverage vending machine shall meet the requirements of N.J.A.C. 8:24-11; **provided further, that bed and breakfast and community residences, as defined, meet the provisions of N.J.A.C. 8:24-13.**

. . .

"Safe temperatures", as applied to potentially hazardous food, means temperatures of 45 degrees Fahrenheit or below, and 140 degrees Fahrenheit or above unless otherwise specified, and **for frozen foods means such temperatures at which the foods remain completely frozen** [0 degrees Fahrenheit or below for frozen foods].

. . .

"State Department", "Department of Health" and "Depart ment" means the New Jersey State Department of Health.

8:24-2.1 Source; protection; wholesomeness; misbranding

(a) Food in the retail food establishment shall be from a source which is in compliance with applicable State and local laws and regulations. Food from such sources shall have been protected from contamination and spoilage during subsequent handling, packaging, and storage, and while in transit.

(b) Home [preparation and storage of food is] prepared foods are prohibited for use in any retail food establishment. **Private residences are prohibited from use as retail food establishments. A specially designated area of a residence may be used if the area meets all the requirements of this chapter, is physically separated from living areas, and is approved by the health authority. Bed and breakfast and community residence food operations as defined by N.J.A.C. 8:24-1.3 shall meet the requirements of N.J.A.C. 8:24-13.**

(c)-(g) (No change.)

2. All such products must be served at a temperature of 45 degrees Fahrenheit or below.

8:24-2.2 Frozen desserts

(a) All frozen desserts such as ice cream, soft frozen desserts, ice milk, sherbets, ices and mix shall meet applicable State and local laws and regulations, **including N.J.A.C. 8:21-7, Frozen Desserts.**

(b) The manufacture of frozen desserts shall be conducted only by establishments licensed by the Department pursuant to N.J.A.C. 8:21-7, Frozen Desserts.

8:24-2.3 Shellfish source

(a) (No change.)

(b) Shellfish tagging and labeling shall be as follows:

1.-2. (No change.)

3. Shellstock and shucked shellfish, **while stored,** shall be kept in the container in which they were received until they are empty. The stub or the tag shall not be removed from any container until the container is empty.

4. (No change.)

8:24-2.5 Eggs

(a) Only clean whole eggs, with shell intact and without cracks or excessive checks, or pasteurized liquid, frozen, or dry eggs or pasteurized dry egg products shall be used except that hard-boiled, peeled eggs, commercially prepared and packaged, may be used.

(b) Whole shell eggs shall be broken by a method that minimizes the comingling of the shell, shell fragments or membrane with the liquid contents of the eggs.

(c) Shell eggs shall only be cracked and pooled when used for immediate cooking.

8:24-3.1 General protection of foods

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

(d) Metal or plastic stem-type indicating thermometers, accurate to +3 degrees Fahrenheit, shall be provided and used to assure the attainment and maintenance of proper internal cooking, **cooling, reheating, hot holding, and cold** holding[, or refrigeration] temperatures of all potentially hazardous foods.

8:24-3.2 Food temperatures

(a) All perishable food, such as raw fruits and vegetables, [shell eggs,] live hardshell clams and oysters, shall be stored at such temperatures as will protect against spoilage.

(b) All potentially hazardous food, including shucked shellfish, unshucked mussels and soft shell clams, except when being prepared, displayed and served as provided in [(c)](**d**) below, shall be kept at 45 degrees Fahrenheit or below, or 140 degrees Fahrenheit or above. Frozen foods shall be maintained [at or below 0 degrees Fahrenheit] **frozen** until removed from storage for preparation and use except as noted in [(e)](**f**) below.

(**c**) Potentially hazardous foods [of large volume or prepared in large quantities] which will be refrigerated after preparation, shall be [rapidly] cooled **from 120 degrees Fahrenheit to 70 degrees Fahrenheit within two hours and rapidly cooled, without interruption, to** below 45 degrees Fahrenheit utilizing such methods as shallow pans[,] **having depths no greater than four inches,** agitation, quick chilling **refrigeration equipment** or water circulation external to the food container so that the cooling period shall not exceed four hours. **Containers of cooling potentially hazardous food shall not be tightly covered or stacked.**[; provided, that] **The** refrigeration of mayonnaise and salad dressings containing eggs and egg products at temperatures of 45 degrees Fahrenheit or below may be waived if:

1.-4. (No change.)

[(c)](**d**) All potentially hazardous food, when placed on display, shall be kept hot or cold as [required hereafter] **follows**:

1.-2. (No change.)

[(d)](**e**) Following preparation, hollandaise and other sauces which, pending service, must be held in the temperature **range** of 45 degrees Fahrenheit to 140 degrees Fahrenheit, may be exempt from the temperature requirements of this subsection, if they are prepared from fresh ingredients and are discarded as waste within three hours after preparation. Where such sauces require eggs as an ingredient, only [uncracked shell eggs,] pasteurized frozen or dried eggs shall be used.

[(e)](**f**) Foods intended for sale in a frozen state [shall] **should** be displayed at an air temperature of 0 degrees Fahrenheit or below provided, that during defrost cycles and brief periods of loading or unloading, the air temperature may rise to levels which do not cause product thawing. Frozen foods on display shall be stored below or behind case fill lines according to the cabinet manufacturer's specifications.

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

8:24-3.3 Food preparation

(a) During the preparation of all raw meats, poultry, **unpasteurized liquid eggs** and fish, other ready to eat foods shall not be permitted to touch these uncooked products or any equipment surfaces which such raw products have touched prior to sanitization. After handling such raw products, hands shall be carefully washed and all equipment and surfaces that the raw meats, poultry, **unpasteurized liquid eggs,** and fish touched shall be washed and sanitized. Special emphasis shall be given to situations where cross contamination may occur.

(b) Convenient and suitable equipment and utensils, slicers, grinders, saws, cleavers, can openers, forks, knives, tongs, spoons, spatulas, scoops and the like shall be provided to minimize [handling] **direct manual contact** of food, particularly potentially hazardous food, at all points where food is prepared.

(c) (No change.)

(d) Potentially hazardous foods requiring cooking or smoking shall be cooked to heat all parts of the food to a temperature of at least 140 degrees Fahrenheit except that:

1. Poultry, poultry stuffings, stuffed meats, and stuffings containing meat shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the initial cooking process, **except that the stuffing of raw poultry and poultry products having a weight greater than two pounds is prohibited**; and

2. Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit **or, if cooked in a microwave oven, to at least 170 degrees Fahrenheit**; and

3. Rare whole roast beef shall be cooked to an internal temperature of at least 130 degrees Fahrenheit, **or, if cooked in a microwave oven, to at least 145 degrees Fahrenheit.**[; and rare] **Rare** beef steak shall be cooked to a temperature of 130 degrees Fahrenheit unless otherwise ordered by the immediate consumer.

(e) Potentially hazardous foods that have been cooked and then refrigerated[,] **or frozen** shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food storage facility; provided, that rare whole roast beef may be reheated to at least 130 degrees Fahrenheit. Steam tables, bainmaries, warmers, and similar hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

(f) (No change.)

(g) Custards, cream fillings, and similar products which are prepared by hot or cold processes, and which are used as puddings or pastry fillings, shall be kept at safe temperatures at or above 140 degrees Fahrenheit or at or below 45 degrees Fahrenheit except during necessary periods of preparation and service, and shall meet the following requirements as applicable:

1. (No change.)

2. Such fillings and puddings shall be [refrigerated at] **cooled to** 45 degrees Fahrenheit or below [in shallow pans properly protected from dust and other contamination,] as required by N.J.A.C. 8:24-3.2(c) immediately after cooking or preparation, and held thereat until combined into pastries, or served.

3. All completed custard filled and cream filled or similar type pastries shall, unless served immediately following filling, be [refrigerated at] **cooled to** 45 degrees Fahrenheit or below **as required by N.J.A.C. 8:24-3.2(c)** promptly after preparation, and held at that temperature until served. Synthetic filled products may be excluded from this requirement if:

i.-iv. (No change.)

8:24-3.4 Food storage

(a) Containers of food shall be stored [above the floor, on clean racks, dollies or other clean surface] in such a manner as to be protected from splash and other contamination. [Additionally, foods

bulk storage must be elevated four to six inches above the floor ı racks or dollies and aisles must be provided between articles in orage and walls, and masses of foods must be broken down into anageable cells with aisles to allow for cleaning and inspection and ı prevent insect and rodent harborage. Foods in bulk storage shall ɜ stored at least 12 inches from each wall and there shall be a white ıspection strip on the floor along each wall where food is stored; rovided, foods packaged in cans, glass or other vermin-proof con- .iners sealed in shipping cartons and stored on clean surfaces in ɔoms, the floors of which are not frequently washed or otherwise ıbjected to water, need not be elevated and aisles need not be rovided if containers are in temporary storage for five days or less, r stored on dollies, skids, racks, or open ended pellets, provide such ɹuipment is easily removeable either by hand or with the use of allet moving equipment that is on the premises and, the areas are .ean, and rodent, insect or other vermin harborages are not rovided.]

(b) **There shall be a white inspection strip at the floor along each all in each room where food is stored in bulk for five or more days. ı addition, foods in bulk storage for five or more days, or which are ot packaged in vermin proof containers sealed in shipping cartons, or re stored in rooms which are frequently washed or otherwise subjected ɔ water, or are stored on racks, skids, or open ended pallets which re not easily moved, shall be:**

1. Elevated at least four to six inches above the floor;

2. Stored at least 12 inches from any wall; and

3. Divided into manageable cells with aisles.

Recodify (b)-(d) as (c)-(e) (No change in text.)

:24-3.5 Food display and service

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

(c) Where unwrapped bulk foods [such as pickles or dried foods] re provided to consumers for self-service sale they shall be in leanable, covered containers [provided with utensils to minimize andling.] **which have a depth of no more than 18 inches and have access oints located at least 30 inches above the floor. By definition, fresh ruits and vegetables, nuts in the shell, salad bars and potentially haz- rdous foods are excluded.**

(d) Tongs, forks, spoons, picks, spatulas, scoops, and other suit- ble utensils shall be provided and shall be used by employees to educe manual contact with food to a minimum. For self-service by ustomers, similar implements shall be provided in a manner as to ncourage their use. **Each container of potentially hazardous food shall e provided with its own dispensing utensil and displayed in such a anner as to minimize cross contamination between raw and ready- o-eat products.**

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

ɜ:24-3.6 Food transportation

(a) The requirements for storage, display, and general protection ıgainst contamination as contained in this section, shall apply in the ransporting of all food from a retail food establishment to another ocation for service, catering or other distribution. All potentially ıazardous food shall be kept at 45 degrees Fahrenheit or below, 140 legrees Fahrenheit or above, and frozen foods [at or below 0 degrees Fahrenheit] **shall be kept at such temperature as to remain frozen** luring transportation: Provided that cold food may be allowed to reach 55 degrees Fahrenheit and hot food may be allowed to reach 130 degrees Fahrenheit if they are to be consumed within one-half ıour of plating.

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

ɜ:24-3.7 Poisonous and toxic materials

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

(g) No person shall apply insecticides or rodenticides in or around ıny retail food establishment unless they **are certified by the New Jersey Department of Environmental Protection and** do so in full compliance with [New Jersey Department of Environmental Protection regulations] N.J.A.C. 7:30-1.

8:24-4.1 Health and disease controls

(a) Persons while affected with any disease in a communicable form, or while a carrier of such disease, or while affected with boils, infected wounds, sores, acute respiratory infection, nausea, vomiting, or diarrhea which could cause food borne diseases such as staphylococcal intoxication, salmonellosis, [typhoid fever] **shigellosis** or hepatitis shall not work in any area of a food establishment in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces with pathogenic organisms, or transmitting disease to other individuals and no person known or suspected of being affected with any such disease or condition shall be employed in any such area or capacity.

(b) (No change.)

(c) The Department or health authority shall use the latest edition of the American Public Health Association's text, "Control of Communicable Diseases in Man," as guidelines for the characteristics and control of food borne diseases, unless other rules, guidelines or interpretations are issued by the State Department of Health.

8:24-4.3 Handwashing

(a) The hands of all employees shall be kept clean while engaged in handling food and food contact surfaces. Employees shall thoroughly wash their hands and exposed arms with soap and warm water before starting work, and shall wash hands during work hours as often as is necessary to keep them clean, and after smoking, eating, drinking, [or] visiting the toilet room, **or handling raw food of animal origin**. Approved separate handwashing facilities shall be provided at convenient locations as necessary to maintain clean hands and arms during working hours. Utensil washing sinks or vats **and food preparation sinks** are not acceptable as handwashing facilities for personnel.

(b) (No change.)

8:24-5.5 Methods and facilities for washing and sanitizing

(a) (No change.)

(b) Manual washing and sanitizing:

1. [Within two years of the enactment of this chapter, all] **All** establishments engaging in manual washing, rinsing and sanitizing of utensils and equipment, shall provide and use a sink with not fewer than three compartments [provided that all newly constructed retail food establishments engaged in manual washing, rinsing and sanitizing shall have a three compartment sink]. Sink compartments shall be large enough to permit the complete immersion of the equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments shall be washed manually or cleaned through pressure spray methods; provided, that establishments where the only utensils to be washed are limited to spatulas, tongs, and similar devices, and when the only equipment to be cleaned is stationary and does not require disassembly for proper cleaning, a two compartment sink may be approved by the health authority for this purpose. At least a two compartment sink shall be provided and used for washing kitchenware and equipment which does not require sanitization. Single compartment sinks, such as cooks' and bakers' sinks, may be used for the prerinsing of utensils. Hot and cold running water shall be supplied for each compartment. Dish baskets, where used, shall be of such design to permit complete immersion of equipment and utensils.

2. (No change.)

(c) Manual sanitization shall be accomplished by one of the following methods:

1.-3. (No change.)

4. Immersion in a clean solution containing any other chemical sanitizing agent listed in N.J.A.C. 8:24-[11.15]**12.1**(b) that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75 degrees Fahrenheit for one minute; or

5. Treatment with steam free from materials or additives other than those specified in N.J.A.C. 8:24-[11.15]**12.1**(a) in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under (b)-(d) of this section in the case of equipment too large to sanitize by immersion.

6. Chemical sanitizers used shall meet the requirements of N.J.A.C. 8:24-[11.15]**12.1**(b) and **be** used in accordance with manufacturer's directions. A test kit or other device that accurately measures the parts per million concentration of the solution and a thermometer accurate to +3 degrees Fahrenheit to check water temperature shall be provided and used.

(d) Mechanical washing and sanitizing:

1. (No change.)

2. The flow pressure shall not be less than 15 or more than 25 pounds per square inch on the water line at the machine, and not less than 10 pounds per square inch at the rinse nozzles. A suitable gauge cock shall be provided immediately upstream from the final rinse valves to permit checking the flow pressure of the final rinse water on all machines [installed after the effective date of this regulation].

3. Machines using hot water for sanitizing shall maintain clean wash and rinse water at not less than the following temperatures, **unless otherwise approved by the Department or health authority:**

i.-iv. (No change.)

v. Single-tank, pot, pan, and utensil washer (either stationary or moving-rack):

(1) Wash temperature: [140°F] **150°F**;

(2) (No change.)

vi. (No change.)

4.-6. (No change.)

7. Machines (single or multi-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used; provided that:

i.-v. (No change.)

vi. Chemical sanitizers used shall meet the requirements of N.J.A.C. 8:24-[11.15]**12.1**(b).

vii. (No change.)

viii. The conversion of hot water sanitizing dishwashing machines to chemical sanitizing machines shall meet the requirements of this section and shall be approved by the Department or health authority.

8.-9. (No change.)

(e) (No change.)

8:24-5.7 Single service articles

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

(c) **When offered for self-service,** [Single] **single**-service knives, forks and spoons packaged in bulk shall be inserted into holders or be wrapped by an employee who has washed his hands immediately prior to sorting or wrapping the utensils. Unless single-service knives, forks and spoons are prewrapped or prepackaged, holders shall be provided to protect these items from contamination and present the handle of the utensil to the consumer.

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

8:24-6.3 Ice

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

(e) If ice is used, containers and utensils shall be provided for storing and serving it in a sanitary manner. Ice buckets, other containers, and scoops, unless they are of the single service type, shall be of a smooth, impervious material, and designed to facilitate cleaning. Ice dispensing utensils shall be stored on a clean surface which is self draining or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination. [Ice storage bins shall be drained through an indirect waste.]

(f)-(g) (No change.)

8:24-6.4 Steam

Steam used in contact with food or food-contact services shall be free from any materials or additives other than those specified in N.J.A.C. 8:24-[11.15]**12.1**(a).

8:24-6.6 Size, installation and maintenance of plumbing

(a) All plumbing shall be sized, installed and maintained in accordance with N.J.A.C. 5:23-1, **New Jersey Uniform Construction Code,** and [the following] **shall:**

1.-3. (No change.)

4. Not constitute a source of contamination of food, equipment or utensils or create an unsanitary condition or nuisance; **and**

5. Be installed in such a manner as to preclude the possibility backflow and backsiphonage.

[5.](**b**) Nonpotable water shall not be connected to food relat equipment or have outlets in the food preparation areas.

8:24-6.7 Drains

(a) Refrigerators, steam kettles, potato peelers, **ice storage bi food preparation sinks, equipment and utensil wash sinks,** and simil types of enclosed equipment in which food, portable equipment utensils are placed, shall not be directly connected to the draina system.

(b) (No change.)

(c) [Each walk-in refrigerator shall be equipped with a floor drai **Floor drains, when provided within a walk-in refrigerator, shall be** installed as to preclude the backflow of sewage into the refrigerat .[; or all parts of the floor of each walk-in refrigerator shall be grad to drain to the outside through a wastepipe, doorway or other ope ing. Walk-in refrigerators installed before enactment of this Chapt shall be excluded from the requirement for a floor drain, and su floors shall be kept in a sanitary condition.]

(d) Drain lines from equipment shall not discharge waste wat in such a manner as will permit the flooding of floors or the flowi of water across working or walking areas, or into difficult to cle areas, or otherwise create a nuisance. All new drains shall be install in accordance with applicable sections of N.J.A.C. 5:23-1, **New Jers Uniform Construction Code**.

8:24-6.8 Toilet facilities

(a) Each retail food establishment shall be provided with adequat conveniently located toilet facilities accessible to the employees at times; provided, that mobile units from which only prewrapped fo or beverages are served are exempt. All new establishments sh provide toilets for the public as per the requirements of N.J.A.(5:23-1, **New Jersey Uniform Construction Code.**

(b) Toilet facilities shall be installed in accordance with N.J.A.(5:23-1, **New Jersey Uniform Construction Code**. When a comm toilet is used for employees and patrons, access shall not be throu food preparation, food storage and utensils and equipment washi areas.

(c)-(g) (No change.)

8:24-6.9 Handwashing facilities

(a) Handwashing facilities shall be adequate in size and numb and shall be so located **and maintained** as to permit convenient ar expeditious use by all employees.

(b) (No change.)

(c) Handwashing facilities shall be in accordance with N.J.A.(5:23-1, **New Jersey Uniform Construction Code.**

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

(f) All [other] components of the handwashing facilities shall k kept clean and in good repair.

(g) Handwashing facilities shall be used only for handwashi purposes.

8:24-6.10 Garbage and rubbish disposal facilities

(a) (No change.)

(b) All containers **while being stored** shall be provided with tigh fitting lids or covers and shall, unless kept in a special vermin proofe room or enclosure or in a waste refrigerator, be kept covered [whe stored or not in continuous use]. [Working containers] **Containe** used in food preparation and utensil washing areas need not k covered; provided they are removed to the garbage storage area upo being filled or otherwise emptied at least daily.

(c)-(k) (No change.)

8:24-7.2 Lighting

(a) (No change.)

(b) Permanently fixed artificial light sources shall be installed t provide, at a distance of 30 inches from the floor[:], [1.] at least 2 foot candles of light in utensil and equipment storage areas [and **in dry food storage areas, in walk-in refrigerators,** in lavatory an toilet areas[; and], **and in all other areas. This shall also include dinin areas during cleaning operations.**

[2. At least 10 foot candles of light in walk-in refrigerating units, dry food storage areas, and all other areas. This shall also include lining areas during cleaning operations.]

8:24-7.3 Ventilation

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

(c) On all new installations or in extensively remodeled establishments, ventilating systems, including hood ventilators, shall be designed, maintained and operated in accordance with N.J.A.C. 5:23-1, **New Jersey Uniform Construction Code** and shall be designed to prevent grease or condensate from dripping into food **or** onto food preparation surfaces.

(d)-(h) (No change.)

8:24-7.4 Housekeeping

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

[(e) None of the operations connected with the establishment shall be conducted in any room used as living or sleeping quarters. Private residences are prohibited from use as retail food establishments; provided, that a specially designated area of a residence may be used if it meets all the requirements of this Chapter, it is physically separated from living areas, and it is approved by the health authority.]

Recodify existing (f)-(m) as **(e)-(l)** (No change in text.)

8:24-9.7 Penalties

Any person who shall violate any provision of this Chapter or who shall refuse to comply with a lawful order or direction of the Department or health authority, shall be liable to penalties as provided by [law] **N.J.S.A. 26:1A-10** or an injunctive action as provided by law, or both.

8:24-9.12 Interpretations

For the purpose of uniform enforcement, the New Jersey Department of Health, at its discretion, will issue statements regarding the interpretation of portions of this chapter. The interpretations shall be regarded by local health authorities as statements of Statewide policy regarding the interpretation of this chapter.

SUBCHAPTER 10. REVIEW OF PLANS, MANAGER TRAINING AND CERTIFICATION

8:24-10.1 Submission of plans

Whenever a retail food establishment is constructed or [extensively remodeled] **altered with regard to structure, layout or operations,** and whenever a structure is converted to use as a retail food establishment, plans and specifications pertaining to the health and sanitary aspects of the operation, for example, proposed equipment layout, equipment design and installation, construction materials of food related work areas, **description of operation, and menu** [and model of proposed fixed equipment and facilities] shall be submitted to the health authority for review **and approval** before construction, [remodeling] **alteration** or conversion is begun. The health authority shall review these plans and respond accordingly within 30 days of the date of submission. No retail food establishment shall be constructed, [extensively remodeled] **altered,** or converted except in accordance with plans and specifications previously submitted to **and approved by** the appropriate health and construction authorities.

[8:24-11.1 Definitions

"Bulk food" means a food which when dispensed to the customer is not packaged, wrapped or otherwise enclosed.

"Commissary" means a catering establishment, restaurant, or any other approved facility in which food, containers or supplies are kept, handled, prepared, packaged, or stored for use in vending machines. The term shall not apply to an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.

"Condiment" means any food such as salt, pepper, mustard and ketchup that is used to enhance the flavor of other food.

"Controlled location vending machine (limited service vending machine)" means a vending machine which:

1. Dispenses only nonpotentially hazardous food, and

2. Is of such design that it can be filled and maintained in a sanitary manner by untrained persons at the location, and

3. Is intended for and used at locations in which protection is assured against environmental contamination.

"Easily cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residues may be effectively removed by normal cleaning methods.

"Employee" means the individual having supervisory or management duties and any other person who handles any food to be dispensed through vending machines, or who come into contact with food contact surfaces or containers.

"Equipment" means vending machines, ovens, tables, counters, sinks, and similar items, other than utensils used in vending operations.

"Food" means any raw, cooked, processed edible substance, water, ice, beverage or ingredient used or intended for use for sale in whole or in part for human consumption.

"Food contact surfaces" means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.

"Health authority" means the duly licensed agent of the local board of health and/or State Department of Health to act in the enforcement of its ordinances and sanitary laws of the State.

"Hermetically sealed container" means a container designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

"Law" means Federal, State and local statutes, ordinances, and regulations.

"Machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated.

"Operator" means any person, who by contract, agreement, or ownership, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more vending machines.

"Packaged" means bottled, canned, cartoned or securely wrapped.

"Person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public, private or other legal entity.

"Potentially hazardous food" means any food that consists in whole or in part of milk, milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients including synthetic ingredients, which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs, foods which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less or foods in hermetically sealed containers.

"Readily accessible" means exposed or capable of being exposed for cleaning and inspection without the use of tools.

"Safe materials" means articles or substances manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food. If materials used are food additives or color additives as defined in Section 201(S) or (T) of the Federal Food, Drug, and Cosmetic Act they are "safe" only if, as used, they are not food additives or color additives as defined in Section 201(S) or (T) of the Federal Food, Drug and Cosmetic Act and are used in conformity with all applicable regulations of the U.S. Food and Drug Administration.

"Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

"Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

"Single service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles designed for one time, one person use, and then discarded.

"Utensil" means any implement used in the storage, preparation, transportation or service of food.

"Vending machine" means any self-service device which, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food, either in bulk or in packages, without the necessity of replenishing the device between each vending operation. It shall

also include self-service dispensers equipped for coin, paper currency, token, card or key operation and optional manual operation. Unless otherwise stated, vending machine includes controlled location vending machines.]

8:24-[11.2]**11.1** (No change in text.)

8:24-[11.3]**11.2** Food protection

(a) (No change.)

(b) The temperature of potentially hazardous foods shall be 45 degrees Fahrenheit [(7.2 degrees C.)] or below or 140 degrees Fahrenheit [(60 degrees C.)] or above at all times, except as otherwise provided in this chapter. Frozen foods shall be held at 0 degrees Fahrenheit [(–17.8 degrees C.)] at all times except during transfer and loading of product or during defrost cycles the foods may reach a temperature of 10 degrees Fahrenheit [(–8 degrees C.)].

Recodify 8:24-11.4 through 11.6 as **11.3 through 11.5** (No change in text.)

8:24-[11.7]**11.6** Exterior construction and maintenance

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

(g) Counter type machines shall be:

1. (No change.)

2. Mounted on [4] **four**-inch [(10.16 cm)] legs or the equivalent; or

3. (No change.)

(h) All service connections through an exterior wall of the machine including water, gas, electrical, and refrigeration connections, shall be grommeted, or closed with no opening over 1/32 inch [(0.79mm)] to prevent the entrance of insects and rodents. All service connections to machines vending potentially hazardous food shall be such as to discourage their unauthorized or unintentional disconnection.

Recodify 8:24-11.8 through 11.14 as **11.7 through 11.13** (No change in text.)

SUBCHAPTER 12. ADDITIONAL REQUIREMENTS

8:24-[11.15]**12.1** Boiler water additives and chemical sanitizing solutions

(a) Boiler water additives and chemical sanitizing solutions used in a retail food establishment shall be used in accordance with the provisions set forth in the Code of Federal Regulations, Title 21, 173.310 and 178.1010.

(b) Sanitizing agents used in a retail food establishment shall be labeled and used in accordance with the labeling requirements of the Federal Insecticide, Fungicide and Rodenticide Act 7 U.S.C. 135 et seq., and N.J.A.C. 7:30-1.

8:24-12.2 Choking prevention posters

Choking prevention posters shall be conspicuously displayed in restaurants as defined and required by N.J.S.A. 26:3E-1.

8:24-12.3 Smoking in restaurants and food stores

All restaurants and food stores as defined by N.J.S.A. 26:3D-22 et seq., and N.J.S.A. 26:3E et seq., shall comply with regulations governing smoking and non-smoking areas as required by those Acts.

SUBCHAPTER 13. COMMUNITY RESIDENCE AND BED AND BREAKFAST RETAIL FOOD ESTABLISHMENTS

8:24-13.1 Scope; purpose

Due to the nature, location and variety of conditions surrounding the operation of community residences and bed and breakfast establishments, it is frequently not possible to provide certain physical facilities required of other retail food establishments. In order to assure adequate protection of food served by community residences and bed and breakfast establishments which are unable to fully meet the requirements of this Chapter, it may be necessary to restrict the types of food or the methods by which such food is served, to modify some requirements for procedures and facilities, and to impose additional requirements.

8:24-13.2 General provisions

When, in the opinion of the Department or health authority, no imminent hazard to the public health will result, community residences and bed and breakfast establishments which do not fully meet the requirements of N.J.A.C. 8:24-2 through N.J.A.C. 8:24-7 may be permitted to operate when food preparation and service are restricted and alternatives to full compliance are provided for by the additional or modified requirements, as set forth in this subchapter. Bed and breakfast establishments serving only commercially prepared non-potentially hazardous foods are excluded from the requirements of N.J.A.C. 8:24. In addition, other private residences regulated under N.J.S.A. 55:13B-1 et seq., Rooming and Boarding House Act of 1979, such as licensed or regulated foster homes, skill development homes, family care homes, respite care homes and similar private residences, are also excluded from the requirements of N.J.A.C. 8:24. However, residential health care facilities shall fully meet the requirements of N.J.A.C. 8:24.

8:24-13.3 Food supplies

(a) Food used and served in all establishments shall be from sources which comply with applicable laws and regulations relating to food. Such food shall be free from spoilage and adulteration and be wholesome and safe for human consumption. The use of food in hermetically sealed containers that was not prepared in an approved food processing establishment (home canned foods) is prohibited.

(b) Milk and fluid milk products shall be pasteurized and from approved sources, except that reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking.

8:24-13.4 Food protection and temperatures

(a) All food, while being stored, prepared, served or transported shall be protected against contamination.

(b) All perishable food shall be stored at temperatures which will protect against spoilage.

(c) All potentially hazardous food, including any foods consisting of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, raw seed sprouts, heat treated vegetable products or other ingredients in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms or the slower growth of *C. botulinum*, shall be maintained at the following minimal internal temperatures:

1. All potentially hazardous foods shall be kept at 45 degrees Fahrenheit or below, or 140 degrees Fahrenheit or above;

2. All frozen foods shall be kept frozen at such temperatures as to remain frozen;

3. Potentially hazardous foods which will be refrigerated after preparation shall be cooled to 45 degrees Fahrenheit or below within four hours using such methods as shallow pans (four inches or less in depth), agitation or other quick chilling methods. Stacking of containers and tight fitting covers is prohibited;

4. Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of:

i. 165 degrees Fahrenheit for all poultry, poultry stuffings, stuffed meats, and stuffings containing meat;

ii. 150 degrees Fahrenheit for all pork and any food containing pork, or if cooked in a microwave to 170 degrees Fahrenheit;

iii. 130 degrees Fahrenheit for rare whole roast beef, or if cooked in a microwave to 145 degrees Fahrenheit; and

iv. 130 degrees Fahrenheit for rare beef steak unless otherwise ordered by the immediate consumer; and

5. Potentially hazardous foods that have been cooked and then refrigerated, shall be rapidly reheated to an internal temperature of 165 degrees Fahrenheit or higher.

(d) Meat, poultry, fish, potato, egg, and similar salads shall be prepared from prechilled products with a minimum of manual contact, using equipment which has been cleaned before use.

(e) Conveniently located refrigeration equipment, such as refrigerators and freezers and hot food equipment, such as stoves and ovens shall be provided to assure the maintenance of all food at required temperatures.

(f) Stem-type indicating thermometers shall be provided and used to assure attainment and maintenance of proper internal temperatures of potentially hazardous food during cooking, cooling, hot holding, cold holding, and reheating.

8:24-13.5 Preparation of food

(a) During preparation, ready-to-eat foods shall not be permitted to

uch raw foods of animal origin, such as meat, poultry, liquid unasteurized eggs, fish and similar products, and the equipment and rfaces which such raw products have touched prior to being thoroughly eaned.

(b) Suitable equipment and utensils shall be provided to minimize irect manual contact of food.

(c) All raw fruits and vegetables shall be thoroughly washed before se.

(d) The preparation of potentially hazardous foods in bed and breakst establishments shall be limited to foods which prior to service equire minimal preparation and handling.

(e) All potentially hazardous food shall be prepared immediately efore serving. The advance preparation of potentially hazardous food prohibited.

:24-13.6 Food storage

Containers of food shall be stored above the floor and in such a anner as to be protected from contamination.

:24-13.7 Poisonous materials

(a) Only those poisonous materials necessary to maintain the establishment in a sanitary condition shall be present in any area related the food operation.

(b) All containers of poisonous materials shall be clearly marked or abeled as to contents.

(c) All poisonous materials shall be stored and used in such a manner s to prevent the contamination of food and food surfaces.

:24-13.8 Personal health and hygiene

(a) Persons while affected with any disease in a communicable form, r while a carrier of such disease or while affected with boils, infected ounds, sores, acute respiratory infection, nausea, vomiting, or diarrhea hich could cause foodborne diseases, shall not work in any area of he establishment in any capacity in which there is a likelihood of such erson contaminating food or food contact surfaces with pathogenic rganisms.

(b) The hands of all foodworkers shall be washed to keep them clean nd in such a manner that will not contaminate food and equipment. Hands shall be thoroughly washed with soap and warm water before tarting work, frequently during the handling of food and equipment, fter handling raw foods of animal origin, smoking, eating, drinking nd visiting the toilet room. An adequate supply of hand cleansing soap, nd sanitary towels or other approved hand drying device shall be rovided.

(c) All persons engaged in handling food and equipment shall wear lean outer garments.

:24-13.9 Food equipment and utensils

(a) Equipment and utensils shall be constructed of safe materials and hall be easily cleanable and durable.

(b) After each usage, all tableware, kitchenware and food contact urfaces of equipment shall be thoroughly cleaned to sight and touch y manual or machine washing to include the following sequence of teps:

1. Equipment and utensils shall be preflushed or prescraped to remove gross food particles;

2. Equipment and utensils shall be thoroughly washed with a detergent solution and clean warm water; and

3. Equipment shall be rinsed of detergent and other residues with lean water.

(c) When manual washing methods are employed, at least a one ompartment sink supplied with hot and cold potable water under ressure shall be provided.

(d) Non food contact surfaces of all equipment shall be cleaned at uch frequency as is necessary to keep them free of accumulations and o maintain them in a sanitary condition.

(e) Clean equipment, utensils and food contact surfaces shall be rotected from contamination while handled and stored.

:24-13.10 Water and sewage

(a) The water supply shall be adequate as to quantity, of a safe, anitary quality, and from a public or private water supply system which s constructed, protected, operated, and maintained in conformance with he New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and rules (N.J.A.C. 7:10) and local laws, ordinances, and regulations; provided, that if approved by the Department of Environmental Protection, a nonpotable water supply system may be permitted within the establishment for purposes such as air conditioning and fire protection, only if such system complies fully with N.J.A.C. 8:24-6.6, Size, installation and maintenance of plumbing, and the nonpotable water supply is not used in such a manner as to bring it into contact, either directly or indirectly, with food, food equipment or utensils.

(b) Hot and cold running water, under pressure, shall be provided in all areas where food is prepared, and where equipment, utensils or containers are washed.

(c) All sewage shall be disposed of by means of:

1. A public sewerage system; or

2. A disposal system which is constructed and operated in conformance with N.J.A.C. 7:9-2, Standards for the Construction of Individual Subsurface Sewage Disposal Systems, the New Jersey Water Pollution Control Act Regulations, N.J.A.C. 7:14, and local laws, ordinances, and regulations.

8:24-13.11 Toilet facilities

(a) Each establishment shall be provided with adequate and conveniently located toilet facilities accessible to the employees at all times.

(b) Toilet rooms shall be easily cleanable, completely enclosed, and shall have tight-fitting, self-closing doors. Such doors shall not be left open except during cleaning or maintenance. If vestibules are provided, they shall be kept in a clean condition and in good repair.

(c) Toilet facilities, including toilet rooms and fixtures, shall be kept clean and in good repair, and free of objectionable odors.

(d) A supply of toilet tissues shall be provided at each toilet at all times.

8:24-13.12 Garbage disposal

(a) All garbage and rubbish containing food waste shall be stored in a sanitary manner so as to control accessibility to vermin.

(b) Storage containers shall be maintained in a clean condition.

8:24-13.13 Vermin control

(a) Effective control measures shall be utilized to minimize and eliminate the presence of rodents, flies, roaches and other vermin in the establishment.

(b) All openings to the outside shall be protected against the entry of vermin.

8:24-13.14 Other facilities and operations

(a) All floors, walls and ceilings shall be kept clean and in good repair.

(b) Permanently installed and adequate artificial lighting shall be provided in all food preparation, storage, and equipment washing areas.

(c) All areas of the establishment shall be sufficiently ventilated to prevent the accumulation of steam, grease, vapors, odors, smoke, fumes, and excessive heat.

(d) All areas of the establishment and its premises shall be kept clean. Cleaning shall be done at such a time and in such a manner as to prevent the contamination of food and equipment.

(e) No pets or other live animals shall be permitted in areas used for the preparation, serving and storage of food, and the cleaning of equipment during work and serving periods.

(a)

DIVISION OF ALCOHOLISM, DRUG ABUSE AND ADDICTION SERVICES

Waiver of Executive Order No. 66(1978) Alcohol Countermeasures Regulations N.J.A.C. 8:66

Take notice that the Alcohol Countermeasures Regulations, N.J.A.C. 8:66, were due to expire December 18, 1990, pursuant to the sunset provisions of Executive Order No. 66(1978). Although the Division of Alcoholism, Drug Abuse and Addiction Services, Department of Health, intends to amend and readopt these rules, the rules would expire before this could be accomplished. The Division has informed Governor James J. Florio that, although the Division has adopted new rules at N.J.A.C. 8:66A which authorize the processing of cases by the county Intoxicated

Driver Resource Centers, it is necessary to retain the rules at N.J.A.C. 8:66 to continue to process intoxicated driving cases which cannot be processed under the new rules.

Therefore, as Governor of the State of New Jersey and by the authority vested in him by Executive Order No. 66(1978), Governor Florio, on December 17, 1990, directed that the five-year sunset provisions of Executive Order No. 66(1978) be waived for N.J.A.C. 8:66, and the expiration date for the rules be extended for a period from December 18, 1990 to March 3, 1995, inclusive of both dates.

(a)

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

Authorized By: Drug Utilization Review Council,
Robert Kowalski, Chairman.
Authority: N.J.S.A. 24:6E-6(b).
Proposal Number: PRN 1991-56.

A **public hearing** concerning these proposed amendments will be held on February 13, 1991, at 2:00 P.M. at the following address:

New Jersey Department of Health
Room 804, Eighth Floor
Health-Agriculture Building
Trenton, New Jersey 08625-0360

Submit written comments by February 21, 1991 to:

Sol Mendell, R.Ph.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, N.J. 08625-0360
(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 triamterene/HCTZ capsules could then be used as a less expensive substitute for Dyazide, a branded prescription medicine. Similarly, the proposed Stuartnatal 1+1 substitute could be substituted for the more costly branded product, Stuartnatal 1+1.

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 the proposed 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 this proposal 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 th State through the Medicaid, Pharmaceutical Assistance to the Aged an Disabled Program, and prescription plan for employees. A 1988 estima of average savings per substituted Medicaid prescription was $7.31. Hov ever, the number of prescriptions that will be newly substituted due t these proposed amendments cannot be accurately assessed in order t arrive at a total savings.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as define under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.: specif cally, over 1500 pharmacies and several small generic drug manufacture which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements fc pharmacies, and small generic drug manufacturers have minimal initi reports, and no additional ongoing reporting or recordkeeping requir ments. Further, these minimal requirements are offset by the increase economic benefits accruing to these same small generic businesses du to these proposed amendments.

Full text of the proposed amendments follows:

Albuterol tabs 2, 4 mg	Watson
Amantadine HCl syrup 50 mg/5 ml	Barre-National
Atropine sulf opht sol 1%	Akorn
Belladonna alk w/belladonna tab	Rexar
Benzonatate caps 100 mg	Chase
Benzoyl peroxide gel 5%, 10%	Thames
CDP/Amitriptyline tabs 5/12.5, 10/25	PBI
Calcium inj	Steris
Carbachol ophth. sol 3%	Steris
Carbinoxamine Pseudoephedrine syr 4/60	Cenci
Carbinoxamine/pseudoephendrine/DM syr	Cenci
Carisoprodol 350 mg	Mutual
Chloral hydrate liq 500 mg	Cenci
Chloramphenicol opht sol 0.5%	Akorn
Chlorzoxazone tabs 250, 500 mg	Ohm
Chlorzoxazone tabs 500 mg	Mutual
Clemastine fumarate syrup 0.67 mg/5 ml	Lemmon
Clemastine fumarate tabs 1.34, 2.68 mg	Cord
Clofibrate caps 500 mg	Novopharm
Clonidine 0.1, 0.2, 0.3/chlorthal. 15 tabs	Cord
Cyclopentolate HCl opht sol 1%	Akorn
Dexamethasone opht sol 0.1%	Akorn
Dexamethasone sod. phosphate inj 4 mg/ml	Steris
Dexpanthenol inj. 250 mg/ml	Steris
Dipyridamole tabs 25, 50, 75 mg	Purepac
Doxycycline caps 100 mg	Sidmak
Erythromycin EC/ER tabs 250, 333, 500 mg	Abbott
Erythromycin ER caps 250 mg	Abbott
Ethosuximide caps 100 mg	Chase
Fluocinolone cr 0.01, 0.025%	G & W
Fluocinolone oint 0.025%	G & W
Fluocinonide soln 0.05%	Copley
Gentamycin Sulf opht sol	Akorn
Homatropine HBr opht sol 5%	Akorn
Hydrocodone/PPM 2.5/12.5 liq	Cenci
Hydrocodone/PPM 5/25 mg liq	Cenci
Hydrocodone/phenylpropanolamine 2.5/12.5	Halsey
Hydrocodone/phenylpropanolamine 5/25 syr	Halsey
Hydrocodone/pseudoephedrine liquid	Cenci
Hydrocodone/pseudoephedrine/guiafenesin	Cenci
Hydrocortisone suppos 25 mg	G & W
Hydrocortisone/Neomycin opht sol	Akorn
Hydromorphone HCl tabs 2, 4 mg	Roxane
Iodinate glycerol/DM 30 mg/10 mg	Halsey
Iodinate glycerol/codeine liquid	Cenci
Iodinated glycerol elixir	Cenci
Iodinated glycerol elixir	Silarx
Iodinated glycerol elixir 60 mg/5 ml	Cenci
Iodinated glycerol tabs 30 mg	Copley
Iodinated glycerol/DM liquid	Cenci
Iodinated glycerol/cod 30 mg/10 mg	Halsey
Lactulose syrup 10 g/15 ml	Inalco
Levorphanol tartrate tab 2 mg	Roxane
Loperamide caps 2 mg	Cord

Loxapine succ. caps 5, 10, 25, 50 mg	Cord
Metaproterenol tabs 10, 20 mg	Biocraft
Methocarbamol tabs 500, 750 mg	Mutual
Methyclothiazide tab 2.5 mg	Zenith
Midrin caps substitute	Interpharm
Minocycline caps 50, 100 mg	W-C
Minoxidil tabs 2.5, 10 mg	Mutual
Morphine sulf supp 5, 10, 20, 30 mg	G & W
Naldecon Ped. drops substitute	LuChem
Naphazoline/Pheniramine 0.025/0.3%	Optopics
Naphazoline opht sol 0.1%	Akorn
Natalins RX substitute	Copley
Nifedipine caps 10 mg	Novopharm
Nifedipine caps 20 mg	Chase
Oxazepam caps 10, 15, 30 mg	Danbury
Pediotic/Cortisporin Otic substitute	Bausch/Lomb
Phenylephrine HCl opht sol 2.5%, 10%	Akorn
Phenylephrine, PPM, guiafenesin liq	Halsey
Pilocarpine HCl opht sol 1%, 2%, 4%	Akorn
Poly Vitamin drops with fluoride 0.25 mg	Cenci
Poly-vitamins/Fluoride 0.25 mg, 0.5 mg	Esquire
Prednisolone sod phos opht sol 0.125%	Akorn
Prednisolone sod phos opht sol 1%	Akorn
Propoxyphene naps/APAP 50/325, 100/650	Mutual
Propoxyphene naps/APAP tabs 100/650	LuChem
Rondec DM drops substitute	LuChem
Rondec DM syrup substitute	LuChem
Rynatan tabs substitute	LuChem
Stuartnatal 1+1 formula	Copley
Sulfacetamide opht sol	Akorn
Sulfacetamide/Prednisolone sol 100/5 mg	Akorn
Sulindac tabs 150, 200 mg	Lemmon
Sulindac tabs 150, 200 mg	Mutual
Sulindac tabs 150, 200 mg	Mutual
Theophylline CR tabs 450 mg	Sidmak
Timolol maleate tabs 5, 10, 20 mg	Novopharm
Tolmetin tabs 200 mg, caps 400 mg	Mutual
Tolmetin sodium caps 400 mg	Purepac
Trazodone tabs 50, 100, 150 mg	Mutual
Triamterene/HCTZ caps 50/25	Penn Labs
Triple vitamin drops/fluoride 0.25 mg	Cenci
Tropicamide ophth. sol 1%	Akorn

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

Food Stamp Program
Miscellaneous Program Requirements

Proposed Amendments: N.J.A.C. 10:87-2.3, 2.6, 2.23, 2.30, 2.31, 3.6, 4.8, 5.5, 5.6, 5.9, 5.10, 7.14, 9.5, 9.7, 10.3, 10.9, 10.10, 10.21, 10.24, 11.23, and Appendix A.

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services

Authority: N.J.S.A. 30:4B-2; 7 CFR Parts 273 and 274; P.L. 100-383, P.L. 99-198, P.L. 100-435, *West v. U.S. Department of Agriculture,* Docket No. 88-1475 (3rd Cir., June 30, 1989); *Murray v. Lyng,* 854 F.2d 303 (8th Cir. 1988), and *Foster v. Celani,* 849 F.2d 91 (2nd Cir. 1988).

Proposal Number: PRN 1991-48.

Submit comments by February 21, 1991, to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments set forth general technical amendments to incorporate changes in Federal requirements into the Food Stamp Program rules, in response to passage of Federal legislation, the issuance of clarifying Federal food stamp regulations, and the issuance of Federal instructions relating guidance of the Food Stamp Program.

The proposed amendments at N.J.A.C. 10:87-2.3(a)2 and (c)4 provide a technical clarification of excluded household members, as an individual who fails to comply with the various work registration provisions in N.J.A.C. 10:87-10 is considered an excluded household member rather than a nonhousehold member. The proposed amendment is in conformity with 7 CFR 273.1(b)2. An amendment also clarifies N.J.A.C. 10:87-2.3(c)3 by emphasizing that failure to attest to citizenship shall result in excluded household member status.

The proposed amendment at N.J.A.C. 10:87-2.6(b)1 addresses the final rulemaking at 55 FR 33275 (August 15, 1990) which specified that if the household has the option of designating who will act as its head, that designation cannot be transferred to a different household member should the head of household fail to comply with a work registration requirement.

The proposed amendment at N.J.A.C. 10:87-2.23 requires the county welfare agency (CWA) to advise the applicant that verification is needed to complete the food stamp certification process. The proposed amendment is consistent with 7 CFR 273.2(c)(5).

The proposed amendment at N.J.A.C. 10:87-2.30(b)1 expands the validity period of food stamp Authorization to Participate cards (referred to as "ATPs"). The proposed amendment reflects a waiver which was granted to the Department by the U.S. Department of Agriculture (USDA) in May 1990 which allows any ATP issued after the 15th day of the month to be valid until the last day of the month following the month of issuance. The proposed amendment to N.J.A.C. 10:87-9.7(b)1 also reflects that waiver. The proposed amendment at N.J.A.C 10:87-2.30(b)3 addresses the Federal requirement at 7 CFR 274.2(b)3 that an indivdual applying for food stamp benefits after the 15th day of the month and that is found eligible for the first and second month's benefits within the normal or expedited processing standard timeframes shall receive both of those month's benefits at the same time.

The proposed amendments at N.J.A.C. 10:87-2.31(e)2 and (g)1ii provide correction in accordance with 7 CFR 273.2(h)(2)(ii) and (4)(i), which state that if a household delays providing required verification until after specified timeframes, the household may receive benefits starting with the month in which the verification is provided. The proposed amendment at N.J.A.C. 10:87-2.31(g)4 reflects Federal regulations at 7 CFR 273.2(d) which remove liability for failure to provide verification when the source of the information was an individual not living with the household.

The proposed amendment at N.J.A.C. 10:87-3.6 provides a technical correction by revising the cross-reference to N.J.A.C. 10:87-2.21(b).

The proposed amendments at N.J.A.C. 10:87-4.8(a)17xiii and 5.9(a)15xiv correct the title of Public Law 100-383 from the Wartime Relocation of Civilians Act to the Civil Liberties Act of 1988.

The proposed amendment at N.J.A.C. 10:87-5.5 provides clarifying language consistent with N.J.A.C. 10:87-2.3(b)6 and 5.9(a)10ii, which state that a foster person may be included in the household at the household's option, and income intended for the foster individual shall be excluded if the household elects not to include the foster individual in the household for food stamp purposes.

The proposed amendment at N.J.A.C. 10:87-5.6 states that the income of an individual who fails to comply with a food stamp work registration requirement is counted in its entirety as available to the remaining household members.

The proposed amendment at N.J.A.C. 10:87-5.9(a)3 states that utility allowance payments made by a public housing authority are excluded income for food stamp purposes. The proposed amendment reflects the *West* and *Foster* U.S. Court of Appeals decisions (see "Authority").

The proposed amendment at N.J.A.C. 10:87-5.10(a)5iv corrects the term "utility standard" to "utility allowances," which are cited in N.J.A.C. 10:87-12. The proposed amendment to N.J.A.C. 10:87-5.10(a)5iv(8) restricts the provision of utility allowances to only those households whose utility expenses exceed the amount of excluded energy assistance received. In its January 26, 1990 letter to the Department's Division of Economic Assistance, USDA's Mid-Atlantic Regional Office adivsed that, consistent with 7 CFR 273.9(d)(6)(ii)(C), only households who incur out-of-pocket utility expenses in excess of excluded energy assistance are entitled to a utility allowance.

The proposed amendment at N.J.A.C. 10:87-7.14 is consistent with the regulatory changes issued in 55 FR 33275 (August 15, 1990). That revision

clarifies how to treat the income and resources of an individual who refuses to comply with a food stamp work registration requirement.

The proposed amendment at N.J.A.C. 10:87-9.5(b) is consistent with 7 CFR 273.12(b) which requires CWAs to establish a toll-free, local, or collect-call telephone number which recipients may use to report changes in circumstance. The proposed amendment at N.J.A.C. 10:87-9.5(c)2ii(3) requires CWAs to establish claims if a household received an overissuance in food stamp benefits as a result of a reported change, per 7 CFR 273.12(c)(1)(iii).

The proposed amendment at N.J.A.C. 10:87-9.7 states that losses of combined benefit issuances shall be treated as only one incident of loss for the purpose of determining the number of ATPs and/or coupons lost by the household for replacement purposes.

The proposed amendment at N.J.A.C. 10:87-10.3 reflects Federal regulations at 7 CFR 273.7(o)(2) and (3), and concerns the determination of the number of recipients who are to be considered in the calculation of Employment and Training Program (ETP) statistics.

The proposed amendment at N.J.A.C. 10:87-10.9 reflects the provision of the Hunger Prevention Act of 1988 which established a $160.00 per dependent reimbursement for households who incur such costs while participating in an ETP activity.

The proposed amendment at N.J.A.C. 10:87-10.10 corrects the voluntary quit provisions so that they more accurately reflect the Federal regulations at 7 CFR 273.7(n). The revisions are considered technical corrections without affecting households.

The proposed amendment at N.J.A.C. 10:87-10.21 dealing with a change in the composition of the household is a technical correction to comply with Federal regulations at 7 CFR 273.7(g)(1).

The proposed amendment at N.J.A.C. 10:87-10.24(b)4 is a technical clarification which aligns N.J.A.C. 10:87 with Federal regulations at 7 CFR 273.7(h)(4).

The proposed amendment at N.J.A.C. 10:87-11.23 implements a component of the Food Security Act of 1985, in accordance with 7 CFR 273.18(k)(5), which requires that CWAs identify at certification whether households owe outstanding payments on a previously issued claim determination.

The proposed amendment at Appendix A distinguishes the procedures which must be followed when examining coupon booklets that have been stapled together from those that have been glued together.

Social Impact

The social impact on the population served is anticipated to be negligible as the proposed amendments are primarily designed to clarify rules and facilitate CWA administrative procedures. The proposed amendment at N.J.A.C. 10:87-5.10 may reduce the benefits of a few households who do not qualify for the standard or heating utility allowance. The proposed amendment at N.J.A.C. 10:87-2.31 may increase the initial benefits of those households that fail to provide necessary verification within prescribed timeframes. The establishment of the telephone system to report changes and the Notice of Required Verification should facilitate communication between the CWAs and food stamp recipients.

Economic Impact

Food stamp recipients will not experience a significant loss or reduction of benefits as a result of the enactment of the proposed amendments, as the amendments primarily provide technical clarification of rules currently in N.J.A.C. 10:87. The proposed amendments will ensure that New Jersey's Food Stamp Program is consistent with Federal statutes and regulations, thus avoiding possible imposition of Federal fiscal sanctions due either to noncompliance or errors identified through the Federal Performance Reporting System.

Regulatory Flexibility Statement

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for Food Stamps to a low-income population by a governmental agency, rather than a private business establishment.

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

10:87-2.3 Nonhousehold members, boarders and excluded household members

(a) Nonhousehold members: The individuals in (a)1 and 2 below residing with a household shall not be considered household members in determining a household's eligibility or allotment.

1. (No change.)

2. The following nonhousehold members are ineligible to participate in the program as separate households.

i. (No change.)

[ii. Individuals disqualified for noncompliance with the work registration, work and training requirements or voluntary quit provisions (see N.J.A.C. 10:87-10 regarding work requirements).]

(b) (No change.)

(c) Excluded household members: The following individuals residing with a household shall be excluded from the household when determining the household's size for the purposes of assigning a benefit level to the household or of comparing the household's monthly income with the income eligibility standards. However, the income and resources of an excluded household member shall be considered available to the remaining household members in accordance with N.J.A.C. 10:87-7.14. Excluded household members may not participate in the program as separate households.

1.-2. (No change.)

3. Ineligible alien **or citizenship** status: Individuals who do not attest to or meet the citizenship or eligible alien status requirements of N.J.A.C. 10:87-**3.6, 3.7, and** 3.8 or the eligible sponsored alien requirements of N.J.A.C. 10:87-7.18; or

[4. Questionable citizenship status: Individuals whose citizenship is questionable (see N.J.A.C. 10:87-2.21(b) regarding verification of questionable citizenship).]

4. Individuals disqualified for noncompliance with the work registration, employment and training program, or voluntary quit provisions at N.J.A.C. 10:87-10.

10:87-2.6 Head of household

(a) (No change.)

(b) For purposes of failure to comply with work registration, work and training requirements, and voluntary quit provisions, the head of household shall be considered to be the principal wage earner.

1. Principal wage earner: The principal wage earner shall be the household member (including excluded members, see N.J.A.C. 10:87-2.3(c)) who has the greatest source of earned income in the two months prior to the month of the work registration, work or training requirement or voluntary quit violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours.

i.-iii. (No change.)

iv. If the head of household fails to comply with a work registration requirement, the household cannot reassign the head of household designation to a different household member until any imposed period has expired.

10:87-2.23 Sources of verification

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

(d) Responsibility for obtaining verification:

1.-2. (No change.)

3. The CWA shall provide each household, at initial certification and recertification, with a Notice of Required Verification (Form FSP-33) if the household is required to provide information necessary to complete the certification process. That notice informs the household that the CWA will assist the household in obtaining the needed verification if the household encounters difficulty, and that failure to secure the required information may affect the household's eligibility for food stamp benefits.

10:87-2.30 Normal processing standard

(a) (No change.)

(b) Opportunity to participate: An opportunity to participate consists of providing households with an ATP and having an issuance facility open and available for the household to obtain its allotment. If the ATP is mailed, two days shall be allowed for delivery before determining if the household has been provided an opportunity to

participate. A household has not been provided an opportunity to participate within 30 days of application if the ATP is mailed on the 29th or 30th day. Neither has an opportunity to participate been provided if the ATP is mailed on the 28th day but no issuance facility is open on the 30th day where the household can obtain coupons. The CWA must mail the ATP at least two days in advance of the 30th day and assure that the ATP can be transacted after it is received but before the 30th day expires. The CWA shall ensure that each certified household is provided an ID card concurrent with the initial issuance of food stamp benefits to the household.

1. Any ATP issued after the [19th] **15th** day of the month shall not expire until the end of the following month.

2. (No change.)

3. Households which apply for initial benefits after the 15th day of the month and which have completed the application and provided all required verification within 30 days of the date of application and have been determined eligible to receive benefits for the initial month of application and the next subsequent month, shall receive their prorated allotment for the initial month and their first full month's allotment at the same time. Households which apply for initial benefits after the 15th day of the month under the expedited service provisions at N.J.A.C. 10:87-2.32 and 2.33 and which have completed the application and provided all required verification within the five-day processing standard and have been determined eligible to receive benefits for the initial month of application and the subsequent month shall receive their prorated allotment for the initial month and their first full month's allotment at the same time.

(c) (No change.)

10:87-2.31 Delays in processing

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

(e) Delays caused by the household: If, by the 30th day, the CWA cannot take any further action on the application due to the fault of the household, the household shall lose its entitlement to benefits for the month of application.

1. (No change.)

2. Households found eligible in second 30-day period: If the household was at fault for the delay in the first 30-day period but is found to be eligible during the second 30-day period, the CWA shall provide benefits only from the [date the household took the required action] **month following the month of application. The household is not entitled to benefits for the month of application when the delay is the fault of the household.**

(f) (No change.)

(g) Delays beyond 60 days: The following procedures apply as appropriate when a delay occurs in the second 30-day period.

1. Complete case record: If the CWA is at fault for not completing the application process by the end of the second 30-day period, and the case record is otherwise complete, the CWA shall continue to process the original application until an eligibility determination is reached.

i. (No change.)

ii. Household fault in initial delay: If the initial delay was the household's fault, the household shall receive benefits retroactive to the [date the household took the required action] **month following the month of application**. The CWA shall use the original application to determine the household's eligibility in months following the 60 day period.

2.-3. (No change.)

4. The CWA shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. The CWA shall not consider individuals identified at N.J.A.C. 10:87-2.3(a) and (c) as individuals outside of the household.

10:87-3.6 U.S. citizen defined

For the purposes of N.J.A.C. 10:87-3.5, the United States shall be defined as the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Swain's Island, American Samoa, and the Northern Mariana Islands. Citizenship shall be verified only if questionable in accordance with N.J.A.C. 10:87-[2.20(c)]**2.21(b)**.

10:87-4.8 Identification of resource exclusions

(a) Only the following shall be classified as resource exclusions by the CWA:

1.-16. (No change.)

17. Resources excluded by Federal law: Resources which are excluded for food stamp purposes by express provision of Federal statute. The following is a listing of resources excluded by Federal statute:

i.-xii. (No change.)

xiii. Payments received under the [Wartime Relocation of Civilians Act] **Civil Liberaties Act of 1988** (P.L. 100-383).

18.-19. (No change.)

10:87-5.5 Unearned income

(a) For the purposes of determining net food stamp income, unearned income shall include, but not be limited to:

1. (No change.)

2. Annuities, pension, Social Security, and other benefits: Annuities, pensions, retirement benefits, veteran's benefits, old-age, survivors, or disability benefits, workman's compensation, unemployment compensation, Social Security benefits, strike benefits, and foster care payments for children or adults **provided that the foster child or adult is included in the household**;

3.-10. (No change.)

10:87-5.6 Income of excluded individuals

(a) Income of individual excluded for intentional program violation **or refusal to comply with a work registration requirement**: The earned or unearned income of an individual disqualified from the household for intentional program violation as set forth in N.J.A.C. 10:87-11[.1 et seq.] **or who refuses to comply with a work registration requirement** shall continue to be attributed in its entirety to the remaining household members (see N.J.A.C. 10:87-7.14(b)).

(b) (No change.)

10:87-5.9 Identification of income exclusions

(a) Only the following shall be excluded from household income; no other income shall be excluded.

1.-2. (No change.)

3. [HUD utility] **Utility** allowance payments**, rebates, and reimbursements** which may be made **by a public housing authority** directly to the individual, the utility or the landlord are [counted as income and not] excluded [as a vendor payment] **from countable income**.

4.-14. (No change.)

15. Income excluded by Federal law: Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program shall be excluded. The following qualify under this provision:

i.-xiii. (No change.)

xiv. Payments received under the [Wartime Relocation of Civilians Act] **Civil Liberaties Act of 1988** (P.L. 100-383).

10:87-5.10 Income deductions

(a) Deductions from income will be allowed only for the following expenses of the household:

1.-4. (No change.)

5. Shelter cost deduction: Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in (a)1, 2, 3, and 4 above have been allowed, shall be deducted. However, in no event shall the shelter deduction exceed the amount in N.J.A.C. 10:87-12.1(b) unless the household contains a member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. These households shall receive an excess shelter deduction for the monthly costs that exceed 50 percent of the household's monthly income after all other applicable deductions. Households receiving Title II disability payments for dependents of a disabled individual are not eligible for the unlimited excess shelter deduction unless the disabled individual is a member of the household.

i.-iii. (No change.)

iv. Utility [standard] **allowances**: Households which incur certain utility costs separate and apart from their rent or mortgage payments

are entitled to claim the appropriate utility allowance (see N.J.A.C. 10:87-12.1(d) or (e)) in accordance with the following provisions:

(1)-(7) (No change.)

(8) A household which has excluded energy assistance (for example, the AFDC or GA energy disregard, Lifeline or TLAP benefits, or utility allowances rebates, or reimbursements provided by a public housing authority) is entitled to the appropriate utility allowance only if during one month of the certification period the household will incur utility expenses in excess of the excluded energy assistance.

10:87-7.14 Treatment of income and resources of certain nonhousehold members

(a) During the period of time that a household member cannot participate because he or she is an ineligible alien, disqualified due to intentional program violation, failed/refused to obtain and provide a social security number, **refused to comply with a work registration requirement,** or is ineligible for failing to sign the declaration attesting to his or her citizenship or alien status, the eligibility and benefit level of the remaining household member(s) shall be determined in accordance with this section.

(b) Excluded for intentional program violation disqualification **or refusal to comply with a work registration requirement**: The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of disqualification for intentional program violation **or refusal to comply with a work registration requirement** shall be determined as follows:

1.-3. (No change.)

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

10:87-9.5 Changes

(a) (No change.)

(b) Household responsibilities:

1. (No change.)

2. Method of reporting: The change may be reported in person, by telephone or by mail. The CWA shall document the date a change is reported, which shall be the date the CWA receives a report form or is advised of the change over the telephone or by a personal visit. PA households which report a change in circumstances shall be considered to have reported the change for food stamp purposes. **CWAs shall provide households with either a toll-free telephone number, a number at which collect telephone calls will be accepted, or a number within each household's local calling area which recipients may utilize to either obtain information or report changes. Those telephone numbers shall be identified on the Change Report Forms and Notices of Adverse Action which the CWAs issue.**

3. (No change.)

(c) CWA responsibilities: The CWA shall not impose any food stamp reporting requirement on household except as noted above. Neither shall the CWA treat the submission of the report of change as a waiver of the household's right to a notice of an adverse action.

1. (No change.)

2. Action on reported change: The CWA shall advise the household of its responsibilities to report changes within the required time period. The CWA is required to take prompt action in all changes reported by the household to determine if the change affects the household's eligibility or allotment. Even if there is no change in allotment, the CWA shall document the change in the case record, provide another change report form to the household, and notify the household of the receipt of the change report and effect of the change, if any, on its benefits. Restoration of lost benefits shall be provided to any household if the CWA fails to take action on a change which increases benefits within the time limits specified below.

i. (No change.)

ii. Changes which increase benefits and require issuance of a supplementary ATP: For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of $50.00 or more in the household's gross monthly income, the CWA shall make the changes effective no later than the first allotment issued 10 days after the date the change was reported. However, in no event shall these changes take effect any later than the month following the month in which the change is reported. Therefore, if the change is reported after the 20th of a month and it is too late for the CWA to adjust the following month's allotment, the CWA shall issue a supplementary ATP by the 10th day of the following month.

(1)-(2) (No change.)

(3) Verification: Verification required by N.J.A.C. 10:87-2.20 through 2.23, must be obtained prior to the issuance of the second normal monthly allotment after the change is reported. If the household does not provide verification, the household's benefits will revert to the original benefit level. In cases where the CWA has determined that a household has refused to cooperate, as defined in N.J.A.C. 10:87-2.14 through 2.17, the CWA shall terminate the household's eligibility. **The CWA shall issue a supplementary ATP by the 10th day of the following month. If the CWA increases a household's benefits to reflect a reported change but subsequent verification indicates that the household was entitled to fewer benefits, the CWA shall establish a claim.**

iii. (No change.)

3. (No change.)

(d)-(k) (No change.)

10:87-9.7 Replacement of benefits

(a) (No change.)

(b) Rules on replacement restrictions are as follows:

1. Replacement issuances shall be provided only if a household timely reports a loss orally or in writing, and provides a statement of nonreceipt if the original ATP or allotment has not been returned to the CWA at the time of request for replacement. The report shall be considered timely if it is made to the CWA within 10 days of the date an ATP is stolen from the household, or an ATP, coupons, or food purchased with food stamps is destroyed in a household misfortune. For a claim of nondelivery by the mail, the report must be made within the period of intended use. (If the issuance was made after the [19th] **15th** of the month, the period of intended use is the last day of the next month.)

2. The number of replacement issuances which a household may receive shall be limited as follows:

i. CWAs shall limit replacement issuances to a total of two countable replacements in six months for ATPs or coupons not received in, or stolen from, the mail, ATPs stolen after receipt, and partial coupon allotments. Separate limits shall not apply for each of the above types of loss. **Losses of combined issuances, as defined at N.J.A.C. 10:87-2.30(b)3, shall be treated as one incident of loss.**

ii.-iv. (No change.)

3. (No change.)

(c)-(i) (No change.)

10:87-10.3 Employment and training program performance standards

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

(d) Counting placements in an E&T program: DEA shall count a person as placed in an E&T program, for purposes of performance standards, in accordance with the following:

1.-3. (No change.)

4. If participation in one type of E&T component is not continuous, the participant may be counted as having been placed [only at the time of his or her initial commencement of the] **more than once in the same** component.

(e) Counting the "base of eligibles": The base of persons eligible to participate in an E&T program (the denominator) consists of all **non-exempt** work registrants in the month of October plus newly work-registered food stamp recipients who have not been exempted by the State Plan from participation in an E&T program. These groups are considered E&T mandatory participants. In addition, volunteers who are placed in an E&T component shall be counted in the base of eligibles. The State (DEA) need not count any individual in the base of eligibles (mandatory work registrants and volunteers) more than once in a fiscal year.

(f)-(i) (No change.)

10:87-10.9 Work registrant requirements

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

(c) Employment and training programs are as follows:

1.-4. (No change.)

5. Participants in an employment and training program, including volunteers, shall receive a participant allowance provided through the CWA for costs of transportation, or other costs that are reasonably necessary and directly related to participation in the employment and training programs at the flat rate of $25.00 per month for all participants. **Dependent care expenses shall not be reimbursed through the $25.00 allowance, but shall be reimbursed in accordance with (c)6 below.**

[i. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining benefits.]

6. CWAs shall reimburse ETP participants up to $160.00 per month per dependent for dependent care expenses incurred while fulfilling a food stamp ETP obligation. The $160.00 reimbursement is in addition to the transportation allowance described in (c)5 above. A recipient shall be deferred from ETP participation if the household's average dependent care expenses would exceed the $160.00 reimbursement if the recipient is assigned to an ETP activity. Deferment shall continue until either a suitable ETP component is available, or the household's dependent care circumstances change so that monthly dependent care expenses no longer exceed the $160.00 reimbursement amount. Households receiving AFDC benefits are not entitled to the $160.00 dependent care reimbursement.

[6.] **7.** (No change in text.)

10:87-10.10 Voluntary quit

(a) (No change.)

(b) Determining whether a voluntary quit occurred: When a household files an application for participation, or when a participating household reports the loss of a source of income, the CWA shall determine if any currently unemployed (that is, employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for full-time work **or who is exempt under N.J.A.C. 10:87-10.7(b)5** has voluntarily quit his or her job (that is, employment involving 20 hours or more per week or having received weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) without good cause. For applicant households, the CWA shall determine if a voluntary quit occurred within the last 60 days. If the CWA learns that a household has lost a source of income after the date of application but before the household is certified, the CWA shall determine whether a voluntary quit occurred. For participating households, the CWA shall determine whether any household member voluntarily quit his or her job while participating in the program. **Benefits shall not be delayed beyond the application processing standards described at N.J.A.C. 10:87-2.30 and 2.32 pending the outcome of the determination.**

1. (No change.)

(c) CWA Action: The CWA shall take the appropriate action, as outlined in (c)1 through 5 below, upon a determination that the head of household voluntarily quit employment.

1. Denial of application: Upon a determination that the head of household voluntarily quit employment, the CWA shall determine if the voluntary quit was with good cause as defined in N.J.A.C. 10:87-10.11. If the voluntary quit was not for good cause, the household's application for participation shall be denied for a period of 90 days beginning with the date of quit. The household shall be advised of the reason for the denial, **the proposed period of disqualification,** and of its rights to reapply at the end of the 90-day period, the circumstances under which a voluntary quit disqualification may be ended, and of its right to request a fair hearing.

2. Disqualification of participating households: If the CWA determines that the head of a participating household voluntarily quit his or her job while participating in the program, or discovers a quit which occurred within 60 days prior to application or between application and certification, the CWA shall provide the household with a notice of adverse action within 10 days of the date the determination of voluntary quit was made. The notice shall specify the period of the disqualification, **the particular act of noncompliance committed,** the circumstances under which a voluntary quit disqualification may be ended or avoided, the household's right to a fair hearing and that the household may reapply at the end of the disqualification period. The household shall be disqualified for three months beginning with the first day of the month after normal adverse action procedures have been taken. If the household leaves the program before the sanction can be levied, the sanction shall not be imposed until the household returns to the program. **If an individual who voluntarily quit joins a new household and is not the household head, the sanction shall be terminated.**

i. (No change.)

3.-5. (No change.)

(d) (No change.)

10:87-10.21 Penalty for noncompliance with employment and training requirements

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

(c) Change in household composition: Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household shall be ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he or she is not head of household, the individual shall be [ineligible for two months and] considered an ineligible household member in accordance with N.J.A.C. 10:87-[7.15] **7.14. A household determined to be ineligible due to failure to comply with work registration requirements may reestablish eligibility if a new and eligible person qualifies to be the household's head.**

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

10:87-10.24 Ending disqualification

(a) (No change.)

(b) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification becomes exempt from the work requirement, is no longer a member of the household, or the member complies as follows:

1.-3. (No change.)

4. Refusal to accept suitable employment: Acceptance of a bona fide offer of suitable employment to which referred by the FSETP office or its designee, if still available to the participant, or securing other employment which yields earnings per week equivalent to the refused job, or securing employment of at least 30 hours per week **or securing employment of less than 30 hours per week but** with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

5. (No change.)

10:87-11.23 Claims against households

All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The CWA shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive, or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive. **During the certification of each food stamp household, the CWA shall identify whether the household was previously overissued food stamp benefits. If an outstanding claim balance is identified, the CWA shall take appropriate action to recover the overissued benefits, pursuant to N.J.A.C. 10:87-11.26 and 11.29.**

APPENDIX A—FISCAL MANAGEMENT

SECTION A

Technical requirements and specifications

The Division of Economic Assistance is responsible for designing, implementing and monitoring fiscal management procedures which ensure the security and control of Authorizations to Participate (ATPs) and Food Coupons.

The Bureau of Business Services/Food Stamp Program Fiscal Office (BBS/FSPFO) operating requirements in Appendix A are unique to the State of New Jersey Food Stamp Program fiscal adminis-

tration. CWAs are encouraged to submit suggestions to improve this Appendix to:

Supervisor
Food Stamp Program Fiscal Office
Bureau of Business Services
Division of Economic Assistance—CN 716
Trenton, N.J. 08625

1.-2. (No change.)

3. Processing of returned books: Upon receipt of an improperly manufactured (see 1(F) above) or mutilated (see 1(L) above) coupon book(s) from a participant, the CWA Fiscal or Food Stamp Supervisor, with the authorization of the CWA Director, shall:

(A) (No change.)

(B) Books with alleged missing coupons should be examined as follows:

(1) (No change.)

(2) Examine the staples (**$65.00 book only**) and their position on the book to determine if there are loose or bent staples, indications that the book has been taken apart and restapled, **examine the glued end of the book to determine if any evidence of tampering exists,** or other indications **exist** that might reveal that the book contained the correct number of coupons at the time of issuance.

(3) **Examine the staples (applicable only to $65.00 books) and their position on the book.** Do not bend or remove the staples while examining the books. The condition and presence or absence of the staples are factors which must be considered by the FSPFO or Food Stamp Supervisor when making a determination.

(4) The condition and presence of glue or staples ($65.00 book only) are factors which must be considered by the FSPFO or Food Stamp Supervisor when making a determination.

(C)-(E) (No change.)

4.-9. (No change.)

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 143 in Camden County

Proposed New Rule: N.J.A.C. 16:28-1.43

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 1991-53.

Submit comments by February 21, 1991 to:

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

The agency proposal follows:

Summary

The proposed new rule will establish "speed limit" zones along Route N.J. 143 (Spring Garden Road) in Winslow Township, Camden County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon the fact that this roadway has recently been taken over by the Department of Transportation, 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. 143 (Spring Garden Road) in Winslow Township, Camden County was warranted.

The Department therefore proposes new rule N.J.A.C. 16:28-1.43 establishing these speed limits.

Social Impact

The proposed new rule will establish "Speed limit" zones along Route N.J. 143 (Spring Garden Road) Winslow Township, Camden County (recently taken over by the Department of Transportation), 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 will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the materials used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule", issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, 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 proposed new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rule.

Full text of the proposed new rule follows:

16:28-1.43 Route 143

(a) The rate of speed designated for State highway Route N.J. 143 described in this subsection shall be established and adopted as the maximum legal rate of speed.

1. For both directions of traffic:

i. In Camden County:

(1) Winslow Township:

(A) Zone 1: 45 miles per hour between Blue Anchor Road (County Road 561) and 1,320 feet north of Blue Anchor Road (railroad tracks) (approximate mileposts 0.00 to 0.25); thence

(B) Zone 2: 40 miles per hour between 1,320 feet north of Blue Anchor Road and 785 feet north of Center Drive (Road to Sewage Plant) (approximate mileposts 0.25 to 1.00); thence

(C) Zone 3: 50 miles per hour between 785 feet north of Center Drive and 950 feet south of Central Avenue (approximate mileposts 1.00 to 1.93); thence

(D) Zone 4: 40 miles per hour between 950 feet south of Central Avenue and Route U.S. 30 (approximate mileposts 1.93 to 2.27).

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Routes U.S. 130, including parts of the Route I-295, Route U.S. 30 and Route U.S. 206

Proposed Amendment: N.J.A.C. 16:28-1.69

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 1991-34.

Submit comments by February 21, 1991 to:

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

The agency proposal follows:

Summary

The proposed amendment will establish revised "speed limit" zones along Route U.S. 130 in the Townships of Hamilton, Washington, and

East Windsor in Mercer County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon request from the local governments in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation and resurvey. The investigation and resurvey proved that the establishment of the revised "speed limit" zones along Route U.S. 130 in the Townships of Hamilton, Washington, and East Windsor in Mercer County were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.69 based upon the request from the local governments, the traffic investigation and resurveys.

Social Impact

The proposed amendment will establish revised "speed limit" zones along Route U.S. 130 in the Townships of Hamilton, Washington, and East Windsor in Mercer 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 "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule", issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, 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 proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rule.

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

16:28-1.69 Route U.S. 130 including parts of Route I-295, Route U.S. 30 and Route U.S. 206

(a) The rate of speed designated for State highway Route U.S. 130, including parts of Route I-295, Route U.S. 30 and Route U.S. 206 described in this subsection are established and adopted as the maximum legal rate of speed for both directions of traffic.

1.-4. (No change.)

5. Mercer County:

i. Hamilton Township, Washington Township and East Windsor Township:

[(1) 55 mph within all corporate limits: (milepost 58:25 to 70.0).]

(1) 55 miles per hour from Bordentown Township (Burlington County)-Hamilton Township (Mercer County) corporate line, through Hamilton Township, Washington Township and East Windsor Township to Hickory Corner Road (milepost 58.28 to 67.50); thence

(2) 50 miles per hour from Hickory Corner Road to 465 feet north of Birch Lane (Roadway Trailer Park) (milepost 67.50 to 69.12); thence

(3) 55 miles per hour from 465 feet north of Birch Lane to East Windsor Township (Mercer County)-Cranbury Township (Middlesex County) corporate line (milepost 69.12 to 70.05).

6. (No change.)

(b) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 38 in Camden and Burlington Counties

Proposed Repeal and New Rule: N.J.A.C. 16:28-1.120

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 1991-55.

Submit comments by February 21, 1991 to:

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

The agency proposal follows:

Summary

The proposed new rule will establish revised "speed limit" zones along Route N.J. 38 in Pennsauken and Cherry Hill Townships, Camden County, and in Maple Shade, Moorestown, Mount Laurel, Hainesport, Lumberton, Mount Holly and Southampton Townships, Burlington County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

As part of a review of current conditions and in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted resurveys and traffic investigations. The investigations and resurveys proved that the revisions to current "speed limit" zones along Route N.J. 38 in Camden and Burlington Counties were warranted.

The Department therefore proposes to repeal the present text as it appears in the Administrative Code at N.J.A.C. 16:28-1.120, and add new rule N.J.A.C. 16:28-1.120, based upon the resurveys and the traffic investigations. Additionally, the speed zones have been revised by changing their locations and designating them by mileposts, in addition to other landmarks within the respective counties by municipalities.

Social Impact

The proposed new rule will revise and establish "speed limit" zones along Route N.J. 38 in Pennsauken and Cherry Hill Townships, Camden County, and in Maple Shade, Moorestown, Mount Laurel, Hainesport, Lumberton, Mount Holly and Southampton, Burlington 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 will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The cost factors for the installation and procurement of signs are variable, depending upon size, materials used and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, 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 and the governmental entities responsible for enforcement of the rules.

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

[16:28-1.120 Route 38

(a) The rate of speed designated for State highway Route 38 described herein below shall be and hereby is established and adopted as the maximum legal rate of speed for both directions of traffic:

1. Pennsauken, Cherry Hill Townships:

i. Zone one: 50 mph: (mileposts 0.0 to 4.4).

2. Maple Shade, Moorestown, Mount Laurel Townships:

i. Fifty mph: (mileposts 4.4 to 12.5).

3. Hainesport Township:

i. Fifty mph from the Mount Laurel Township-Hainesport Township line to Lumberton Road: (mileposts 12.5 to 14.4);

ii. Zone two: 45 mph from Lumberton Road to the Hainesport Township-Lumberton Township line: (mileposts 14.4 to 15.2).

4. Lumberton Township:

i. 45 mph from the Hainesport Township-Lumberton Township line to Route 541 Spur (Mount Holly Bypass): (mileposts 15.2 to 15.4);

ii. Zone three: 40 mph from Route 541 Spur (Mount Holly Bypass) to the Lumberton Township-Mount Holly Township line (mileposts 15.4 to 16.5).

5. Mount Holly Township: 40 mph: (mileposts 16.5 to 16.8).

6. Lumberton, Mount Holly, Eastampton and Southampton Townships, Burlington County:

i. Fifty mph between Pemberton Road (milepost 16.78 and Route U.S. 206 (milepost 19.23).

7. Wall Township:

i. Zone four: 55 mph: (mileposts 64.0 to 67.2).]

16:28-1.120 Route 38

(a) The rate of speed designated for State highway Route 38 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Camden County:

(1) Pennsauken Township:

(A) 50 miles per hour between Route U.S. 30-Route U.S. 130 and the Pennsauken Township-Cherry Hill Township line (approximate mileposts 0.00 to 1.32); thence

(2) Cherry Hill Township:

(A) 50 miles per hour between the Pennsauken Township-Cherry Hill Township line and the Cherry Hill Township (Camden County)-Maple Shade Township (Burlington County) line (approximate mileposts 1.32 to 4.40); thence

ii. In Burlington County:

(1) Maple Shade Township:

(A) 50 miles per hour between the Cherry Hill Township (Camden County)-Maple Shade Township (Burlington County) line and the Maple Shade Township-Moorestown Township line (approximate mileposts 4.40 to 6.10); thence

(2) Moorestown Township:

(A) 50 miles per hour between the Maple Shade Township-Moorestown Township line and the Moorestown Township-Mount Laurel Township line (approximate mileposts 6.10 to 8.84); thence

(3) Mount Laurel Township:

(A) 50 miles per hour between the Moorestown Township-Mount Laurel Township line and the Mount Laurel Township-Hainesport Township line (approximate mileposts 8.84 to 12.49); thence

(4) Hainesport Township:

(A) 50 miles per hour between Mount Laurel Township-Hainesport Township line and the Hainesport Township-Lumberton Township line (approximate mileposts 12.49 to 15.29); thence

(5) Lumberton and Mount Holly Townships:

(A) 50 miles per hour between the Hainesport Township-Lumberton Township line (extending through Mount Holly Township) and the Lumberton Township-Southampton Township line (approximate mileposts 15.29 to 18.30); thence

(6) Southampton Township:

(A) 50 miles per hour between Lumberton Township-Southampton Township line and Route U.S. 206 (approximate mileposts 18.30 to 19.23).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Stopping and Standing
Route N.J. 28 in Union County
Proposed Amendment: N.J.A.C. 16:28A-1.19

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 39:4-138.1.

Proposal Number: PRN 1991-54.

Submit comments by February 21, 1991 to:

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

The agency proposal follows:

Summary

The proposed amendment will revise the day established for restricting "no stopping or standing" along Route N.J. 28 in the Borough of Roselle Park, Union 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 the local government in the interest of safety, the changing of the date municipal court is held, the requirement for effective street cleaning and the logistics involved, the Department's Division of Traffic Engineering and Local Aid approved this change of day. There has been no change in the time restrictions.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.19 based upon the request from the local government.

Social Impact

The proposed amendment will revise and establish a "no stopping or standing" zone along Route N.J. 28 in the Borough of Roselle Park, Union 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 local government will bear the costs for the installation of "no stopping or standing" zones signs. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, 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 and governmental entities responsible for enforcement of the rules.

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

16:28A-1.19 Route 28

(a) The certain parts of State highway Route 28 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 change.)

2. No stopping or standing in the Borough of Roselle Park, Union County:

i.-iv. (No change.)

v. Along the south side, from 9:00 A.M. to 11:00 A.M., [Thursday] **Tuesday** within the entire corporate limits.

vi.-viii. (No change.)

3.-13. (No change.)

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

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route N.J. 67 in Bergen County
Proposed Amendment: N.J.A.C. 16:28A-1.71

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

Authority: N.J.S.A. 27:1A-5, 27:1-6, and 39:4-138.1 and 39:4-199.
Proposal Number: PRN 1991-52.

Submit comments by February 21, 1991 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish a revised "no parking bus stop" zone along Route N.J. 67 in Fort Lee Borough, Bergen 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.

Based upon requests from the local government in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a revised "no parking bus stop" zone along Route N.J. 67 in Fort Lee Borough, Bergen County was warranted.

The Department is establishing a near side bus stop on Route N.J. 67 at Forest Road and not a far side bus stop as was originally promulgated.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.71, based upon the request from local government and the traffic investigation.

Social Impact

The proposed amendment will establish a revised "no parking bus stop" zone along Route N.J. 67 in Fort Lee Borough, Bergen 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 government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government will bear the costs for the "no parking bus stop" zone signs. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule" issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, 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 and governmental entities responsible for enforcement of the rules.

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

16:28A-1.71 Route 67

(a) The certain parts of State highway Route 67 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the westerly (southbound) side in Fort Lee Borough, Bergen County:

i. Along Lemoine Avenue:

(1) (No change.)

(2) Near side bus stops:

(A)-(D) (No change.)

(E) Forest Road—Beginning at the northerly curb line of Forest Road and extending 105 feet northerly therefrom.

(3) (No change.)

ii. Along Palisade Avenue:

(1) Far side bus stops:

(A) (No change.)

[(B) Forest Road—Beginning at the southerly curb line of Forest Road and extending 150 feet southerly therefrom.]

Recodify [(C)] as **(B)** (No change in text.)

2.-3. (No change.)

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

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turns Prohibitions

Route U.S. 9 in Ocean County

Proposed Amendment: N.J.A.C. 16:31-1.29

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 39:4-183.6.
Proposal Number: PRN 1991-42.

Submit comments by February 21, 1991 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish a "no left turn" provision along Route U.S. 9 in Berkeley Township, Ocean 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 the local government in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation and survey. The investigation and survey proved that the establishment of a left turn prohibition along Route U.S. 9 in Berkeley Township, Ocean County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:31-1.29 based upon the request from the local government, the traffic investigation and survey.

Social Impact

The proposed amendment will establish a left turn prohibition south to east at McDonald's driveway along Route U.S. 9 in Berkeley Township, Ocean 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. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine as prescribed by N.J.S.A. 39, and the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, 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 proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rule.

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

16:31-1.29 Route U.S. 9

(a) Turning movements of traffic on certain parts of State highway Route U.S. 9 described in this subsection are regulated as follows:

1. In Ocean County:

i. (No change.)

ii. Berkeley Township:

(1) No left turn southbound to eastbound on McDonald's driveway (approximately 400 feet south of Ocean Gate Drive).

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Teachers' Pension and Annuity Fund
Age Computation; Enrollment; Retirement
Proposed New Rule: N.J.A.C. 17:3-1.13

Authorized by: Board of Trustees, Teachers' Pension and Annuity Fund, Michael Weik, Secretary.

Authority: N.J.S.A. 18:66-56.

Proposal Number: PRN 1991-46.

Submit comments by February 21, 1991 to:

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

The agency proposal follows:

Summary

The proposed new rule clearly sets forth how a member's age is calculated for enrollment and retirement purposes. If a new member is more than six months into his or her calendar age (for example, 30 years and 8 months), such member will have his or her contribution rate and retirement factor based upon his or her next calendar age (for example, 31 years in the previous example). In effect, this is the method used to currently calculate such ages. The proposed new rule merely codifies what has been consistently done in the past and the present. It is proposed merely to clarify the issue, since many questions are raised about the computation of such ages for enrollment and retirement purposes.

Social Impact

This proposed rule may affect current and new members of the Teachers' Pension and Annuity Fund, in that the calculation of a member's age will be "rounded down," for enrollment purposes, if they are less than six months past their birthday and "rounded up," if they are six months or more past their birthday.

Economic Impact

This proposed new rule will not have any adverse impact upon the persons who may be affected by it. Again, this proposed rule represents a codification of long past and current procedures. Although a member may be deemed "older" for enrollment purposes and as a result contribute at a higher pension rate, such a computation will allow such a person to retire "sooner" and collect retirement benefits earlier than he or she would have if he or she were considered "younger." In effect, if there are any slight adverse, economic effects, they are offset by more liberal or earlier retirement benefits at the time of retirement.

Regulatory Flexibility Statement

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

Full text of the proposed new rule follows:

17:3-1.13 Nearest attained age; enrollment; retirement

(a) An individual, who is six months or more than his or her current age at the time of his or her enrollment, will have his or her pension contribution rate and retirement factor based upon the age on his or her next birthday.

(b) Retired members will have their retirement benefits, as well as their survivors' benefits, calculated upon the basis of the factors applicable to their age on their next birthday.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Transfer Inheritance and Estate Tax
Assessment and Valuation; Returns
Proposed Amendments: N.J.A.C. 18:26-2.14, 2.15, 3.4, 3.10, 7.10, 8.2, 8.3, 8.8, 8.9, 8.11, 8.21, 9.1, 9.3, 9.4, 9.5, 9.6, 9.10, 10.12, 11.4, 11.8, 11.15 and 11.16
Proposed Repeals and New Rules: N.J.A.C. 18:26-8.6 and 10.1
Proposed Repeals: N.J.A.C. 18:26-8.1 and 8.7

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:50-1.

Proposal Number: PRN 1991-43.

Submit comments by February 21, 1991 to:

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

The agency proposal follows:

Summary

The proposed amendments make several changes related to the administration of the Transfer Inheritance Tax Act, N.J.S.A. 54:33-1 et seq. Under the current rules, the estate representative filed a return listing the net assets of the decedent and the Transfer Inheritance Tax Branch (Branch) then computed the amount of tax due and issued an assessment. Under these rules as proposed for amendment, the estate representative would continue to file the return, and in addition, would compute the amount of tax due and remit such tax when the return is filed.

The Branch would thereafter advise the estate representative as to whether the return filed by the estate and the tax calculation are accepted, in which case the Branch's notification would be the tax assessment. In the event that the Branch decided to further examine the return, it would subsequently notify the estate representative as to the amount of tax assessed.

Also proposed are several technical amendments, such as adding references to new forms and deleting references to "district supervisors" which no longer exist, and makes clear when a deduction for real estate commissions would be allowed.

Social Impact

Adoption of the proposed amendments should simplify and speed up the administration of estates. Processing the handling of the decedent's estate by the executor or administrator should be simplified as to time and convenience.

Economic Impact

There would be no significant economic impact because the inheritance taxes would be the same. Costs of estate administration and tax return preparation may be reduced, however, and there should be some savings to the State in costs of administration and manpower.

Regulatory Flexibility Statement

The 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. Accordingly, a regulatory flexibility analysis is not required. The amendments only make changes in the administration of the Transfer Inheritance Tax, which is applicable to the estates of certain decedents.

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

18:26-2.14 Composition of taxes on certain transfers

(a) In the case of a transfer or transfers made subject to a contingency or condition which renders a definite determination of the transfer inheritance tax due impossible, the Transfer Inheritance Tax [Bureau will suggest] **Branch may enter into** a composition or compromise of the tax based upon the immediate payment and final disposition of the tax.

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

18:26-2.15 Bond in lieu of payment

(a) If settlement through a compromise of the tax fails, a bond in double the highest amount of tax must be filed with the Inheritance Tax [Bureau] **Branch**, executed by the executor, administrator, trustee, or other property representative, as principal, and a surety company licensed to operate in New Jersey as surety, until the contingency or condition occurs and the tax due becomes definite.

(b) Upon the happening of the contingency or condition to which a transfer is subject, the executor, administrator, trustee or other proper representative shall notify the Transfer Inheritance Tax [Bureau] **Branch** of the date the occurrence took place and a computation of the tax due shall then be made. (See N.J.A.C. 18:26-9.13.)

(c) (No change.)

18:26-3.4 Additions or reductions to estate tax

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

(c) The amount of the estate tax due New Jersey, if any, cannot be determined in any case until the Federal government has definitely determined the amount of Federal estate tax chargeable on final assessment.

1. Notice to the estate of final assessment usually takes the form of a letter from the District Director, Internal Revenue Service, indicating the amount of Federal estate tax chargeable, and the amount of the allowable credit.

2. If any adjustments have been made, this letter is accompanied by a detailed statement of the changes made in each schedule of the Federal estate tax return. If an appeal from the Director's findings is taken, the final notice will be the order of the appellate court in this respect.

3. The New Jersey Inheritance Tax [Bureau] **Branch** requires a photostatic copy of all determinations, final and intermediate, of the Internal Revenue Service, with all supporting statements. Photostatic copies of receipts for payment of succession or estate taxes to any state, other than New Jersey, territory, possession, or the District of Columbia are also required.

4. Form of return for New Jersey estate tax purposes may be obtained from the Transfer Inheritance Tax [Bureau at] **Branch, CN-249,** Trenton, N.J. 08646-**0249**.

18:26-3.10 Appeals

Any executor, administrator, trustee, person or corporation liable for the payment of the estate tax and aggrieved by any decision, order, finding or assessment of the Director, may appeal to the Tax Court of New Jersey for a review thereof within 90 days of the date of notice assessing the tax complained of, [on giving bond, approved by a judge of the Tax Court, conditioned to pay said tax, together with interest and costs, if said tax be affirmed by the Court] **in accordance with pertinent provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:51A-13 et seq.**

18:26-7.10 Executor's and administrator's expenses

(a) (No change.)

(b) Where a formal account is filed and the amount allowed by the court for executor's or administrator's commissions is greater than the amount previously fixed by the [Bureau] **Branch**, the fiduciary is to forward a plain copy of the judgment allowing commissions and upon revision of the assessment there shall be applied the rate used by the court to the value, as of the date of death as determined by the Inheritance Tax [Bureau] **Branch** of the property on which the allowance of the court is based, but the value of any property excluded from the New Jersey Transfer Inheritance Tax shall be excluded from the computation.

(c) (No change.)

(d) [In addition, executor's or administrator's commissions are not allowed on:

1. Real estate specifically devised, except where the personal estate is not sufficient to pay the debts and costs of administration of the estate;

2. Real estate not specifically devised, except where the personal estate is not sufficient to pay the debts and costs of the administration of the estate, or to pay pecuniary legacies.] **Executor's or administrator's commissions are allowed on real estate that is actually sold by the executor or administrator. The real estate must be sold by the representative and not the beneficiary(s) in order to qualify.**

(e) (No change.)

18:26-8.1 [Assessments in general] **(Reserved)**

[Upon the filing of a return with the District Supervisor in the county in which the decedent was a resident, in the case of a resident decedent, or with the Transfer Inheritance Tax Bureau, in the case of a nonresident decedent, the District Supervisor of the county in which the property is situated shall appraise the real and tangible personal property of a decedent and he or she shall forward the return with his or her appraisals and all related date to the Transfer Inheritance Tax Bureau where the final assessment is made.]

18:26-8.2 Appointment of appraisers

(a) (No change.)

(b) The appraisal of all intangible personal property is made by an auditor at the Inheritance Tax [Bureau] **Branch**.

18:26-8.3 Notice of appraisal; evidence; report

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

(d) Upon completion of the examination for any property and attainment of any information solicited from witnesses, the appraiser is required to make a report and file the same with the Inheritance Tax [Bureau] **Branch**.

18:26-8.6 Final assessment [bills]

[(a) Upon completion of the assessment, a bill showing the aggregated amount of tax, the names of the taxable beneficiaries and the tax assessed against each will be forwarded to the executor, administrator or other representative of the estate, except when returns are filed pursuant to N.J.A.C. 18:26-8.7, when no bill is issued.

(b) An appraisal, assessment or decision becomes final when the executor, administrator or other representative of the estate receives the bill.] **Upon receipt of the return and payment of any applicable tax, the Branch will advise the estate representative as to whether the return filed by the estate and the tax calculation are accepted, in which case the Branch's notification will be the assessment. In the event that the Branch decides to further examine the return, it will subsequently notify the estate representative as to the amount of tax assessed.**

18:26-8.7 [Pre-audit payment of inheritance tax; resident decedent's estate returns] **(Reserved)**

[(a) The representative of an estate may file form L-2 or L-3 (see N.J.A.C. 18:26-9.4(a)2 and 3) and a completed form L-5 directly to New Jersey Inheritance Tax, CN-249, Trenton, NJ 08646 together with a certified or cashier's check in full payment of the tax and interest, if any, as computed by the taxpayer on form L-5, and immediately receive necessary waivers, unless the distribution or valuation of the estate involves:

1. Closely held corporation; or
2. Inter-vivos trust; or
3. Contingencies requiring compromise; or
4. Marital deduction.

(b) Returns filed pursuant to this section may be subject to selective audit, and if errors or omissions are found, resulting in an additional tax, a bill for same will be forwarded. Selective audit may be instituted by the bureau within six months of the date of receipt by the bureau of form L-5. Returns accepted as filed resulting in no receipt or bill being issued.]

18:26-8.8 Time limit for assessment

Upon the expiration of a period of 15 years after the date **of death** of a decedent, no proceeding may be instituted to assess or collect any tax, interest or penalties due this State for Inheritance Tax

purposes against any estate, executor, administrator, trustee, grantee, donee, vendee, devisee, legatee, heir, next of kin or beneficiary. However, this does not affect any rights to collection which this State has by reason of filing with the Clerk of the Superior Court, a Certificate of Debt, Decree of Judgment for the New Jersey Inheritance Tax, including any interest and penalties; nor does the period of limitation affect the rights of this State to assess and collect the New Jersey Inheritance Tax including any interest and penalties under the terms of a bond or their agreement securing the payment of such tax, interest and penalties.

18:26-8.9 Appeals from assessment

Any interested person dissatisfied with [the] **an** appraisement or assessment [so made] **made by the Inheritance Tax Branch** may appeal to the Tax Court within 90 days after the making and entering of the assessment [on giving a bond, approved by a judge of the Tax Court, conditioned to pay the tax so levied, with interest and costs, if the same be affirmed by the Tax Court], **in accordance with pertinent provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:51A-13 et seq.**

18:26-8.11 Fractional interest in real property

(a) The appraisal of real estate in which a decedent owned a fractional interest, in cases where the estate contends that a discounted value is in order, is **conducted by** [appraised by the District Supervisor of the county in which the property is situated] **a representative of the Inheritance Tax Branch**.

(b) A determination shall then be made by [the District Supervisor] **a representative of the Inheritance Tax Branch** [and appraiser] as to whether a discount in value is warranted, and, if so, the amount of the discount to be allowed.

18:26-8.21 Contingent or defeasible estates

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

(c) Where a number of years have elapsed between the date of death and the date of initial assessment, the [Bureau] **Branch** will inquire as to the amounts and dates of any payments to, or withdrawals by the beneficiary. If such payments or withdrawals have been made a contingent assessment, based upon the amount of corpus paid less any vested life estate value or discounted value will be completed.

(d) (No change.)

18:26-9.1 Date return due

(a) All inheritance tax returns must be filed, **together with payment of the tax,** within eight months following the death of the decedent. Failure of the personal representative, heir-at-law or next-of-kin, surviving joint tenant, trustee or transferee to file a return within the time prescribed subjects such party responsible for such filing to the [penalty] **penalties** provided in [Section 8 of this Subchapter] **the State Tax Uniform Procedure Law, N.J.S.A. 54:49-3 et seq.**

(b) (No change.)

18:26-9.3 Form of returns

Returns are required to be made on forms [L-1, L-2, L-3, L-4, and F-1] **IT-R (Resident) and IT-NR (Non-Resident)** approved by the Director which may be obtained by writing to the Transfer Inheritance Tax [Bureau] **Branch, CN-249,** Trenton, New Jersey[,] 08646-**0249**.

18:26-9.4 Resident decedents' returns

(a) In the case of a resident decedent, all returns must be filed **and tax computed** on one of the following forms and accompanied by **payment of tax,** a copy of the decedent's will, if such decedent died testate, as well as a copy of the decedent's income tax return (form 1040 or 1040A) filed with the Internal Revenue Service for the last full year preceding his **or her** date of death.

1. Form [L-1: For use in estates where the decedent dies intestate, not seized of any real estate, and upon whose estate letter of general administration will not be required. Said form L-1 shall be filed directly with the Transfer Inheritance Tax Bureau, Trenton, New Jersey, 08646] **IT-R (Resident): Must be used in all resident estates.**

[2. Form L-2: May be used in resident estates where letter testamentary or of general administration have been granted and assets can be listed in the space provided. It must be filed with the District Supervisor of the county of which the decedent died a resident except when filed pursuant to N.J.A.C. 18:26-8.7.

3. Form L-3: Must be used in all other resident estates.]

[4.]**2.** Form L-4: Preliminary affidavit to be used in making application for consents to transfer prior to completion of the original return. The [Bureau] **Branch** will retain in every case control over a sufficient portion of the assets to assure collection of the tax, even though a payment on account may have been made. The [Bureau] **Branch** will not issue consents to transfer all the personal property and depends upon real property as security for the tax. The only exception to the procedure is where a bank, trust company, or similar institution has been named executor and guarantees in writing, payment of tax.

3. Form L-8: Self-executing waiver for use in permitting a transfer of assets to a Class "A" beneficiary.

4. Form L-9: Application by a resident decedent for issuance of a waiver permitting a transfer of real estate to a Class "A" beneficiary

18:26-9.5 Nonresident returns

(a) In the case of a nonresident decedent, a return must be filed **and tax computed** on Form [F-1] **IT-NR (Non-Resident)** or, where the representative or beneficiary of such estate agrees to the use of a flat tax rate a flat tax rate affidavit, either of which must be accompanied by **payment of tax, and** a certified copy of the decedent's will, if such decedent dies testate.

(b) A flat tax may be paid in lieu of filing the information required in Form [F-1] **IT-NR**, if the representative or beneficiary of a nonresident estate files an affidavit containing the following information

1.-5. (No change.)

(c) (No change.)

18:26-9.6 Amendment to original return

In the case of both resident and nonresident estates, any assets and liabilities not disclosed in the original return and all supplemental data requested by the [Bureau] **Branch** is to be filed in affidavit form on legal size paper and attested to by the duly authorized statutory representative of the estate, next of kin, or beneficiary certifying in detail a description of the asset, real or personal and/or the liability and the reasons for failure to disclose same in the original return and filed directly with the Transfer Inheritance Tax [Bureau] **Branch, CN-249**, Trenton, New Jersey 08646-**0249**.

18:26-9.10 How tax is payable

(a) [All payments of the New Jersey Inheritance Tax and any interest due thereon whether in full settlement of the tax or a payment on account, is to be made by certified or cashier's check drawn to the order of the New Jersey Inheritance Tax Bureau and forwarded directly to the Transfer Inheritance Tax Bureau, Trenton, New Jersey 08646 together with a letter giving the name of the decedent, his date of death and legal domicile] **A certified or cashiers check in full payment of the tax and interest, if any, must be filed together with the return directly with the Inheritance Tax Branch, CN-249, Trenton, New Jersey 08646-0249.**

[(b) No District Supervisor or employee of his office is permitted to accept any payment of the tax and/or interest. Any payments of the tax or interest received at the office of the District Supervisor is immediately returned to the sender thereof with instructions that the payment is to be forwarded to the Transfer Inheritance Tax Bureau, Trenton, New Jersey 08625. The accrual of interest is tolled only upon receipt by the Bureau in Trenton, New Jersey of payment of the tax and only to the extent of the payment on account.]

[(c)](**b**) Where interest has accrued at the time of any payment, such payment is first credited in satisfaction of the accrued interest, and the excess credited in payment of the tax chargeable. The interest shall continue to accrue on any remaining balance from the date of said payment to the date of final adjustment.

[(d)](**c**) Payment on account of any transfer inheritance tax [to be assessed] may be made in advance of the actual assessment. Any payment on account will also be accepted to cover any compounded, contingent or compromise assessment.

18:26-10.1 Levy of tax; **resident and nonresident decedents**

[Upon the filing of a return, together with any supplementary data required with the New Jersey Transfer Inheritance Tax Bureau or the District Supervisor as the case may be, the cash value of the estate is determined and the tax is assessed and fixed by the Director, and then notice is given, by mail, to all parties known by the Director to be interested in the estate advising such persons of the levy of the tax.] **Resident and nonresident decedents' returns must be filed together with a certified or cashier's check in full payment of the tax and interest, if any, directly with the Inheritance Tax Branch, CN-249, Trenton, New Jersey 08646-0249. Upon the filing of a return and payment of the tax, the Branch will issue a notice of assessment showing the amount of tax due, the amount paid, and whether interest is due or a refund is to be issued (see N.J.A.C. 18:26-8.6, 9.4, 9.9 and 9.10).**

18:26-10.12 Time and manner of making application for refund

(a) (No change.)

(b) Such application is to be made by means of an affidavit on legal size paper, setting forth in detail all of the facts upon which the claim for refund is based, including a copy of a Court Order, if a court of competent jurisdiction has made a final determination upon which the refund is based, signed by the executor, administrator, trustee, heir-at-law, or surviving joint tenant and filed directly with the Transfer Inheritance Tax [Bureau] **Branch, CN-249,** Trenton, New Jersey 08646-**0249.**

18:26-11.4 Real and personal property of resident and nonresident decedents

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

(c) Waivers are necessary to transfer any real property located in New Jersey belonging to a nonresident decedent. Such waivers are issued after the nonresident decedent return is filed with the Transfer Inheritance Tax [Bureau] **Branch** and the tax, if any, is adjusted and paid.

18:26-11.8 Transfers to savings accounts without a waiver

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

(d) The transfers permitted **in (a)-(c)** above are subject to the requirement that the banking institution promptly file a notice with the Transfer Inheritance Tax [Bureau] **Branch, CN-249,** Trenton, New Jersey **08646-0249,** containing the following information:

1.-4. (No change.)

(e) (No change.)

18:26-11.15 Certain small estates not subject to waiver

(a) (No change.)

(b) Form 0-83, used by a spouse, or Form 0-80, used by any other applicant, is to be obtained only from a bank, savings institution or savings and loan association and executed concurrently with the release of any funds. Every bank institution or association is required to obtain such forms directly from the Transfer Inheritance Tax [Bureau] **Branch, CN-249,** Trenton, New Jersey [08625] **08646-0249,** and is further required to obtain the following information from each applicant before the release of any funds to be assured that the total assets of the estate are less than $5,000 or $200.00 as the case may be:

1.-5. (No change.)

(c)-(e) (No change.)

18:26-11.16 Blanket waiver

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

(c) In addition to the amount permitted to be released by an institution, association, organization, corporation or person mentioned in this section, institutions, associations, organizations, corporations, or persons may, without written consent of the Director:

1. (No change.)

2. Pay any checks in any amount for which there are sufficient funds held in deposit, drawn on any account owned by a decedent individually, jointly or otherwise, representing full or partial payment of any New Jersey Transfer Inheritance Taxes and made payable to the New Jersey Inheritance Tax [Bureau] **Branch**;

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

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Definitions
Procedure for Exchange of Checks Submitted by Gaming Patrons
Proposed Amendments: N.J.A.C. 19:45-1.1 and 1.25

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(g), (l) and (m), 5:12-99 and 5:12-101.

Proposal Number: PRN 1991-35.

Submit comments by February 21, 1991 to:

David C. Missimer, Senior Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposal is being published by the Casino Control Commission as a result of a rulemaking petition filed with the Commission by Boardwalk Regency Corporation (Caesars). Present rules of the Commission allow the acceptance of patron checks as a means of establishing credit pursuant to N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.25, redeeming outstanding counter checks pursuant to N.J.S.A. 5:12-101c and N.J.A.C. 19:45-1.26 and 1.27, or paying a returned counter check pursuant to N.J.S.A. 5:12-101a and N.J.A.C. 19:45-1.29. Each of these cited rules, however, refers to the acceptance of "checks" drawn by a patron on his or her "checking account" in a "bank."

The proposed amendments to the existing rules would permit a casino licensee to accept from a patron share drafts and drafts drawn on negotiable order of withdrawal ("NOW") accounts or similar accounts maintained at banks, mutual savings banks, savings banks, credit unions, federal home loan banks, savings and loan associations and building and loan associations and other "depository institutions" within the meaning of Section 19(b) of the Federal Reserve Act, 12 U.S.C. §461(b), which are cash items that are permitted to be sent for payment through the facilities of the Federal Reserve System. The proposed amendments would require a casino licensee to comply with all the provisions of N.J.A.C. 19:45 with respect to these types of cash items, depository institutions and accounts as if such things were checks, banks and checking accounts, respectively.

Social Impact

The petitioner asserts that the proposed amendments are consistent with the strict regulation of the financial activities of casino licensees. Caesars further asserts that the proposed amendments will benefit the casino industry and patrons by permitting a casino licensee to accept from a patron, in addition to checks, check-like instruments such as NOW drafts and share drafts drawn on depository institutions which are cash items that are permitted to be sent for payment through the facilities of the Federal Reserve System. The amendments are sought because it would allow a casino licensee to make available credit to a patron having an account at a depository institution upon which these cash items may be drawn by a patron on the same basis as a casino licensee makes available credit to a patron with a checking account.

Economic Impact

The proposed amendments should not result in any additional costs for the casino industry, Casino Control Commission, Division of Gaming Enforcement, or the public. It is possible that an expansion of the types of instruments which may be accepted by a casino licensee may increase the amount of gaming revenue received by the gaming industry, but any attempt to quantify this effect at this time would be highly speculative at best.

Regulatory Flexibility Statement

The proposed amendments will only affect the operations of New Jersey casino licensees, and therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.1 Definitions

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

"Bank" is defined in N.J.A.C. 19:45-1.25.

. . .

"Changeperson" means a person employed in the operation of a casino to possess an imprest inventory of [a] coin created from slot booth funds and used for the even exchange with slot machine patrons of coupons, coin, currency and slot tokens.

"Check" is defined in N.J.A.C. 19:45-1.25.

. . .

"Checking account" is defined in N.J.A.C. 19:45-1.25.

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

(a) (No change.)

(b) No casino licensee or any person licensed under the [Casino Control] Act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the [Casino Control] Act, may accept a check other than a recognized [traveler's] **travelers'** check or other cash equivalent, from any person to enable such person to take part in gaming activity as a player, or may give cash or cash equivalents in exchange for such check unless the requirements of **this section and** N.J.A.C. 19:45-1.26, 19:45-1.27, 19:45-1.28 and 19:45-1.29 concerning check cashing, redeeming, consolidating, collecting and recording procedures are observed by the casino licensee and its employees and agents. **For purposes of this chapter: the term "check" when used in connection with an exchange, redemption, substitution or consolidation by a patron shall mean any draft drawn by the patron which is a "cash item" as defined in Regulation J of the Board of Governors of the Federal Reserve System, 12 C.F.R. §210.2(e), and which is drawn on an account maintained in a "depository institution" as defined in Section 19(b) of the Federal Reserve Act, 12 U.S.C. §461(b), including share drafts and drafts drawn on negotiable order of withdrawal accounts or similar accounts; the term "checking account" shall mean any account on which a "check" is drawn; and the term "bank" shall include any "depository institution" as defined in 12 U.S.C. §461(b).** For purposes of this [regulation] **chapter**, a check received from a person by cage cashiers may be presumed by the casino licensee not to be exchanged to enable such person to take part in gaming activity as a player, if the casino licensee shall cause to be posted at each general cashier station in the cashiers' cage a conspicuous sign that reads: "By [Law] **law**, personal checks cannot be exchanged for currency or coin to be used for gaming purposes."

(c)-(p) (No change.)

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Aisles; Grating; Electrical Outlets; Denominations; Density; Floor Space; Arrangement; Floor Plan; Slot Stools

Proposed Amendment: N.J.A.C. 19:46-1.27 Alternative I, N.J.A.C 19:46-1.27 Alternative II, N.J.A.C. 19:46-1.27 Alternative III

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and 5:12-69(c) and 5:12-100(h).

Proposal Number: PRN 1991-49.

Submit comments by February 21, 1991 to:

Deno R. Marino
Deputy Director—Operations
Casino Control Commission
CitiCenter—4th Floor
1300 Atlantic Avenue
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:46-1.27 would alter the permissible density of slot machines on the casino floor and thereby provide casino licensees with more flexibility in determining the number of slot machines to be placed on the casino floor. This proposal includes three alternatives, one alternative may be adopted in its entirety, or subsections which are not inconsistent may be adopted from more than one alternative. Alternative I, which would be applied prospectively, would direct the calculation for slot density away from the total space occupied by both the patron and the slot machine and focus primarily on the space occupied by the slot patron. Alternative II would eliminate the minimum slot density requirement and allow slot density to be determined by each casino licensee as long as other regulatory requirements are observed. Alternative III, in addition to eliminating the minimum slot density requirement, would also eliminate the required filing of an egress analysis to the Commission and the required prior approval for the proposed arrangement of slot machines and/or slot stool locations. Alternative III also modifies the existing language of N.J.A.C. 19:46-1.27(a). Under any of the alternatives the slot density would still be subject to the requirements set forth in N.J.S.A. 5:12-100(h) and N.J.A.C. 19:46-1.27(g).

Social Impact

Any of the proposed alternatives will allow casino licensees greater flexibility to offer more slot machines to patrons. Alternative I would mandate a minimum standard to be applied to assure maximum patron comfort and safety. Alternative II and Alternative III would allow casino licensees to establish their own standard for assuring patron comfort and safety.

The additional number of slot machines which will be allowed under any of the alternatives will come from the total area now exclusively occupied by the slot machines not including walkways between them. With the technology now available, slot manufacturers are able to build machines that occupy less square footage than older machines that were used when N.J.A.C. 19:46-1.27(e) was adopted. The casinos simply want to derive the benefit from this reduction in machine floor space area.

The intent of Alternative I is to define a minimum width that should be allocated for each patron playing a slot machine. The three foot dimension allocated for depth is not new; it is just a further refinement of N.J.A.C. 19:46-1.27(a) which requires that aisle space between slot machines facing each other shall be at least six feet wide.

Alternatives II and III which eliminate any minimum space requirements would allow the casinos the flexibility to determine the width facing each slot machine based on patron requirements and the desire to attract slot patrons from other casinos by offering a more comfortable and gracious playing environment. Experience has shown that this has been the case and it is expected that all casinos would continue to be sensitive to the patron's comfort.

Since the placement of slot stools and the resulting effect on emergency egress is a life safety issue, the amendments proposed in Alternative III would recognize that the Department of Community Affairs, the Atlantic City Fire Department and local construction officials have the expertise and authority in such matters.

Economic Impact

Any of the proposed alternatives are expected to allow casino licensees to increase the total number of slot machines on the casino floor and thereby increase the licensee's gross revenue. If this occurs, there will also be an increase in the amount of gross revenue taxes collected by the State.

Regulatory Flexibility Statement

This amendment will only affect the operations of New Jersey casino licensees, and therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

Alternative I

19:46-1.27 Aisles[,]; grating; electrical outlets; denominations; density; floor space; arrangement; floor plan; slot stools

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

(e) [Unless otherwise approved by the Commission, no] **No** casino licensee shall be permitted to use in the conduct of gaming any [number of] slot [machines] **machine** which [creates a density of greater than one machine for every 10 square feet of the floor space of its casino authorized by the Commission to be occupied by slot machines] **does not allow space in front of it of at least 27 inches in width, or the actual width of the machine, whichever is greater, and at least three feet in depth. The provisions of this subsection shall not apply to any slot machine configuration approved and in use as of the effective date of this amendment.**

(f)-(k) (No change.)

Alternative II

19:46-1.27 Aisles[,]; grating; electrical outlets; denominations; density; floor space; arrangement; floor plan; slot stools

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

[(e) Unless otherwise approved by the Commission, no casino licensee shall be permitted to use in the conduct of gaming any number of slot machines which creates a density of greater than one machine for every 10 square feet of the floor space of its casino authorized by the Commission to be occupied by slot machines.]

Recodify existing (f)-(k) as **(e)-(j)** (No change in text.)

Alternative III

19:46-1.27 Aisles[,]; grating; electrical outlets; denominations; density; floor space; arrangement; floor plan, slot stools

(a) [Unless otherwise approved by the Commission, the] **The** aisle space between any two rows of slot machines facing each other in a casino shall be at least six feet in width.

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

[(e) Unless otherwise approved by the Commission, no casino licensee shall be permitted to use in the conduct of gaming any number of slot machines which creates a density of greater than one machine for every 10 square feet of the floor space of its casino authorized by the Commission to be occupied by slot machines.]

Recodify existing (f) and (g) as **(e) and (f)** (No change in text.)

[(h)]**(g)** [In requesting Commission approval for its proposed arrangement of slot machines, each] **Each** casino license and applicant for a casino licensee shall submit to the Commission a detailed floor plan depicting its proposed arrangement of slot machines **and slot stools** and indicating thereon all relevant floor space square footage, density information, and aisle dimensions, including dimensions of aisles between rows of slot machines facing each other; of distances in front of slot machines not directly facing another slot machine and of walkways between banks of slot machines. It shall be the obligation of each casino licensee to maintain on file with the Commission a current **copy of** such floor plan certified as to its accuracy.

[(i) In requesting Commission approval for the installation of slot stools, each casino licensee shall submit to the Commission and the Division an egress study which shall consist of a detailed floor plan depicting:

1. The maximum number of persons that can be reasonably expected to occupy all locations of the casino floor, including the area immediately surrounding all table games and slot machines;

2. The logical flow of traffic through all major egress aisles in emergency circumstances; and

3. The maximum number of people that can pass, travel and/or exit through various points along the major egress aisles.]

[(j)]**(h)** [Prior to the installation of slot stools, the] **The** casino licensee shall submit to the Commission [for approval] a detailed floor plan which depicts, to scale, the proposed location of each slot stool and the remaining aisle space.

[(k)]**(i)** The placement of slot stools on the casino floor shall comply with the following requirements:

1.-3. (No change.)

4. Slot stools shall only be of the spindle-type and must be fastened to the floor or slot base[; and].

[5. Slot stools shall not be permitted to be located in major egress aisles unless the casino licensee clearly demonstrates that the placement of the stools in these aisles will not interfere with emergency egress capabilities from the casino floor.]

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Jurisdiction of the Office of Administrative Law; Interlocutory Review
Adopted Amendments: N.J.A.C. 1:1-3.2 and 1:1-14.10

Proposed: November 5, 1990 at 22 N.J.R. 3278(a).
Adopted: December 24, 1990 by Steven L. Lefelt, Deputy Director, Office of Administrative Law.
Filed: December 26, 1990 as R.1991 d.34, **without change.**

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

Effective Date: January 22, 1991.
Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

1:1-3.2 Jurisdiction of the Office of Administrative Law
(a)-(b) (No change.)
(c) Matters involving the administration of the Office of Administrative Law as a State agency are subject to the authority of the Director. In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for the purposes of review:
1.-3. (No change.)
4. Sanctions under N.J.A.C. 1:1-14.4 consisting of the assessment of costs or expenses;
5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3; and
6. Establishment of a hearing location pursuant to N.J.A.C. 1:1-9.1(b).

1:1-14.10 Interlocutory review
(a)-(j) (No change.)
(k) In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of interlocutory review:
1.-3. (No change.)
4. Sanctions under N.J.A.C. 1:1-14.4 consisting of the assessment of costs or expenses;
5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3; and
6. Establishment of a hearing location pursuant to N.J.A.C. 1:1-9.1(b).
(l) (No change.)
(m) Orders or rulings issued under (k)1, 2, 3, 5 and 6 above may only be appealed interlocutorily; a party may not seek review of such orders or rulings after the judge renders the initial decision in the contested case.

AGRICULTURE

(b)

DIVISION OF PLANT INDUSTRY

Seed Certification
Adopted New Rules: N.J.A.C. 2:16

Proposed: November 5, 1990 at 22 N.J.R. 3285(a).
Adopted: December 19, 1990 by Arthur R. Brown, Jr., Secretary, Department of Agriculture; and State Board of Agriculture.
Filed: December 20, 1990 as R.1991 d.28, **without change.**

Authority: N.J.S.A. 4:1-21.7.

Effective Date: January 22, 1991.
Expiration Date: January 22, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 16
CERTIFICATION

SUBCHAPTER 1. BLUEBERRY PLANTS

2:16-1.1 Certification of blueberry plants
All blueberry growers selling propagating wood, rooted cutting or plants must be certified. Certification shall be based on the inspection of all nursery plants, cutting beds and of enough mother plant to ensure adequate supplies of cutting wood for sale and for own propagation. The rules shall be as set forth in this subchapter.

2:16-1.2 Application for participation
Application for the program shall be made by one year preceding the establishment of the cutting bed to the Supervisor of Nursery Inspection, Division of Plant Industry, New Jersey Department of Agriculture, CN 330, Trenton, N.J. 08625.

2:16-1.3 Qualifications for mother plants; removal of diseased or infested plants
(a) Mother plants shall be clearly marked for variety.
(b) A row, partial row or rows of established plants of each variety to be propagated are to be cut to a maximum of 24 inches from the ground annually to provide propagating wood.
(c) Mother plants, to qualify, shall not have more than a total of one-half of one percent stunt disease for the season.
(d) Plants showing symptoms of blueberry stunt disease or virus diseases such as shoestring, mosaic and ringspot are to be tagged by the inspectors and removed by the grower within 24 hours after notification. Plants showing symptoms of blueberry stunt are to be sprayed by the grower to control sharpnosed leafhoppers prior to removal.
(e) Plants found infested with injurious insects shall not be certified until infested plants are removed or the infestation controlled.
(f) If mother plants are bordered on one side or on both sides by field bushes, five rows on either side of the mother row or rows will be inspected.

2:16-1.4 Qualification for nursery plants; removal of diseased plants
(a) Nursery plants, to qualify as certified, shall not have more than three-quarters of one per cent stunt for the season.
(b) Where varieties within the nursery field show different percentages of stunt, the tolerances in (a) above are nevertheless applicable to each variety.
(c) Plants infected with stunt and other virus diseases shall be tagged and removed by the grower within 24 hours after notification

2:16-1.5 Time of inspection and insecticide application
(a) All mother plants, rooted cuttings and nursery plants shall be sprayed or dusted twice a year to control the sharp-nosed leafhopper the carrier of stunt disease. The timing of these applications and the material to be used shall be recommended by the New Jersey Agricultural Experiment Station. The grower shall notify the Division of Plant Industry, New Jersey Department of Agriculture, CN 330 Health-Agriculture Bldg., John Fitch Plaza, Trenton, 08625, the same day spray or dust application is made.
(b) The times of inspections are as follows:
1. First inspection during May and June;
2. Second inspection during August, September and October; and
3. Additional inspections as deemed necessary by the Department

2:16-1.6 Procedure for handling cuttings, cutting beds and plant nurseries
(a) Cuttings shall be clearly marked for variety.

(b) A record of the number of cuttings set in the cutting beds by varieties shall be kept by the grower.

(c) Propagators whose plantings have not been certified the preceding year or those who buy additional cutting wood shall procure the same from fields approved for certification. A bill of sale shall be presented on demand showing the source and quantity of said purchase.

(d) Cutting beds shall be isolated 50 feet from uncertifiable plants unless prior arrangement has been made with the Department to alter that standard.

2:16-1.7 Procedure for handling nursery rows

(a) The same provisions that apply to the cutting bed, apply to the nursery rows (see N.J.A.C. 2:16-1.6).

(b) An inventory of the plants by varieties remaining unsold in the nursery rows at the end of the shipping year shall be kept by the grower.

2:16-1.8 Issuance of inspection certificates

Upon fulfillment of the requirements of this subchapter, the grower is entitled to the certificate of inspection of the New Jersey Department of Agriculture.

SUBCHAPTER 2. SEED, GENERAL CERTIFICATION STANDARDS

2:16-2.1 Applicability of certification standards

The standards set forth in this subchapter are applicable to all crops eligible for certification for genetic purity and identity, and, in conjunction with the standards for the individual crops found in the subchapters applying to those crops, shall constitute the standards for the certification of crops in New Jersey.

2:16-2.2 Certifying organizations from New Jersey

(a) The New Jersey Department of Agriculture is the official seed certification agency in the state of New Jersey.

(b) Cook College, Rutgers—The State University is the agricultural research and extension agency for seed certification.

(c) These two organizations independently cooperate in the certification program.

2:16-2.3 Purpose of certification

The purpose of certification is to maintain and make available to the public, high quality seed and propagating material of superior crop varieties so grown and distributed as to insure genetic identity, genetic and mechanical purity and a minimum of seed-borne diseases.

2:16-2.4 Classes and sources of certified seed

(a) Four classes of seed are recognized in seed certification, namely breeder, foundation, registered and certified. These classes are defined as follows:

1. Breeder seed is seed of vegetative material directly controlled by the originating or the sponsoring plant breeder or institution and which provides the source for the initial and recurring increase of foundation seed.

2. Foundation seed is the progeny of breeders or foundation seed so handled as to maintain specific genetic identity and purity. Foundation seed may be the progeny of foundation seed only after approval has been granted by the Department.

3. Registered seed is the progeny of foundation seed that is so handled as to maintain genetic identity and purity, and that has been approved and certified by the Department. This class of seed shall be of a quality suitable for the production of certified seed.

4. Certified seed is the progeny of foundation or registered seed that is so handled as to maintain genetic identity and purity and that has been approved and certified by the Department.

(b) The Department may permit a grower to grow certified seed from lots of foundation, registered or certified seed which were fully inspected but rejected for certification because of factors such as germination or weed contamination which do not involve genetic identity and purity of germ plasm.

(c) In cases where seed planted for the production of foundation, registered or certified seed is obtained from another person, documentary evidence, such as the certification tags, the number of bushels planted, the invoice or sales record, and any other data shall be submitted to the Department to establish the source of seed.

2:16-2.5 Limitation of generations

(a) The number of generations through which a variety may be multiplied shall be limited to that specified by the originating breeder or owner of the variety, and shall not exceed two generations beyond the foundation seed class with the following exceptions:

1. Recertification of the certified class shall be permitted for older varieties where foundation seed is not maintained.

2. The production of an additional generation of the certified class only shall be permitted on a one-year basis, when an emergency is declared prior to the planting season by the Department stating that the foundation and registered seed supplies are not adequate to plant the needed certified acreage of the variety. The permission of the originating or sponsoring plant breeder, institution, firm or owner of the variety, if existent, shall be obtained. The additional generation of certified seed to meet the emergency need is ineligible for recertification.

2:16-2.6 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. The following definitions apply to all crops:

"Association of Official Seed Certifying Agencies" is the national association of certifying agencies.

"Certifying agency" means an agency authorized under the laws of a state, territory or possession to officially certify seed and which has standards approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.

"Conditioner" means any person or organization who has requested the Department to collect samples, perform tests, and make inspections in order to have seed labeled as certified or interagency certified.

"Conditioning" means the mechanical handling of the seed from harvest until marketing, and includes cleaning, sizing, applying a seed treatment, bagging or any other operation in the handling of the seed before marketing.

"Contaminant" means any seed or plant not of the kind or variety being considered.

"Department" means the New Jersey Department of Agriculture, Bureau of Seed Certification and Control.

"Grower" means any person or organization who applies for the inspection of a crop entered for certification, produces the crop in accordance with the certification regulations for that crop, and who accepts the responsibility for the production and management of the seed crop as well as all related financial obligations.

"Kind" means one or more related species which singularly or collectively is known by one common name.

"Lot" means a definite quantity of seed identified by a lot number, each portion or bag of which is uniform within recognized tolerance for the factor appearing in the labeling. For certified small grains and soybeans, the size of the lot shall be limited to 1,000 bushels.

"Noxious weeds" means the list of weeds found and defined in the Rules of the New Jersey State Seed Law at N.J.A.C. 2:21, Noxious Weed Seeds, pursuant to N.J.S.A. 4:8-17.24, and include:

1. "Prohibited noxious weeds": bindweed, hedge bindweed, quackgrass, Canada thistle, and horsenettle.

2. "Restricted noxious weeds": dodder, corn cockle, wild onion, wild garlic, cheat, Bermuda grass, and Johnsongrass and other perennial sweet sorghum spp.

"Official sample" means a sample taken by a representative of the Department using sampling techniques recognized by the Association of Official Seed Certifying Agencies.

"Off-type" means plants or seeds which do not conform to the description of the characteristics of the variety as supplied by the breeder or sponsoring institutions or organizations.

"Other varieties" means plants and seed of the same kind that can be differentiated from the variety that is being certified, but shall not include variations which are characteristic of the variety as described by the breeder or which are caused by environmental conditions.

"Plant breeder" means a person or organization actively engaged in the breeding or maintenance of varieties of plants.

"Protected variety" means one for which the breeder or sponsoring organization has filed application with the United States Plant Variety Protection Office.

"Roguing" means the pulling out or otherwise removing unwanted plants or weeds from a field planted for seed.

"Seed" as used in these rules and standards shall be understood to include all propagating materials.

"Variant" means seeds or plants which are distinct within the variety but occur naturally in the variety, are stable and predictable, and were originally a part of the variety as released. They are not considered as off-types.

"Variety" or "Cultivar" means an assemblage of cultivated individuals which are distinguished by any characters (morphological, cytological, chemical, or others) significant for the purpose of agriculture, forestry or horticulture and which, when reproduced (sexually or asexually) or reconstituted, retain their distinguishing features.

2:16-2.7 Eligibility requirements for certification of crop varieties

(a) All varieties that are approved by the Department are eligible for certification.

(b) All varieties that are certified by any other agency which is a member of, or recognized by, the Association of Official Seed Certifying Agencies may be considered for certification at the request of a grower.

(c) For varieties not approved by other certifying agencies, the breeder or sponsoring institution or organization shall describe and document in the application for certification submitted to the Department those characteristics of the variety which give it distinctness and merit by supplying the following information.

1. The name of the variety;
2. A statement concerning the variety's origin and the breeding procedure used in its development;
3. A detailed description of the morphological, physiological and other characteristics of the plants and seed that distinguish it from other varieties;
4. Evidence supporting the identity of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety;
5. A statement delineating the geographic area or areas of adaptation of the variety;
6. A statement of the plans and procedures for the maintenance of seed classes, including the number of generations through which the variety may be multiplied;
7. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified;
8. Any additional restrictions on the variety specified by the breeder with respect to geographic area of seed production, age of stand or other factors affecting genetic purity; and
9. A sample of the variety as marked.

(d) The information required in (c) above shall be submitted to the Bureau of Seed Certification and Control for consideration. Upon the approval of the Department, the variety shall be accepted for certification.

(e) At the time a variety is accepted for certification, a sample of seed of the generation or generations requested by the Department shall be submitted by the sponsor. These samples shall be retained to provide appropriate control samples against which all future releases of stock seed will be tested to establish varietal characteristics.

2:16-2.8 Qualification for inspectors

Inspection work shall be performed only by persons who have been trained and approved by the Department.

2:16-2.9 Handling crop prior to inspection; field boundaries

(a) Roguing of off-type plants, objectionable crop plants and weeds whose seed are inseparable is required prior to field inspection.

(b) Field boundaries shall also be designated prior to field inspection.

2:16-2.10 Restriction on number of varieties

Only one variety of the same crop shall be grown for seed production on a farm except upon prior approval of the Department.

2:16-2.11 Harvested fields ineligible for certification

If a field is harvested before inspection, that crop automatically becomes ineligible for certification.

2:16-2.12 Seed house or bin inspection of seed

One or more inspections of harvested lots of seed from inspected fields shall be made at any time by representatives of the Department who shall have the authority to reject from certification any lot not protected from mixture or which is not identified.

2:16-2.13 Seed testing results basis for certification

(a) Analyses and tests of official samples of seed and definition of analytical terms shall be in accordance with the Rules for Testing Seed of the Association of Official Seed Analysts. A copy of these rules is on file at the office of the Bureau of Seed Certification and Control, Division of Plant Industry, New Jersey Department of Agriculture, CN 330, Trenton, NJ 08625.

(b) The seed analyses from the official laboratory of the Bureau of Seed Certification and Control shall be the basis for certification

2:16-2.14 Tags, seals, and bags for seed stocks

(a) All stocks when sold as certified seed shall have an official tag properly affixed, according to the type of tag, to each container Sealing requirements will depend upon the crop and methods of handling.

(b) Tags shall identify the certifying agency, show a lot number the variety name, and the kind and class of seed.

(c) The certification label or tag which is attached to the bag serves as evidence of the genetic identity and purity of the seed contained therein.

1. A blue tag shall be used to designate certified class seed.
2. A purple tag shall be used for registered class seed.
3. A white tag shall be used for foundation class seed and breeder seed.

(d) All official certification tags and seals shall be affixed to seed containers under the supervision of, or by a representative of the Department.

(e) All certified classes of seed shall be packaged in new bags approved by the Department.

2:16-2.15 Substandard seed in emergencies

(a) The Department recognizes that in an emergency, such as unfavorable weather conditions, seed necessary for the production of a crop could be lost if regular certification standards were strictly enforced. Therefore, under such circumstances, seed failing to meet certification standards other than those affecting genetic purity may be certified, provided there is no injury to the reputation of certified seed.

(b) The certification tags or labels attached to such seed in (a) above shall show clearly the respects in which the seed does not meet the regular certification standards.

2:16-2.16 Seed appearance

Seed having met the specific field and bin requirements can still be rejected from certification if the appearance of the seed is such as to give discredit to the certified seed program, for example, discoloration or non-uniformity.

2:16-2.17 Contaminating crops and weeds shall be controlled

Every field for which certification is requested shall show that precaution has been taken to control contaminating crops, varieties noxious weeds, and other plants whose seeds are indistinguishable or inseparable with available cleaning equipment from seed of the particular crop being inspected.

2:16-2.18 Difficulty of inspection may cause certification rejection

Fields with excessive lodging or other conditions which make it difficult to perform complete and thorough field inspections may be rejected from certification.

2:16-2.19 Seed treatment

If certified seed is treated with a pesticide, or if treatment is required to meet certification germination standards, the substances used shall be those registered for seed treatment use by the New Jersey Department of Environmental Protection under the Pesticide Control Code, N.J.A.C. 7:30.

2:16-2.20 Precautions taken to control seed-borne diseases

(a) Every field for which certification is requested shall show evidence that precaution has been taken to control seed-borne diseases.

(b) The field at the time of inspection shall not contain seed-borne diseases beyond the tolerances established in the field standards for the individual crops.

(c) The representative sample of the finished seed lot, at the discretion of the Department, may be subjected to laboratory examination for disease.

2:16-2.21 Complying with Federal and state seed laws

The grower or conditioner who makes the initial sale of the finished lot of certified seed shall be responsible for complying with all seed laws and any other applicable laws of the states to which he ships the seed and the Federal Seed Act (7 U.S.C. 1551-1611) if he ships the seed interstate.

2:16-2.22 Failure to comply with the certification rules

(a) A grower willfully failing to comply with the certification rules covering the production of New Jersey certified products may forfeit the right to produce certified products in the future.

(b) In cases of forfeiture as mentioned in (a) above, the grower may file a notice of appeal with the New Jersey Secretary of Agriculture. The Secretary may hold hearings upon the violation pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1.

2:16-2.23 Application for certification

(a) Certification application forms may be obtained from the Bureau of Seed Certification and Control of the New Jersey Department of Agriculture, CN 330, Trenton, New Jersey 08625.

(b) Separate application forms shall be filed for each class of a particular variety and crop.

2:16-2.24 Dates for filing application

Dates of application for participation in the certification programs shall be those found in the standards for the kind of crop to be certified.

2:16-2.25 Maps of farms

To facilitate the work of the Department, maps giving field location, isolation distances and any other important facts that would be helpful to the inspector shall accompany the application.

2:16-2.26 General requirements for seed conditioners

(a) Only commercial or custom seed conditioning plants approved by the Department are eligible to condition certified seed.

(b) All conditioning plants shall have the equipment and facilities necessary to perform the cleaning or mixing operations requested without introducing admixtures or contaminants.

(c) All conditioners of certified seed shall request an inspection of the cleaning equipment when changing from one variety to another.

2:16-2.27 Transfer of uncleaned seed

(a) Provision has been made for the transfer of uncleaned seed in bulk for certification if necessary, provided the following procedures are used:

1. It is the responsibility of the grower to notify the Department to be at the grower's farm before or at the time the seed is to be moved from the farm.

2. The grower shall supply the Department with the name of the purchaser, the exact amount of seed and the date of delivery to the purchaser.

3. The purchaser shall notify the Department when he expects to receive the seed into his warehouse so the Department inspector can be on hand to inspect the seed as it is received.

4. The purchaser shall supply a copy of the official weight receiving form and a report of the cleaning waste weight.

5. The seed shall be tagged by the Department inspector or under his or her supervision when certification is completed. Analysis tags shall include the producer's number. Seed shall be identified with the producer at all times.

(b) The rules regarding seed moved in bulk apply to the first buyer only. No further transfer in bulk is permitted. If the first buyer does not complete certification, the seed becomes ineligible for certification.

(c) Seed is not recognized as certified until it is cleaned and tagged.

2:16-2.28 Reinspection of carry-over seed; one-year limitation

(a) In order to maintain its certified status, certified seed that is carried over from the previous year shall be resampled and tested for germination by the Department. The germination test results shall meet the minimum requirements for the kind of seed in question.

(b) For carry over seed meeting the above requirements, a new analysis tag shall be affixed.

(c) Certified seed shall be eligible for recertification for one year, only, after the year of production.

2:16-2.29 Grower's or vendor's guarantee

The grower or vendor guarantees to the first buyer that the seed to which the certification tag is attached is a part of the lot of seed designated on the analysis tag, and inspected in the field by a representative of the Department and found to conform to the standards published in this chapter.

2:16-2.30 Certification fees

(a) Certification fees are determined by the Secretary of the New Jersey Department of Agriculture.

(b) The schedule of fees is found at N.J.A.C. 2:16-9.

(c) Charges for certification will be billed at the end of the calendar year.

SUBCHAPTER 3. INTERAGENCY TURFGRASS CERTIFICATION

2:16-3.1 Application and amplification of general certification standards

The rules contained in this subchapter supplement the general certification seed standards N.J.A.C. 2:16-2, established by the State Board of Agriculture, and apply specifically to the interagency certification of seed.

2:16-3.2 Purpose

(a) The purpose of interagency certification is to provide a system for maintaining the genetic and mechanical purity of certified seed when repackaged or combined in mixtures of kinds or varieties.

(b) The requirements of this subchapter apply when the Department participates with an out-of-State certification agency in the seed certification process.

2:16-3.3 Definition

In addition to the definitions found at N.J.A.C. 2:16-2.6, the following definitions shall apply to interagency certification.

"Component" means a specific lot of a single variety that is used in a mixture.

"Interagency certified mixture" or "mixture" in this subchapter means different kinds of varieties of seed certified by the state of origin that have been:

1. Mixed under the Department's supervision, and

2. Found by the Department to have met the specific minimum seed standards set forth in this subchapter.

"Mixing Report" means a form used by the Department to list each component of a specific mixture and the lots and amounts used in the mixture.

"Official sample" means a sample taken by a representative of the Department using sampling techniques recognized by the Association of Official Seed Certifying Agencies.

"Sod quality" means seed which has met the quality standards established by the state of origin for use in cultivated sod and has been so labeled by the state of origin.

2:16-3.4 Interagency standards and procedures

(a) Varieties eligible for interagency certification shall be those approved by a member of the Association of Official Seed Certifying Agencies.

(b) Only seed certified by member agencies of the Association of Official Seed Certifying Agencies or agencies recognized by it may be used in the interagency certification program.

(c) The seed certification standards as adopted by the New Jersey Department of Agriculture for the kinds to be certified shall be applied to interagency certified seed. These standards are found in the subchapters of this chapter which relate to the kind of seed in question. In the absence of New Jersey standards, the seed standards of the state in which the seed was grown and certified shall be applied.

(d) Seed shall not be recognized for final certification by the Department unless it is received in containers carrying documentary evidence of its eligibility supplied by another certifying agency, including:

1. Variety and kind;
2. Amount of seed;
3. Class of seed; and
4. Inspection or lot number traceable to the previous certifying agency's records.

2:16-3.5 Prior approval of cooperating certification agencies not required

The Department shall not require advance approval of another certifying agency to engage in interagency certification activities unless the original certifying agency prohibits or limits such certification by a statement on its tag.

2:16-3.6 Conditioners' application and requirements for certification

(a) Conditioners desiring interagency certification of seed shall apply annually to the New Jersey Department of Agriculture and shall meet the requirements of this subchapter.

(b) Conditioners shall notify the Department far enough in advance of the date of mixing to allow for sampling and testing of component lots by the Department.

(c) The identity of the seed shall be maintained at all times.

2:16-3.7 Conditioners' facilities

(a) Facilities shall be available to perform the function requested without introducing contaminants or admixtures.

(b) Equipment used for making mixtures of turfgrasses shall have all areas which come into direct contact with the seed accessible for thorough cleaning by the conditioner and inspection by the Department.

2:16-3.8 Conditioners required records

(a) Records of all movement of seed and procedures shall be adequate to account for all incoming and finally certified seed. The records to be included are:

1. Receiving records of:
i. The variety and kind;
ii. The name and address of shipper;
iii. The shipper's lot number or inspection number;
iv. The date of shipment;
v. The date received;
vi. The weight received;
vii. The receiving lot number assigned by consignee; and
viii. The name and address of delivering carrier.
2. Record of mixing or rebagging, which shall include:
i. The variety and kind of each component;
ii. The lot number of each component;
iii. The lot number and name assigned to each mixture;
iv. The weight of each bag and number of bags used of each component;
v. The weight of each bag and number of bags in completed lot; and
vi. The date of mixing or rebagging.
3. Disposition of stock record of completed lot, which shall include:
i. The name of mixture and lot number;
ii. The weight of bags and number of bags in final lot;
iii. The invoice number and weight of each shipment made from the lot; and
iv. The balance of lot remaining after each shipment; and
4. Invoice or other sales record, which shall include:
i. The name of mixture and lot number;
ii. The name and address of the buyer or consignee;
iii. The date sold or shipped; and
iv. The number of bags and weight of bags sold or shipped.

(b) Conditioners shall permit inspection by the Department of all records of all lots of the kind of seed certified, including both certified and non-certified lots.

2:16-3.9 Inspection of conditioning operations and records

The New Jersey Department of Agriculture shall make as many inspections of both seed and records as may be required to ascertain that only seed meeting the requirements of this subchapter is labeled with interagency certification tags.

2:16-3.10 Appointment of responsible individual

Approved conditioners who have met the requirements in N.J.A.C. 2:16-3.7 through 3.9 shall designate an individual who shall be responsible to the New Jersey Department of Agriculture for performing such duties as may be required.

2:16-3.11 Sampling and testing by the Department

(a) When mixing lots of seed for certification, the conditioner shall use only lots of seed pre-approved by the Department. Before approving of a lot, the Department shall:

1. Take an official sample of each component; and
2. Perform tests necessary to verify the eligibility of each component lot.

(b) After the different components have been mixed under the supervision of the Department, the conditioner shall permit the Department to take an official sample of each mixture to retain for reference.

(c) Samples of component lots to be certified as well as samples of finally certified lots shall be retained by the Department for three years.

2:16-3.12 Mixing procedures for certified turfgrass

(a) Before mixing, the conditioner shall ensure that:

1. All mixing equipment, pallets, scales and floor areas adjacent to and around the mixing area are clean and free from seed and foreign material.
2. Sufficient quantities of new containers are marked with the name of the mixture.
3. Sufficient quantities of properly completed analysis tags are prepared.
4. Analysis test reports for purity, germination, and sod quality, if applicable, from the state of origin shall be supplied for the Department's records for each lot of each component used in the mixture.
5. A mixing report shall be completed for the Department with the following information:
i. The business name, address and phone number of the conditioner;
ii. The lot number, state of origin and percentage of each component used;
iii. The name, lot number and date of the mixture;
iv. The weight of each package of the mixture and the total number of packages in the mixture;
v. The starting and ending numbers of the certification labels used and the total number of certification labels issued;
vi. A copy of the analysis label either printed on or attached to the report; and
vii. The signature of the designated representative of the conditioner and the signature of the Department's representative at the completion of the mixing and packaging process.
6. Each component used is assembled in close proximity to the mixing area.
7. Each container of each component is clean and sealed, with a certification tag attached. No damaged containers shall be accepted.
8. Sufficient personnel are available to complete the mixing process.

(b) Before mixing, the Department representative shall:

1. Inspect all equipment for cleanliness;
2. Inspect the mixing area for cleanliness;
3. Inspect the new containers provided for the mixture to ensure that they are appropriate;
4. Inspect the analysis tags for completeness and accuracy; and

5. Inspect each component to ensure that the correct lots are present in the proper amounts, and that all containers of seed to be used in certified mixtures bear a certification tag.

(c) The Department representative shall be present during the mixing process and shall supervise the loading and bagging of the mixed lot after the components have been thoroughly mixed for the appropriate length of time.

(d) The Department representative shall have the sole responsibility to:

1. Draw an official sample of the completed mixture; and
2. Determine whether the mixer should be cleaned before the next seed mixture is made.

2:16-3.13 Minimum seed standards for Interagency Certification of turfgrass seed

(a) For turfgrass mixtures intended for use in New Jersey certified sod, the following shall apply:

1. Component lots shall be those designated as Sod Quality by the state of origin; the minimum seed standards for the components shall be those found in N.J.A.C. 2:16-7.24(a).
2. Varieties and mixtures of varieties shall be approved by Cook College, Rutgers, the State University as stated in N.J.A.C. 2:16-7.23(a).
3. It is the responsibility of the conditioner to inform the Department that the mixture is to comply with the New Jersey certified sod standards.
4. The seed analysis tag shall bear the statement "Eligible for New Jersey Certified Sod."

(b) For certified mixtures made for sod growers, other than those in (a) above, the components used shall be sod quality.

(c) The components for all other mixtures shall comply with the following seed standards:

Kind	Min. Pur.	Max. Oth. Var.	Min. Germ	Max.† Other Crop	Max Weed	Noxious Weed Seed
Kentucky Bluegrass	96%	2%	80%	.25%	.2%	None
Red Fescues (F. rubra vars.)	97%	2%	85%	.25%	.2%	None
Hard Fescues	97%	2%	85%	.25%	.2%	None
Tall Fescue	97%	2%	85%	.25%	.2%	None
Perennial Ryegrass	97%	2%	85%	.50%	.2%	None
Bentgrass††	98%	3%	85%	.25%	.2%	None
Rough Bluegrass	96%	2%	80%	.25%	.2%	None

†Up to 18 seeds per pound is the maximum amount of the following species: Annual bluegrass (Poa annua), big bluegrass (Poa ampla), Rough bluegrass (Poa trivialis), Meadow fescue (Festuca elatior), Tall fescue (F. arundinacea—except in lots containing tall fescue), Ryegrass (Lolium spp.—except in lots containing ryegrass), Bentgrass (Agrostis spp.—except in lots containing bentgrass), Timothy (Phleum pratense), Smooth Brome (Bromus inermis), Wild oat (Avena fatua) Foxtail (Setaria spp.), Pancium spp., Nutsedge (Cyperus spp.), Bermudagrass (Cynodon dactylon), Velvetgrass (Holcus lanatus).

Up to 90 seeds per pound is the maximum amount permitted of the following objectionable weed seeds: Dock and Sorrel (Rumex spp.), Plantain (Plantago spp.), Black medic (Medicago lupulina), Chickweeds (Cerastium spp. and Stellaria spp.), Field Pennycress (Thlaspi arvense), Wild carrot (Daucus carota), Speedwell (Veronica spp.), Spurge (Euphorbia spp.), Wood sorrel (Oxalis stricta), Yarrow (Achillea millefolium), Clover (Trifolium spp.)

††Bentgrass purity and germination standards may be 96 percent minimum pure seed and 80 percent germination for specific varieties as determined by the certifying agency of the state of origin.

(d) In an emergency, and at the discretion of the Department, seed lots failing to meet these standards for other than genetic reasons may be used for interagency certified mixtures. Use of such lots shall be made only when the Department determines that there exists a serious shortage of seed meeting these standards.

2:16-3.14 Interagency certification tags and tagging

(a) Certification tags issued by the Department for interagency certified seed shall be serially numbered and shall show the class of seed.

(b) The analysis tags supplied by the conditioner shall carry the name of the mixture and the number of the lot, shall show clearly the certifying agencies involved and the kinds and varieties of seed, as well as conform to the labeling requirements of the New Jersey State Seed Law as found at N.J.S.A. 4:8-17.13 et seq.

2:16-3.15 Rejection of interagency certification component seed lots

(a) The Department shall reject any certified component seed lot for interagency certification that fails to meet the seed standards as described in this subchapter or that exhibits seed damage or contamination. This damage or contamination may include, but is not limited to:

1. Rodent or insect damage;
2. Moisture damage;
3. Disease;
4. Weed seeds;
5. Other crop seeds;
6. Inert matter; and
7. Any factor which may affect the performance or quality of the seed.

2:16-3.16 Charges for interagency certification

Charges for interagency certification services of the Department are found at N.J.A.C. 2:16-9.4.

SUBCHAPTER 4. SMALL GRAINS (WHEAT, RYE, BARLEY, OATS)

2:16-4.1 Application and amplification of general certification standards

The rules in this subchapter supplement the general certification seed standards, N.J.A.C. 2:16-2, established by the State Board of Agriculture and apply specifically to the certification of small grain seeds.

2:16-4.2 Dates for application

(a) The latest dates on which applications may be filed at the Department for small grains are as follows:

1. Winter wheat, April 1;
2. Winter barley, April 1;
3. Winter rye, April 1; and
4. Winter oats, April 1.

(b) Applications should be filed as far in advance of the deadline as possible.

2:16-4.3 Seed requirements

(a) Foundation seed of wheat and barley shall be treated for the control of loose smut.

(b) Registered seed shall be the progeny of foundation seed.

(c) Certified seed shall be the progeny of foundation or registered seed.

2:16-4.4 Land requirements

(a) A crop of small grain shall not be eligible for certification if planted on land on which the same kind of crop was grown the year previous, unless the previous crop was grown from certified seed of the same variety.

(b) No manure or contaminating material shall be applied one year preceding or during the establishment and productive period of the stand.

2:16-4.5 Field inspection by the Department

(a) A field inspection shall be made each year that a certified seed crop is produced.

(b) The field inspection shall be made after the crop is fully headed when varietal crop mixtures and other factors can be determined.

(c) A field harvested before inspection shall not be eligible for certification.

2:16-4.6 Field standards; general requirements

(a) The field shall be considered the unit of certification and a field cannot be divided for the purpose of certification. A strip of ground at least 10 feet in width and which is either mowed, uncropped or planted to some crop other than the one being inspected shall constitute a field boundary for the purpose of these standards. All grain from rejected fields or portions of fields shall be disposed of so that it cannot be used as certified seed.

(b) All rye fields producing certified seed shall be isolated by at least 660 feet from rye fields of any other variety or fields of the same variety that do not meet the purity requirements for certification.

1. All fields used for the production of registered seed shall be isolated by at least 660 feet from fields of like grains.

2. No field of wheat or barley shall be eligible for certification within 660 feet of an adjacent field which contains one percent or more infection of loose smut.

(c) The field shall be clean of plants that produce objectionable weed seed, varietal mixtures and mixtures of other crops before the inspector arrives.

2:16-4.7 Field standards; specific requirements

The following table sets forth the maximum field standards for contamination by other varieties, crops, weeds and diseases:

Factor	Foundation	Registered	Certified
Other Varieties[1]	.01% (1 in 10,000)	.02% (1 in 5,000)	.05% (1 in 2,000)
Inseparable other crops[2]	None	5 heads per acre	14 heads per acre
Objectionable weeds whose seeds are inseparable[3]	None	None	None
Diseases:			
Loose smut	None	500 heads per acre	1,000 heads per acre
Smuts controllable with chemicals	.1% (1 in 1,000)	.1% (1 in 1,000)	.2% (2 in 1,000)
Other seed-borne diseases[4]			

[1]Other varieties shall be considered to include off-type plants and plants that can be differentiated from the variety that is being inspected.

[2]Inseparable other crops shall include crop plants, the seed of which cannot be adequately removed by the usual method of cleaning. Rye in wheat and barley must be no more than five heads per acre in certified.

[3]Objectionable weeds include radish, mustard, wild onion, Canada thistle, quackgrass, vetch, corn cockle and wild garlic.

[4]In the event a seed-borne disease is judged to be detrimental to the seed quality, the inspector shall have the power to reject the field from certification.

2:16-4.8 Samples and sampling of seed

An official sample of each lot of seed, representative of the entire lot, shall be taken for laboratory analysis by a representative of the Department prior to being offered for sale as certified seed and shall meet the seed standards as found in N.J.A.C. 2:16-4.9.

2:16-4.9 Seed standards

The following table sets forth the seed standards for certified small grains.

Factor		Standards		
		Foundation	Registered	Certified
Pure Seed	minimum	—	98.00%	98.00%
Other varieties	maximum	1 seed per 1,000 grms.	1 seed per 500 grms.	5 seeds per 500 grms.
Other small grain crops	maximum	1 seed per 500 grams.[1]	1 seed per 500 grms.[1]	2 seeds per 500 grms.[1]
Inert matter	maximum	2.00%	2.00%	2.00%
Restricted noxious weed seeds[2]	maximum	None	None	None
Prohibited noxious weed seeds[3]	maximum	None	None	None
Moisture	maximum	14.00%	14.00%	14.00%
Germination	minimum	90.00%	90.00%	90.00%

[1]No rye seed will be permitted in lots of barley, wheat or oats tested for certification.

[2]Restricted noxious weed shall include those listed at N.J.A.C. 2:21-4, Noxious Weed Seeds pursuant to N.J.S.A. 4:8-17.13 et seq. plus radish, mustard, vetch and curled dock.

[3]Prohibited noxious weed seeds are those listed at N.J.A.C. 2:21-4, noxious weed seeds pursuant to N.J.S.A. 4:8-17.13 et seq. and can be found in N.J.A.C. 2:16-2.6.

SUBCHAPTER 5. SOYBEANS

2:16-5.1 Application and amplification of general certification standards

The rules in this subchapter supplement the general certification seed standards, N.J.A.C. 2:16-2 established by the State Board of Agriculture and apply specifically to the certification of soybean seed.

2:16-5.2 Restrictions on number of varieties

Two varieties of similar appearance shall not be grown in the same field nor binned in the same seed house.

2:16-5.3 Date of application

Application for growing certified soybeans shall be filed no later than July 1.

2:16-5.4 Land requirements

Soybeans shall be grown on land on which the previous crop was of another kind, or planted with a class of certified seed of the same variety or with a variety of a contrasting pubescence, flower or hilum color.

2:16-5.5 Field inspections by the Department

(a) Fields planted and entered for production of certified seed shall be inspected at least once, at a time when varietal purity can be determined.

(b) Fields harvested prior to field inspection shall not be eligible for certification.

2:16-5.6 Field standards; general requirements

(a) The field shall be considered the unit for certification, and a field cannot be divided for the purpose of certification.

(b) A strip of ground at least 10 feet in width and which is either mowed, uncropped or planted to some crop other than soybeans shall constitute a field boundary for the purpose of these standards.

(c) All grain from rejected fields or portions of fields shall be disposed of so that it cannot be used as certified seed.

2:16-5.7 Field standards; specific requirements

The following table sets forth the field standards for certified soybeans:

		Standards	
Factor		Registered	Certified
Other Varieties[1]	maximum	.05% (1 in 2,000)	.10% (1 in 1,000)
Corn plants with developed seed	maximum	None	None
Objectionable weeds[2]	maximum	None	None
Diseases	maximum	3	3

[1]Other varieties shall be considered to include off-type plants, and plants that can be differentiated from the variety that is being inspected.

[2]Objectionable weeds shall include all weed seeds which cannot be readily separated from soybeans.

[3]In the event a seed-borne disease is judged to be detrimental to the seed quality, the inspector shall have the power to reject the field from certification.

2:16-5.8 Samples and sampling of seed

An official sample of each lot of seed, representative of the lot, shall be taken for laboratory analysis by a representative of the Department prior to being offered for sale as certified seed, and shall meet the seed standards as found in N.J.A.C. 2:16-5.9.

2:16-5.9 Seed standards

The following table sets forth the seed standards for certified soybeans:

		Standards	
Factor		Registered	Certified
Pure seed	minimum	98.00%	98.00%
Other Varieties[1]	maximum	0.10% (1 in 1,000)	0.25% (2 in 1,000)
Inert matter	maximum	2.00%	2.00%
Other crops	maximum	None	1 seed per 500 grms.
Corn	maximum	None	None
Weed seed	maximum	1 seed per 500 grms.	2 seeds per 500 grms.
Objectionable weed seed[2]	maximum	None	None
Moisture	maximum	14.00%	14.00%
Germination	minimum	80.00%	80.00%

[1]Off-colored beans due to environmental factors shall not be considered other varieties.

[2]Objectionable weeds shall include morning glory, bur-cucumber, spurred anoda, cocklebur, Jimson weed and all prohibited and restricted noxious weed seeds under the New Jersey State Seed Law (N.J.S.A. 4:8-17.24) as delineated at N.J.A.C. 2:21-4.1 and 4.2.

SUBCHAPTER 6. VEGETABLES

2:16-6.1 Application and amplification of general standards

Rules in this subchapter supplement the general certification seed standards, N.J.A.C. 2:16-2, established by the State Board of Agriculture and apply specifically to vegetable seeds.

2:16-6.2 Eligibility requirements

(a) The seed of a crop shall be submitted one year in advance of planting a crop for certification to the Department of Vegetable Crops of the New Jersey Agricultural Experiment Station at Cook College to be included in the Experiment Station varietal trials.

(b) A description shall be submitted to the New Jersey Department of Agriculture not later than May 1 of the year in which seed certification is requested of each variety, specifically setting forth its distinctiveness whereby a claim to the classification of a new variety is supported.

2:16-6.3 Application for certification

A grower desiring to produce certified vegetable seed shall contact the Bureau of Seed Certification and Control prior to the planting of the crop in order to determine the eligibility of the variety, the seed and the field for certification.

2:16-6.4 Seed house or bin inspection

Inspection of harvested lots of seed from inspected fields may be made at any time by a representative of the Department who shall have the authority to revoke from certification any lot not protected from mixture or which is not identified.

2:16-6.5 Samples and sampling of seed

(a) A representative sample of each lot of seed or propagating material as it is offered for sale shall be obtained by the Department for future quality reference.

(b) The seed samples shall be maintained by the Department for a period of one year.

2:16-6.6 Seed appearance

Seed having met the requirements of N.J.A.C. 2:16-2 and this subchapter may still be rejected from certification if the appearance of the seed is a discredit to the certified seed program, for example discoloration or non-uniformity of seed.

2:16-6.7 Tags and seals

(a) All seed stocks when sold as certified shall have an official tag properly affixed to each container.

1. Containers of certified seed shall be sealed.

2. All official certification tags shall be secured from the Department and shall be affixed to seed containers, either by the grower or a representative of the Department, depending on circumstances involved.

(b) The certification tag which is attached to the bag serves as evidence of the genetic identity and genetic purity of the seed contained therein.

(c) Certified seed tags shall be white for foundation and breeder seed if tagged, purple for registered seed, and blue for the certified class.

2:16-6.8 Field and seed standards

(a) Field and seed standards for certified vegetable crops shall be those established by the Association of Official Seed Certifying Agencies.

(b) Copies of the standards for the kind to be certified may be obtained from the Bureau of Seed Certification and Control of the New Jersey Department of Agriculture, CN 330, Trenton, NJ 08625.

2:16-6.9 Sub-standard seed

(a) The Department recognizes that certain lots of seed that may be desirable for the advancement of a particular variety would be lost if regular certification standards were adhered to; therefore, under such circumstances seed failing to meet certain standards other than those affecting genetic purity may be certified by the Department provided there is no adverse effect to the reputation of certified seed.

(b) The certification tag attached to such seed shall clearly show the respects in which the seed does not meet the regular certification standards.

2:16-6.10 Seed conditioning

(a) Seed eligible for final certification shall be conditioned by equipment approved by the Department.

(b) Minimum equipment shall include a cleaner with self-cleaning screens, and facilities for cleaning elevator legs, boots and other parts coming into direct contact with the seed.

SUBCHAPTER 7. TURFGRASS SOD

2:16-7.1 Application and amplification of general standards

The rules in this subchapter supplement the general certification standards found at N.J.A.C. 2:16-2, and are applicable to all species of turfgrass sod that are eligible for certification. They shall constitute the standards for certification of sod in New Jersey.

2:16-7.2 Type of certifying organization

(a) Cook College of Rutgers, The State University is the agricultural research and extension agency for turf certification.

(b) The New Jersey Department of Agriculture is the official certification agency and assumes the regulatory or enforcement work in turf production.

2:16-7.3 Purpose of certification

The purpose of sod certification shall be to maintain and make available to the public, through certification, high quality sod of superior types of turfgrasses so grown and distributed as to insure genetic identity and purity and high degree of freedom from weeds, injurious insects, disease, nematodes and other pests.

2:16-7.4 Eligibility requirements for certification

(a) Only those species, varieties and mixtures that are approved by the Turfgrass Extension Specialist, Cook College, Rutgers, the State University shall be eligible for certification.

(b) A list of eligible species, varieties and mixtures for sod produced from seed shall be established and maintained by the Turfgrass Extension Specialist and shall be revised as needed to include newly approved varieties.

(c) The list in (b) above shall be available from the Bureau of Seed Certification and Control of the New Jersey Department of Agriculture, CN 330, Trenton, NJ 08625.

2:16-7.5 Sources of certified turfgrass sod

(a) The only recognized class of certified sod shall be Certified (Blue tag). Seed or other propagating material used for the establishment of certified turfgrass sod shall be in accordance with the following specified sources.

(b) For turfgrass sod established from seed, certified shall be the progeny of sod quality foundation, registered or certified seed lots that have been approved by the Department and that have been so handled by the sod grower as to maintain genetic identity and purity.

(c) For turfgrass sod established from vegetative material, certified shall be the progeny of foundation of registered stock that has been approved and certified by the Department and that has been so handled by the sod grower as to maintain genetic identity and purity. Certified shall be the progeny of certified stock only after approval has been granted by the Turfgrass Extension Specialist of Cook College and the Bureau of Seed Certification and Control.

2:16-7.6 Establishing the source of seed or propagating material

In those cases where the seed or propagating material planted for production of certified sod is obtained from another person, documentary evidence, such as a certification tag, sales record, and other written memoranda shall be submitted to the Department to establish the source.

2:16-7.7 Qualifications for inspectors

Inspection work shall be performed only by inspectors who have been trained and approved by the Department.

2:16-7.8 Handling of crop prior to inspection

(a) Roguing of off-type plants, objectionable crop plants and weeds is required prior to field inspection.

(b) Field boundaries shall be designated prior to field inspection.

2:16-7.9 Harvesting shall prevent certification

If a field is harvested before inspection, that crop automatically becomes ineligible for certification.

2:16-7.10 Labels for certified stock; evidence of identity

(a) All stocks, when sold as certified, shall have an official certification tag properly affixed to the invoices.

(b) The certification label which is attached serves as evidence of the genetic identity and purity contained therein. The blue label will be used to designate certified.

2:16-7.11 Appearance of sod

Sod having met the specific field requirements can still be rejected from certification if the appearance is such as to give discredit to the certified reputation.

2:16-7.12 Contaminating crops and weeds

(a) To qualify for certification each field shall be under such management as to be free of contamination from other turfgrass species, crops and weeds.

(b) Fields with conditions which make it difficult to perform complete and thorough field inspections may be rejected from certification.

2:16-7.13 Pest control required

(a) Every field within the certifying program shall be maintained free of diseases, nematodes and other pests.

(b) Fields to qualify for certification shall be free from injurious turfgrass insects.

2:16-7.14 Complying with Federal and State laws

Responsibility for any obligations, other than those concerned with certification, arising from the sale or shipment of sod which has been certified, rests with the grower or subsequent handler making the sale or shipment.

2:16-7.15 Application for certification

(a) Application forms for the production of certified sod may be obtained by the sod grower from the Bureau of Seed Certification and Control.

(b) The completed application form shall be sent to the Bureau of Seed Certification and Control, New Jersey Department of Agriculture, CN 330, Trenton, New Jersey 08625.

2:16-7.16 Dates for filing application

Applications shall be filed at the office of the certifying agency no later than March 1, and should be filed as far in advance of the deadline as possible.

2:16-7.17 Maps of production areas

To facilitate the work of the Department, it is suggested that maps accompany the application form giving field locations, isolation distances and any other important facts that would be helpful to the inspector.

2:16-7.18 Land requirements

(a) A field to be eligible for the production of certified sod shall have been inspected prior to planting and found free of all other perennial grasses.

(b) In all cases, a field found eligible for the production of certified sod shall be free of injurious insects, unacceptable weeds as found in N.J.A.C. 2:16-7.21, and volunteer plants of other varieties or species of turfgrass.

2:16-7.19 Sod Inspections

(a) Inspections during the growing season shall be made by the Department for genetic purity and identity, the presence of other perennial grasses, noxious, unacceptable and other objectionable weeds as found in N.J.A.C. 2:16-7.21, and insects and diseases.

(b) After fields have met the requirements for certification, inspection by the Department at approximately monthly intervals shall be made to maintain certification eligibility. Certification shall be withdrawn at any time the quality of the sod is found not to meet the standards in N.J.A.C. 2:16-7.21 and N.J.A.C. 2:16-7.22.

(c) To be sold as certified, all sod shall be field inspected by the Department within 30 days of the date of harvest, and found to meet the field standards listed in this subchapter.

2:16-7.20 Field standards; general requirements

(a) A field or blocks within a field shall be considered the unit for certification. If for any reason sections of a field do not meet certification requirements, the portion or portions of the field meeting certification requirements may be certified.

(b) A field or block of sod to be eligible for certification shall be isolated from adjacent fields with a 10-foot barrier. The barrier shall be fallowed or seeded to the same variety of the turfgrass species considered for certification in order to prevent contamination of grasses at the margins.

(c) No animal manures or other contaminating material shall be applied two years preceding or during the establishment and production of the stand.

2:16-7.21 Specific field standards and requirements

(a) The production of certified sod shall be limited to fields having stands not more than three years old from date of planting.

(b) Maximum field tolerance standards for other varieties or off-type plants of the same species, other turfgrass species, and other crops and weeds when recognizable are as indicated in the following table.

Factor	Kentucky Bluegrass	Hard and Red Fescues	Kentucky Bluegrass Red Fescue Mixture	Bentgrass	Zoysia	Kentucky Bluegrass Tall Fescue Mixture
Other turfgrasses[1]—(Percent of total turfgrass population)						
1. Kentucky bluegrass	3	1	3	1	1	3
2. Red fescue	1	3	3	1	1	1
3. Poa trivalis	0	0	0	0	0	0
4. Bentgrass	0	0	0	2	0	0
5. Tall fescue	0	0	0	0	0	0
6. Ryegrass	0	0	0	0	0	0
7. Zoysia	0	0	0	0	0	0
8. Bermudagrass	0	0	0	0	0	0
Other crops	0	0	0	0	0	0
Weeds—(Plants per 1,000 square feet of sod area)						
Unacceptable[2]	0	0	0	0	0	0
Objectionable[3]	2	2	2	2	2	2

[1]Other turfgrasses shall include:

(1) Varieties or off-type plants of the same species being inspected for certification.

(2) Species of turfgrasses other than the one being inspected for certification.

[2]Unacceptable weeds shall include primary and secondary noxious weeds in accordance with the provisions of the New Jersey State Seed Law and other weeds difficult to control selectively through cultural or chemical methods.

Noxious weeds specified by the New Jersey State Seed Law include:

bindweed (Convolvulus arvesis), hedge bindweed (Convolvulus spium), quackgrass (Agropyron repens), Canada thistle (Cirsium arvense) and horse nettle (Solanum carolinense) as primary, and dodder (Cuscuta spp.), corn cockle (Agrostemma githago), wild garlic (Allium canadense), cheat (Bromus secalinus), and Bermudagrass (Cynodon dactylon) as secondary.

Other unacceptable weeds shall include:

nutgrass (Cyperus esculentus), goosegrass (Eleusine indica), annual bluegrass (Poa annua), and any other variety or species of perennial grass.

[3]Objectionable weeds shall include:

Crabgrass (Digitaria spp.), dandelion (Taraxacum officinale), plantain (Plantago spp.), sheep sorrel (Rumex acetosella), wood sorrel (Oxalis europeaea), ground ivy (Glechoma hederacea), yarrow (Achillea millefolium), annual chickweed (Stellaria media), mouse-ear chickweed (Cerastium vulgatum), field chickweed (Cerastium arvense), speedwell (Veronica spp.), spurge (Euphorbia spp.), knotweed (Polygonum oleracea), heal-all (Prunella vulgaris), knawel (Scleranthus annuus), black medic (Medicago iupulina), white clover (Trifolium repens L.) and any other broadleaf or grassy weed which may detract from sod quality.

(c) If at any time the field shows evidence of excessive weed growth, it may be rejected by the inspector.

2:16-7.22 Sod quality

(a) The marketable product shall be of uniform density, color and texture.

(b) Certified sod shall be free of thatch, insect, disease, nematode or weed problems.

2:16-7.23 Seed requirements for New Jersey certified sod production

(a) All species, varieties and mixtures of varieties to be used for New Jersey certified sod shall be those approved by Cook College, Rutgers, the State University as stated in N.J.A.C. 2:16-7.4.

(b) All lots of seed used in the production of New Jersey certified sod shall be approved by the Department. The grower shall submit to the Department the following:

1. An official seed analysis report from the state of origin including an examination for sod quality; and
2. All labeling information including the lot number and the number of pounds involved.

(c) For sod seeded from single, unmixed kinds and varieties, the seed shall be certified, designated as Sod Quality by the state of origin, meet the minimum seed standards found in N.J.A.C. 2:16-7.24 and shall comply with the sod mixture eligibility requirements at N.J.A.C. 2:16-7.4(b).

(d) For sod produced from mixtures of species or varieties, the component seed lots shall be certified, designated as Sod Quality by the state of origin and shall meet the minimum seed standards found in N.J.A.C. 2:16-7.24, and the mixtures shall be certified using the procedures and standards found at N.J.A.C. 2:16-3.

2:16-7.24 Seed standards for sod quality grass seed

(a) The seed standards for sod quality grass seed are as follows:

Variety	Minimum Purity	Minimum Germination	Maximum[1] Other Crop	Maximum[3] Weed
Kentucky Bluegrass	97%	80%	0.1%[2]	0.02%
Red Fescue	98%	90%	0.1%	0.02%
Chewings Fescue	98%	90%	0.1%	0.02%
Hard Fescue	98%	90%	0.1%	0.02%
Tall Fescue	98%	90%	0.1%	0.02%
Perennial Ryegrass	98%	90%	0.1%	0.02%

[1]Must be free of ryegrass (except for lots containing ryegrass as a component), orchardgrass, timothy, bentgrass, big bluegrass, Poa trivalis, smooth bromegrass, reed canary grass, tall fescue (except for lots containing tall fescue as a component) and clover.
Canada Bluegrass in Kentucky Bluegrass varieties, maximum 0.02 percent.
Red Fescue and Chewings Fescue must be free of Canada Bluegrass.
[2]Other Kentucky Bluegrass—Maximum 2 percent
[3]Must be free of dock, chickweed, crabgrass, plantain, black medic, annual bluegrass, velvetgrass and noxious weed seeds.

SUBCHAPTER 8. VEGETATIVELY PROPAGATED GRASSES

2:16-8.1 Application and amplification of general certification standards

(a) Rules in this subchapter supplement the general certification seed standards at N.J.A.C. 2:16-2, established by the State Board of Agriculture and apply specifically to vegetatively propagated grasses.

(b) The following terms apply specifically to vegetatively propagated grasses:

1. Breeder culms, are those produced by the U.S.D.A. Plant Materials Center (Cape May, New Jersey);
2. Foundation culms, are first year propagations from breeder culms.
3. Registered culms, are first year propagations from foundation culms.
4. Certified culms, are those produced from either foundation or registered culms.

2:16-8.2 Handling of crop prior to inspection

A field shall be rogued sufficiently during the growing season to remove any other varieties of the crop being certified or other undesirable plant mixture that cannot be separated during the packing operations.

2:16-8.3 Date of application

Application for growing certified vegetatively propagated grasses shall be filed with the Bureau of Seed Certification and Control no later than June 1.

2:16-8.4 Land requirements

(a) A field to be eligible for the production of foundation, registered or certified culms, shall have been free of other strains of the same species for two consecutive years preceding the year that it is to be planted.

(b) The fields shall be inspected by the Department prior to planting and shall have been found to be free of noxious weeds as defined in N.J.A.C. 2:16-2 and free of objectionable weeds as listed in N.J.A.C. 2:16-8.9.

2:16-8.5 Field inspection

Field inspections by the Department shall be made at various times during the growing season to determine accurately the amount of varietal mixture present.

2:16-8.6 Field standards

The entire acreage standing at the time of inspection shall be subjected to inspection as a unit.

2:16-8.7 Isolation

A field to be eligible for certification shall be isolated from any other perennial grasses by a barrier that will prevent encroachment or mechanical mixing during harvest.

2:16-8.8 Field standards; specific requirements

(a) No other varieties are permitted in foundation or registered fields.

(b) For certified class fields, one plant of another variety in 1,000 square feet is the maximum permitted.

2:16-8.9 Planting stock standards for all classes

(a) A sample of at least 100 culms shall be drawn by the Department inspector during spring and fall pulling and tested by the inspector.

(b) The following table sets forth the standards for planting stock:

Pure living culms, minimum	90.0%
Other living plants, minimum	2.0%
Total objectionable weeds, maximum[1]	0.0%

[1]Objectionable weeds shall include the following species: Canada thistle, dodder, horse nettle, johnsongrass, leafy spurge, nut grass, quackgrass, wild onion or garlic, wild radish, field bindweed and hedge bindweed.

SUBCHAPTER 9. CERTIFICATION FEE SCHEDULE

2:16-9.1 General purpose and provisions

Fees are charged by the Department for certification services, including field inspections, supervision of cleaning and mixing equipment and operations, tags supplied by the Department and seed testing. The Department shall bill the users of certification services annually, at the end of the calendar year; fees shall be paid to:

New Jersey Department of Agriculture
Division of Plant Industry
Bureau of Seed Certification and Control
CN 330
Trenton, NJ 08625

2:16-9.2 Small grains, soybeans, vegetables

(a) The following fees shall be charged for participation in the program for certifying small grains, soybeans and vegetable crops:

1. An entrance fee of $20.00 for each grower.
2. An inspection fee of $1.50 for each acre entered.
3. Labels, if purchased from Department, $.03 each.

2:16-9.3 Cultivated sod, vegetatively propagated grasses

(a) The following fees shall be charged for participation in the program for certifying sod:

1. An entrance fee of $20.00 for each grower.
2. An inspection fee of $1.00 for each acre entered.
3. Labels, if purchased from Department, $.03 each.

2:16-9.4 Interagency certified turfgrass

(a) The following fees shall be charged for participation in the program for certifying mixtures of turfgrasses seed:

1. Entrance fee of $20.00 for each participating mixer.
2. Sampling and testing for each component of mixture, $25.00.
3. For every 1,000 pounds of seed mixed there shall be a charge of $20.00, with a minimum charge of $75.00 for each mixing day.
4. There shall be a charge of $10.00 when sampling only is requested.
5. Labels, if purchased from Department, $.03 each.

2:16-9.5 Fee waived for participating government agencies

No fees shall be charged to Federal or state agencies which participate in the certification program.

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Savings and Loan Associations: General Provisions Readoption with Amendments: N.J.A.C. 3:26

Proposed: November 19, 1990 at 22 N.J.R. 3428(a).
Adopted: December 27, 1990 by Jeff Connor, Commissioner, Department of Banking.
Filed: December 31, 1990 as R.1991, d.41, **without change.**
Authority: N.J.S.A. 17:1-8.1; 17:12B-48(21); 17:12B-197; 17:29-11.
Effective Date: December 31, 1990, Readoption; January 22, 1991, Amendments.
Expiration Date: December 31, 1995.

Summary of Public Comments and Agency Responses:

The Department received two comments from savings and loan associations concerning the records retention schedule set forth in subchapter 1.

COMMENT: The Department of Banking should eliminate the records retention schedule. There is adequate protection from other Federal agencies, such as the Internal Revenue Service, against the untimely destruction of accounting and corporate records. Further, it is unfair to subject State chartered associations to a records retention schedule, since there is no similar schedule for State chartered banks and savings banks.

RESPONSE: The Department of Banking in the proposed readoption of these rules has reduced the time periods governing record retention by associations. After the readoption is effective, certain specified records will need to be maintained only one-half as long as before. It is the view of the Department that the schedule as amended sets forth a minimum schedule which an association would want to maintain for its own protection, and that its provisions are not burdensome.

However, the Department recognizes that there is no similar records retention schedule for banks or savings banks. Further, with the phase out of small uninsured associations, the need for a records retention schedule is lessened. Accordingly, the Department will continue to monitor the need for such a schedule, and will consider its elimination in the future.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:26.

Full text of the adopted amendments follows.

3:26-1.1 Records retention schedule

(a) A savings and loan association shall maintain its records for the following minimum periods:

Description of Books, Records, Etc.	Period to be Retained
1. Payment slips	2 years
1A. Coupons used with club accounts	1 year after payout of club account
1B. Coupons used with mortgage accounts	2 years, where a copy of the statement of the mortgage account is submitted annually to the mortgagor and a copy of said statement is retained in the association's file
2. Withdrawal slips	
i. Supported by checks	6 years
ii. If only record	10 years
3. Subsidiary ledgers, etc.	
i. Individual account cards and sheets	6 years after account is closed
ii. Roll books (Shareholders' ledgers)	10 years
4. General ledger: books, cards or sheets	10 years
5. Tellers' Proof Sheets used as posting media	6 years
6. (No change.)	
7. Cancelled checks, including dividend and trust account checks	6 years
8.-10A. (No change.)	
10B. Share certificates	10 years
11. Account transfer or share assignment records	
i. Individual accounts cards or sheets	10 years
ii. Roll book accounts	10 years
12.-22. (No change.)	
23. Corporate minutes: directors, executive committee and members' meetings	10 years
24. Reports	
i. Examination reports	10 years
ii. Audit reports	10 years
iii. Annual reports to Department	10 years
25. Monthly reports to directors (one copy)	3 years
26. Records of original entry—general journal, cash receipts and disbursements journal, etc.	10 years
27.-28. (No change.)	
29. Journal vouchers	3 years
30. (No change.)	
31. Inheritance tax waivers and surrogates' certificates	6 years
32.-33. (No change.)	
34. Trustee account ledger	10 years
35. (No change.)	

3:26-3.1 Action upon detection or discovery of crime

(a) Every State association, including any service corporation which is owned, wholly or jointly, by a State association, shall immediately notify the Commissioner by telephone of the detection or discovery of any embezzlement, defalcation, misapplication, or misuse of funds by any director, officer, employee, attorney or agent of the State association or service corporation. As soon thereafter as is practical, the association's or service corporation's management

or auditor shall submit to the Commissioner a written report of the crime or crimes discovered or detected, including the names of the individuals involved, the extent of any loss, and the method used to effectuate the embezzlement, defalcation, misapplication or misuse. Compliance with the requirement in this subsection for a written report shall be evidenced:

1. By the filing of a copy of any forms required under rules adopted by any appropriate Federal agency concerning internal crimes; or

2. By filing Department of Banking Form No. S.L. 4.

(b) (No change.)

(c) Every State association shall notify the Commissioner in the manner described in (a) above, of every crime either attempted or perpetrated against the association or service corporation by individuals other than an officer, director, employee, attorney or agent of the association irrespective of the amount of loss. In the case of a robbery, burglary or non-employee larceny, compliance with this subsection shall be evidenced by the filing with the Commissioner of a copy of any form required under rules adopted by any appropriate Federal agency concerning external crimes or by filing with the Commissioner Department of Banking Form No. S.L. 5.

3:26-4.1 State Savings and Loan Association parity with Federal savings and loan associations

In addition to other authority granted by law, and unless contrary to State law, a savings and loan association may exercise any power, right, benefit or privilege which is now or hereafter authorized for Federal savings and loan associations pursuant to Federal law or rules and regulations of any appropriate Federal agency. Any such power shall be exercised upon the same terms and subject to the same conditions as are authorized for Federal savings and loan associations. The powers, rights, benefits or privileges shall be automatically exercisable upon the expiration of 30 days from the date of adoption by the Federal regulatory agency, except if the Commissioner of Banking within that 30-day period provides notice that the power shall not be granted to State savings and loan associations. Such notice shall be provided to each savings and loan association, and to the trade publications of the New Jersey Council of Savings Institutions, the New Jersey Bankers Association and the New Jersey Savings League for publication. The Commissioner of Banking may permit savings and loan associations to begin exercise of a power prior to the expiration of the 30-day period by providing notice of permission to each savings and loan association and to the above mentioned trade publications.

HEALTH

(a)

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

Proposed: August 20, 1990 at 22 N.J.R. 2501(a).
Adopted: December 18, 1990 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: December 20, 1990 as R.1991 d.29, **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: January 22, 1991.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: Lederle Laboratories commented that the proposed minocycline tablets had no brand for which to be substituted, because Lederle had discontinued Minocin brand tablets.

RESPONSE: The Council agreed and therefore did not adopt minocycline tablets.

The following products and their manufacturer were **adopted**:

Clonidine 0.1, 0.2, 0.3 mg tabs	**W-C**
Clorazepate tabs 3.75, 7.5, 15 mg	**W-C**
Methyldopa/HCTZ tabs 500/30, 500/50	**W-C**
Probenecid tabs 500 mg	**Zenith**

The following product and its manufacturer were **not adopted**:

Minocycline 50, 100 mg tabs	W-C

The following products were **not adopted but are still pending**:

Albuterol Sulf tabs 2, 4 mg	Purepac
Albuterol Sulf 2, 4 mg tabs	W-C
Amiloride/HCTZ tabs 5/50	Cord
Carbamazepine 100 mg chewable tabs	W-C
Chlorpropamide tabs 100, 250 mg	Lederle
Digoxin tabs 0.125, 0.25 mg	Zenith Labs
Digoxin tabs 0.125, 0.5 mg	Pioneer
Doxepin HCl caps 10, 25, 50 mg	Purepac
Doxycycline caps 50, 100 mg	Interpharm
Doxycycline tabs 100 mg	Interpharm
Erythromycin ER tabs 250, 333 mg	Abbott Labs
Erythromycin ethylsuccinate tabs 400 mg	Abbott Labs
Fenoprofen caps 200, 300 mg	W-C
Fenoprofen tabs 600 mg	W-C
Indomethacin 25, 50 mg caps	W-C
Leucovorin 2 mg tab	W-C
Loperamide 2 mg caps	Lemmon, W-C
Lorazepam 0.5, 1, 2 mg tabs	W-C
Methyldopa tabs 125, 250, 500 mg	Roxane
Methyldopa/HCTZ tabs 250/15, 250/25	W-C
Propranolol tabs 10, 20, 40, 60, 80 mg	W-C
Propranolol tabs 10, 20, 40, 60, 80 mg	W-C
Propranolol HCTZ 40/25, 80/25 tabs	W-C
Sulindac tabs 150, 200 mg	Purepac
Sulindac tabs 150, 200 mg	W-C
Tetracycline 250, 500 mg caps	W-C
Timolol Maleate tabs 5, 10, 20 mg	W-C
Tolmetin sodium caps 400 mg	Cord, W-C
Tolmetin tabs 200 mg	W-C
Verapamil HCl tab 40 mg	Cord, Purepac

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 22 N.J.R. 2582(a).

(b)

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

Proposed: October 15, 1990 at 22 N.J.R. 3191(a).
Adopted: December 18, 1990 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: December 20, 1990 as R.1991 d.30, **with portions not adopted but still pending.**

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

Effective Date: January 22, 1991.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: Superpharm Corporation opposed the proposed deletion of their ibuprofen product, explaining that their original submission to the FDA was from the early 1980s and the data could not be verified as absolutely correct. Superpharm performed a new bioequivalency study to re-establish the equivalency of their ibuprofen to Motrin, the innovator product. Superpharm provided the new biostudy as proof that their ibuprofen, although still rated "BX" by the FDA, was nonetheless therapeutically equivalent to Motrin and therefore should be retained in the New Jersey formulary.

RESPONSE: Despite the Council's technical consultant recommending that the new biodata show Superpharm's ibuprofen to be bioequivalent to Motrin, the Council reiterated their long-standing policy to not allow "BX" products into the formulary, nor to remain there if the rating

anges. The Council therefore rejected Superpharm's arguments and moved Superpharm's ibuprofen tablets, 400 mg, from the Formulary.

COMMENT: Chelsea Laboratories commented that their 40 mg verapamil tablets are NOT rated "BX," thus should be retained in the formulary.

RESPONSE: The Council deferred action on Chelsea's 40 mg verapamil pending clarification from the FDA.

No other comments were received.

The following products and their manufacturers were **deleted** from the formulary:

mitriptyline/perphenazine tablets 4/50	Chelsea
buprofen tablets 400 mg	Superpharm
xazepam capsules 10 mg, 15 mg, and 30 mg	Chelsea
erphenazine tablets 8 mg	Chelsea
erapamil tablets 80, 120 mg	Chelsea

The following product remains **pending**:

erapamil tablets 40 mg	Chelsea

LABOR

(a)

DIVISION OF WORKERS' COMPENSATION

Notice of Rule Invalidation

Conduct and Discipline of Judges of Compensation

N.J.A.C. 12:235-3.11 through 3.23

Take notice that the rules concerning the conduct and discipline of Judges of Compensation at N.J.A.C. 12:235-3.11 through 3.23 have been invalidated by the Superior Court of New Jersey Appellate Division, in *In the Matter of the Adoption of Rules Concerning Conduct of Judges of Compensation, N.J.A.C. 12:235-3.11 through 3.23,* ____ N.J. Super. ____, Dkt. No. A-2946-88T2 (App. Div. December 11, 1990).

Please contact the New Jersey Department of Labor regarding any further action involving the case.

This notice is provided by the Office of Administrative Law pursuant to N.J.A.C. 1:30-1.13.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Enforcement Service

Readoption: N.J.A.C. 13:20

Proposed: November 5, 1990 at 22 N.J.R. 3307(a).
Adopted: December 12, 1990, by Col. Clinton L. Pagano, Director, Division of Motor Vehicles.
Filed: December 13, 1990 as R.1991 d.20, **without change.**

Authority: N.J.S.A. 39:2-3, 39:3-10, 39:3-11, 39:3-27.14, 39:3-27.39, 39:3-33.3, 39:3-33.7, 39:3-33.9, 39:3-43, 39:3-75, 39:3-77, 39:3-81, 39:3-84a(10), 39:4-208, 39:5-30, 39:8-1, 39:8-2, 39:8-4, 39:8-4.1, 39:8-23 and 39:10-4.

Effective Date: December 13, 1990.
Expiration Date: December 13, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:20.

(c)

DIVISION OF MOTOR VEHICLES

Licensing Service

Readoption with Amendments: N.J.A.C. 13:21

Proposed: November 5, 1990 at 22 N.J.R. 3311(a).
Adopted: December 12, 1990, by Col. Clinton L. Pagano, Director, Division of Motor Vehicles, and, as to N.J.A.C. 13:21-19, the Motor Vehicle Franchise Committee, Col. Clinton L. Pagano, Chairman.
Filed: December 13, 1990 as R.1991 d.21, **without change.**

Authority: N.J.S.A. 39:2-3, 39:3-4, 39:3-5, 39:3-5.1, 39:3-8, 39:3-10, 39:3-10a, 39:3-10.1, 39:3-11.1, 39:3-13, 39:3-13a, 39:3-13.1, 39:3-15.1, 39:3-20, 39:3-24, 39:3-26.1, 39:3-30, 39:3-33, 39:3-43, 39:3-84, 39:3C-1 et seq., 39:5-30, 39:5-32, 39:10-4, 39:10-19, 39:10-20, 39:10-37, 39:10A-6, 39:13-7, 56:10-25 and 42 U.S.C. §405(c)(2)(C).

Effective Date: December 13, 1990, Readoption; January 22, 1991, Amendments.
Expiration Date: December 13, 1995.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:21.

Full text of the adopted amendments follows.

13:21-21.15 Additional violations

(a) In addition to any violation of N.J.S.A. 39:13-1 et seq., the Director may impose a civil penalty, refuse to issue a license or a renewal thereof, or suspend or revoke the existing license of any auto body repair facility if he determines that the applicant or licensee:

1.-7. (No change.)

8. Fails to maintain an approved place of business in accordance with N.J.A.C. 13:21-21.4(c)1;

9. Fails to pay any fee required by law or regulation; or

10. For other good cause.

(d)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF ARCHITECTS

Fees; Certificate of Authorization

Adopted Amendment: N.J.A.C. 13:27-5.8

Proposed: November 5, 1990 at 22 N.J.R. 3314(a).
Adopted: December 13, 1990 by the State Board of Architects, Joseph Filippone, President.
Filed: December 31, 1990 as R.1991 d.40, **without change.**

Authority: N.J.S.A. 45:3-21(a).

Effective Date: January 22, 1991.
Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:27-5.8 Fees

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

(l) Applicants for a Certificate of Authorization issued pursuant to P.L. 1989, c.275, shall pay a one-time, nonrefundable application fee of $100.00 as well as a biennial fee of $500.00, or $250.00 per year.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Submission and Handling of Information Which May Be Entitled to Confidential Treatment Pursuant to N.J.S.A. 52:27F-18(d)

Adopted New Rules: N.J.A.C. 14A:7 (recodified upon adoption as N.J.A.C. 14:32)

Proposed: September 4, 1990, at 22 N.J.R. 2649(a).
Adopted: December 12, 1990 by the Board of Public Utilities, Scott A. Weiner, President.
Filed: December 24, 1990 as R.1991 d.31, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27F-18(d).

Effective Date: January 22, 1991.
Expiration Date: January 22, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Since N.J.A.C. 14A:7 expired September 16, 1990, pursuant to Executive Order No. 66(1978), the rules proposed for readoption with amendments are adopted herein as new rules, in accordance with N.J.A.C. 1:30-4.4(f).

A public hearing in this matter was held on September 24, 1990, at which no member of the public or other interested party appeared.

In order to properly codify the rules of the former Department of Energy, the Board of Public Utilities is recodifying N.J.A.C. 14A:7 upon adoption as N.J.A.C. 14:32. References to these rules within this chapter are also corrected to reflect the recodification.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER *[7]* *32*

SUBMISSION AND HANDLING OF INFORMATION WHICH MAY BE ENTITLED TO CONFIDENTIAL TREATMENT

SUBCHAPTER 1. TRADE SECRETS

[14A:7] ***14:32***-1.1 Scope

The rules in this chapter are promulgated pursuant to N.J.S.A. 52:27F-19(d). They shall govern the submission and handling of information which may be entitled to confidential treatment because such information constitutes a trade secret.

[14A:7] ***14:32***-1.2 Definitions

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

"Authorized agent" means any person who is duly authorized by the Board to perform work in connection with the conduct of the Board's business.

"Board" means the New Jersey Board of Public Utilities.

"Confidentiality claim" means a claim that information is entitled to confidential treatment because such information constitutes a trade secret.

"Energy industry" means any person, company, corporation, business, institution, establishment, or other organization of any nature engaged in the exploration, extraction, transportation, transmission, refining, processing, generation, distribution, sale or storage of energy.

"Trade secret" means the whole or any portion or phase of any scientific, technical, or otherwise proprietary information, design, process, procedure, formula, or improvement which is used in one's business and is secret and of value; and a trade secret shall be presumed to be secret when the owner takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

[14A:7] ***14:32***-1.3 Confidential information

(a) Any energy industry requested by the Board to submit information pursuant to N.J.S.A. 52:27F-18 may assert a confidentiality claim covering part or all of the information by following the procedures set forth in (b) and (g) below.

(b) Any energy industry submitting information pursuant to N.J.S.A. 52:27F-18 to the Board and asserting a confidentiality claim covering such information shall submit two documents to the Board. The first document shall contain all the information requested by the Board, including any information which the energy industry claims to be entitled to confidential treatment. The second document shall be identical to the first report except that it shall contain no information which the energy industry claims to be entitled to confidential treatment. If all submitted information is claimed to be confidential no second document is required.

(c) (No change.)

(d) All parts of the text of the first document which the energy industry claims to be entitled to confidential treatment shall be underscored. Parts already determined by the Board to be entitled to confidential treatment shall be so labeled.

(e) (No change.)

(f) If all the information has been already determined by the Board to be entitled to confidential treatment, only one document is required to be submitted and the top of each page shall display the heading "CONFIDENTIALITY DETERMINED."

(g) The energy industry submitting the documents shall send them to the Board official who requested the information by certified mail return receipt requested, by personal delivery, or by other means which allows verification of the fact of receipt and the date of receipt.

[14A:7] ***14:32***-1.4 Confidentiality determinations

(a) Information claimed to be entitled to confidential treatment will be treated as confidential until the Board receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information.

(b) After receiving such request, the Board shall make a confidentiality determination. The Board shall so notify the energy industry that submitted the information by certified mail return receipt requested. The notice shall state that a request for the information has been made and that the energy industry that submitted the information may, within 30 days of notification, submit a request to the Board for a summary proceeding. The request should include evidence to support a claim that the information is entitled to confidential treatment. The evidence may include, but is not limited to affidavits, records, other documents, and a statement, which shall be as detailed as possible without disclosing any information which the energy industry claims to be entitled to confidential treatment, indicating:

1.-3. (No change.)

(c) The Board shall review the evidence. If after such review, the Board determines that the information is not entitled to confidential treatment, the Board shall so notify the energy industry that submitted the information by certified mail return receipt requested. Such determination shall be made after consideration of the applicable criteria in N.J.A.C. *[14A:7]* ***14:32***-1.5. The notice shall state the basis for the determination, that a party may request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1 and 1:21, within 10 days of the determination and that, if the request for confidentiality was not granted and a hearing is not requested the Board will make the information available to the public on the tenth working day after the date of the energy industry's receipt of the written notice.

(d) If the Board determines that the information is entitled to confidential treatment, the information shall not be deemed to be public records and shall be exempt from the requirements of N.J.S.A. 47:1A-1 et seq., pursuant to N.J.S.A. 52:27F-18(d). The Board shall so inform the affected person who made the request for release of the information under N.J.S.A. 47:1A-1 et seq. The notice shall state the basis for the determination and that it constitutes final agency action.

[14A:7] ***14:32***-1.5 Criteria for confidential determination

(a) Determinations made under N.J.A.C. *[14A:7]* ***14:32***-1.4(d) shall hold that information is entitled to confidential treatment if:

1.-5. (No change.)

6. Disclosure of the information is likely to impair the Board's ability to obtain similar information in the future.

[14A:7] ***14:32***-1.6 Access to confidential information

Unless specifically provided for by Federal or State law, no person shall have access to information which has been determined to be entitled to confidential treatment, other than: Board personnel with the express written permission of the Board or its designate, Federal agencies, State agencies, or other governmental entities, subject to the provisions of N.J.A.C. *[14A:7]* ***14:32***-1.7 or authorized agents of the Board subject to the provisions of N.J.A.C. *[14A:7]* ***14:32***-1.8.

[14A:7] ***14:32***-1.7 Disclosure of confidential information to Federal agencies, other State agencies, and municipal agencies

(a) The Board may disclose information entitled to confidential treatment to federal agencies, other State agencies, and municipal agencies if:

1. The Board receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency. The request must set forth the official purpose for which the information is needed;

2. The Board notifies the other agency of its determination that the information is entitled to confidential treatment;

3. The other agency has first furnished to the Board a written opinion from that agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the energy industry that submitted the information to the Board to disclose such information to the other agency; and

4. (No change.)

(b) After determining that it will release the confidential information, the Board shall so notify the energy industry that submitted the information by certified mail return receipt requested. The notice shall state the basis of the determination. If within 14 days of notification of proposed disclosure, the provider of such information requests in writing that the Board reconsider its decision to release the information, the Board shall conduct a summary proceeding. The request should include evidence to support a claim that the Board's determination was incorrect. The evidence may include, but is not limited to, affidavits, records, and other documents.

(c) If a timely request for reconsideration has been made by the provider of such information, the Board shall review the evidence and its prior determination. If after such review, the Board determines that it will release the confidential information, the Board shall so notify the energy industry that submitted the information by certified mail return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the release of the confidential information, and that the Board will make the information available to the requesting governmental agency on the tenth working day after the date of the energy industry's receipt of the written notice. If the Board determines that it will not release the confidential information, the Board shall so inform the requesting governmental agency. The notice shall so state the basis for the determination and that it constitutes final agency action.

[14A:7] ***14:32***-1.8 Disclosure of confidential information to authorized agents

(a) The Board may disclose information which has been determined to be entitled to confidential treatment to an authorized agent of the Board if the Board determines that such disclosure is necessary in order for the authorized agent to perform the work in connection with the conduct of the Board's business.

(b) No information shall be disclosed under (a) above, unless there is a written agreement entered into between the Board and the authorized agent which provides that the authorized agent and the authorized agent's employees shall use the information only for the purpose of performing the work in connection with the conduct of the Board's business, shall refrain from disclosing the information to anyone other than the Board and shall return to the Board all copies of the information (and any abstracts or extracts therefrom) upon request by the Board or whenever the information is no longer required by the authorized agent for the performance of the work.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF LOCAL HIGHWAY DESIGN

Urban Revitalization, Special Demonstration and Emergency Project Regulations

Readoption: N.J.A.C. 16:22

Proposed: October 15, 1990, at 22 N.J.R. 3196(a).

Adopted: December 6, 1990, by Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Filed: December 18, 1990 as R.1991 d.25, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:8-1 to 9.

Effective Date: December 18, 1990.

Expiration Date: December 18, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:22.

HUMAN SERVICES

(b)

DIVISION OF DEVELOPMENTAL DISABILITIES

Administration

Readoption with Amendments: N.J.A.C. 10:48

Proposed: October 15, 1990 at 22 N.J.R. 3192(a).

Adopted: December 18, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: December 19, 1990 as R.1991 d.27, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4-6 et seq., N.J.S.A. 30:1-12 et seq., and 30:6D-5(b).

Effective Date: December 19, 1990, Readoption; January 22, 1991, Amendments.

Expiration Date: December 19, 1995.

Summary of Public Comments and Agency Responses:

The proposed readoption with amendments was published on October 15, 1990. During the comment period, 99 comments were received. Of these, 94 were virtually the same; the majority were a form letter with identical wording.

Form Letter

1. COMMENT: This letter is written to adamantly oppose the Division of Developmental Disabilities (DDD) Proposed Readoption with Amendments: N.J.A.C. 10:48, as published in the N.J. State Register, October 15, 1990.

It is beyond all reasoning that handicapped children who are protected by, and who have the option to exercise, their legal rights of due process under P.L. 94-142 and N.J.A.C. 6:28 in the unbiased forum at the Office of Administrative Law (OAL), are relegated back to a biased forum of due process within DDD, the very agency which they will seek services from once they 'age out' of the special education system.

As a parent and friend of all handicapped children in the State of New Jersey, I strongly urge the Division of Developmental Disabilities to nullify these proposed Amendments and rethink their role as the primary provider required by the Vocational Rehabilitation Act and the newly adopted American Disabilities Act of 1990. Not allowing our "adult children" access to an impartial forum, such as the OAL, is a disgraceful miscarriage of justice in our judicial system which has the legal, ethical, and moral obligation to provide the necessary safeguard assurances for this protected class of citizens!

RESPONSE: The comment does not refer to a specific provision of the proposal. Instead, it questions the discretion of the Director to determine a matter contested or uncontested.

A contested case, as defined in the New Jersey Administrative Procedures Act (N.J.S.A. 52:14B-1 to 15), is one for which a hearing is required by statute or constitutional provision. N.J.S.A. 52:14B-12 allows agencies to conduct administrative reviews in other than contested matters.

It is up to the agency head, in this case the Division Director, to determine if a matter is contested under the Administrative Procedures Act and N.J.A.C. 10:48-1.4(b). If there is a statutory or constitutional right to a hearing, the Director must refer the matter to the OAL. Where there is no constitutional or statutory right to a hearing, the Division is not mandated or obligated to hold a hearing. However, the Division has the discretion to grant a hearing and has chosen to offer an administrative review by a staff member appointed by the Director.

The process for holding an Administrative Review Conference is virtually identical to the procedures used by the OAL. These procedures have been used by the Division for the last five years.

This readoption makes no substantive change in the procedures which were previously adopted on January 21, 1986. The readoption seeks to clarify and set forth in greater detail the procedures and protections granted in uncontested cases.

Spectrum for Living

2. COMMENT: The relationship between DDD and the clients it serves is unique and intimate. It cannot be equated with the DDD/licensee or the DDD/vendor relationship and should not be governed by precisely the same set of rules. Therefore, the changes and principles I urge [which follow] deal only with the DDD/client relationship and no other.

RESPONSE: While there is a recognized difference between persons who use the services of the Division and providers of services who are regulated by the Division, it is believed that the procedure to appeal decisions of the Division provides a fair and impartial forum in both instances.

3. COMMENT: DDD should be responsible to seek out every possible client in need of its services. Further, it should be DDD's responsibility to ensure that all legal channels leading to eligibility and provision of services are exhausted in every case. No client or applicant should be excluded from due consideration even when a care-giver fails to follow DDD procedures.

RESPONSE: The Division of Developmental Disabilities can only provide services to an individual who voluntarily seeks those services. The intention of these rules is to clearly delineate the procedures to be followed when disagreements concerning services exist.

4. COMMENT: Appeals of denial of eligibility should be mandatory and it should be the responsibility of DDD to ensure that every client or client-candidate is well-advised.

RESPONSE: The decision to appeal is the appellant's right to exercise. The Division does advise each person found ineligible of their right to appeal. Because of the nature of an appeal, the Division cannot advise the individual once a decision has been appealed. The Department of the Public Advocate may be able to assist the individual in the appeal.

5. COMMENT: All time limits imposed by DDD against clients or applicants should be flexible and advisory.

RESPONSE: Time lines are appropriate to insure that disagreements are resolved in a timely manner. The Division must, however, ascertain that the matter under appeal is current and therefore, time limits should be reasonably enforced.

6. COMMENT: All time limits should be described in the same terms, [that is,] work days or calendar days.

RESPONSE: The Division agrees. The rules have been amended to indicate either calendar or working days, whichever is appropriate, depending upon the action to be taken.

7. COMMENT: N.J.A.C. 10:48-1.1(b): As noted above, [the] client/DDD [relationship] is a special relationship and should be governed by its own rules, as distinguished from any other appellants'.

RESPONSE: The Department believes that the rules proposed for readoption with amendments provide a thorough and adequate appeal mechanism for both licensees and persons who receive services.

8. COMMENT: N.J.A.C. 10:48-1.1: DDD staff should also supply appellants with detailed accounts of all preceding team deliberations and decisions, informal conference proceedings, etc., relating to an appeal.

RESPONSE: In a contested case, the OAL has provisions for discovery. N.J.A.C. 10:48-1.6(g)6 indicates the provisions for discovery in uncontested cases and states that discovery shall be limited to the client record, that is, "the organized compilation of documents that relate to the provision of services to an individual client."

N.J.A.C. 10:48-1.3(b) has been revised to require that a copy of the report summarizing an informal conference to be provided to the appellant.

9. COMMENT: N.J.A.C. 10:48-1.1(f): The suggested addition is: "The terms of the settlement shall be binding upon the appellant and the Division unless it can later be demonstrated that the agreement is not in the best interests of the client."

RESPONSE: The purpose of a settlement is to close, or settle, the matter under appeal. All settlements should take into account the best interests of the client at the time the settlement is made. Should the settlement later be thought not to be in the best interests of the client it would then be appropriate to reapply for service or to start a new appeal, so that the new information related to the issue can be examined together with all other relevant factors.

10. COMMENT: N.J.A.C. 10:48-1.1(i): "Appeals . . . initiated within 30 calendar days of written notification." Does that mean 30 days from the writing of the notice? from the mailing? from the receipt by the appellant? As noted above, appeals of negative eligibility determinations should be mandatory.

RESPONSE: In order to ensure adequate time to make an appeal, this section has been amended to allow 60 days from the date of the written notification.

11. COMMENT: N.J.A.C. 10:48-1.1(m): This provision [that the appellant be held to specific time limits, as established by these rules, or lose the right to an appeal] is unacceptable and should be eliminated.

RESPONSE: While every effort is made to reasonably accommodate and to assist the client or his or her representative in the pursuit of an appeal, time lines must be observed to ensure that disputes are resolved expeditiously. It is the responsibility of the appellant to pursue the appeal if there is disagreement with a decision, and to comply with the time lines set forth in the rules.

12. COMMENT: N.J.A.C. 10:48-1.1(n): ["No transcript shall be made of an informal conference"] No transcript means a limitation on the ability to appeal. No transcript means one person's after-the-fact recall becomes permanent record.

RESPONSE: The purpose of an informal conference is to resolve the matter in dispute as soon as possible, in a manner acceptable to both parties. It is similar to a pre-trial settlement conference which seeks to resolve disputes without formal proceedings, which must be recorded in detail. While the summary of the informal conference documents the efforts made at the conference to resolve the issues, this does not prevent the appellant from presenting evidence at the next level of appeal.

13. COMMENT: N.J.A.C. 10:48-1.1(s): The following words should be deleted from this item: "An allegation or conjecture does not constitute evidence." and whatever clarification is necessary be included in N.J.A.C. 10:48-1.2, Definitions.

RESPONSE: The Division must employ verbatim the definition of evidence used by the OAL, which can be found in the New Jersey Administrative Code at N.J.A.C. 1:1-2.1. The Division has, however determined that a clarification of the status of allegations or conjectures is needed in the rules; therefore, no change has been made.

14. COMMENT: Under 10:48-1.2 Definitions: ' "Appeal" means a request made by an authorized person' . . .

The term "authorized person" referring to one responsible to initiate an appeal infers knowledge and expertise not necessarily possessed by the responsible person and rarely by the client who will be deprived of rights if the appeal is not heard.

"[I]dentifiable in terms of date, parties involved . . ." "Parties involved" should be construed to mean those physically present and participating. Mere listing of team members should not be construed as denoting participation.

"Reasons for the decision" should reflect the entire deliberations of he "parties involved" leading to the rationale of the decision.

RESPONSE: The previous rules permitted appeals to be filed by any nterested party. This provision resulted, in some cases, in a lack of clarity of the matter under appeal, as a result of the sometimes competing nterests of client, parent of client, guardian, and agency, for example. The current definition of appellant identifies who is an authorized person, ccording to the rules. The term "involved parties" has been changed o "persons making the decision," since the latter information is more elpful to the Division in its evaluation of the appeal.

15. COMMENT: ' "Appellant" means the authorized person etc.' Read the definitions of "authorized person" 1 through 5. The client or lient-candidate is here, with only one exception, excluded from being alled "the appellant". The philosophy that excludes most clients from eing considered "the appellant" leads to the imposition of arbitrary time nd procedural obstacles to the appeal process. After all, if "the appellant" is an informed, forewarned, competent adult, there's nothing wrong in denying "the appellant" a hearing if he has failed to meet a leadline.

On the other hand, a philosophy which identifies the only true "appellant" as the client or client-candidate would impose an obligation on he state to insure that all possible appeals are given proper hearing. DDD would then do what the state mandates in serving every eligible person even when the stupidity or sickness or illiteracy or negligence of an 'authorized person" imposes a burden.

Economy of time or money should not be a rationale for avoiding esponsibility.

RESPONSE: The rules allow specified persons, other than the client, o speak or to act on the client's behalf, and in so doing, grant the client nore opportunity to appeal decisions than he or she would have as an ndividual appellant. If the individual requires assistance, then his or her guardian can be considered the appellant. The definition also allows the ppellant to have a representative. In an effort to be responsive to the eeds of the client, the Division has increased the time lines at N.J.A.C. 0:48-1.1(i) to allow more time to file the appeal.

16. COMMENT: 10:48-1.3: Informal Conference: "—chairperson hall prepare a statement etc."

The chairperson should be identified in the statement by name and ertified as present and participating.

The statement should be prepared by the presiding participant.

The statement (if a transcript is not to be kept) should contain a omplete record of the positions and arguments of both sides, rationale sed in reaching a decision, and the decision.

The statement should be subject to editorial comment, objection, and pproval of the appellant before being made part of the client file. If a nutually acceptable final draft of the statement cannot be arrived at, the ppellant should be able to include a statement of his objections in the ermanent client file.

RESPONSE: The Division agrees that the chairperson should be identified by name and should prepare the statement. The reference to the administrative head has been deleted. A summary of the items requested s already required by the rules. Since the procedure is not adversarial, he Division considers a summary sufficient and appropriate at this point. The statement should not be subject to editorial comment, since, should e appellant disagree, he or she may proceed to the next step in the appeal rocess, as provided for in these rules. The addition of an editorial review tep would add time to the process, disadvantaging the client in some nstances.

17. COMMENT: N.J.A.C. 10:48-1.3(c)1IV: The time limit of ten working days is too restrictive. The "further appeal" would have to be prepared before the informal conference in order to provide time to assemble the detailed brief required.

RESPONSE: The Division agrees. The time limit has been increased to 15 working days. A detailed brief is not, however, required in order to continue the appeal.

18. COMMENT: N.J.A.C. 10:48-1.3(e): "Failure to file an appeal within the prescribed time limits shall render the agency action final."

Please strike this item. It is absolutely no good. DDD must maintain a flexible policy in setting time limits so as not to exclude anyone from pursuing every possible avenue. The state should seek out clients and ensure that every available appeal is heard. Otherwise, the voiceless, the ignorant, the illiterate, the drug or alcohol dependent, the fearful, the disabled caregivers, and those who believe a phone call from an intake worker represents the state's final judgement are in danger of arbitrary exclusion. Economically advantageous perhaps but morally reprehensible.

RESPONSE: It is the policy of the Division to assist the appellant, through reasonable accommodations, to understand the requirements of the appeal process. The Division must, however, have some administrative means to bring appeals to closure, should the individual choose not to pursue the appeal. Therefore, the provision to render the agency action final in the event that the appellant has not filed an appeal within the prescribed time limits will remain in the rules.

19. COMMENT: N.J.A.C. 10:48-1.4(a)1. "—within 15 calendar days of the mailing of the written response."

It's unclear which response is intended here.

*No time limit should ever be based on the mailing date of a notice. The efficacy of the Post Office becomes another arbitrary obstacle to timely action. A time limit that begins on the date the appellant receives a written notice would make more sense (with the same recommendation of flexibility as above).

RESPONSE: This section has been revised to indicate 15 working days after the date of the written summary. It is not necessary that the appeal be received by the Division within the 15 working days, but this provision does ensure that the appeal is pursued in a timely fashion.

20. COMMENT: N.J.A.C. 10:48-1.6(b)1. "—within 20 calendar days of notification—"

Does that mean dated from appellant's receipt of notification?

RESPONSE: This means from the date contained on the notification that a paper review has been granted.

21. COMMENT: N.J.A.C. 10:48-1.6(b)3. "Discovery shall be limited to the client record—"

This limitation underlines the above-mentioned need for detailed accounts and/or transcripts of all previous hearings, meetings (i.e., intake team, informal conference, etc.) to maintain a complete client record.

RESPONSE: The legal client record includes accounts of hearings and meetings such as those of the intake team, the I.H.P. conference, and internal conferences.

22. COMMENT: N.J.A.C. 10:48-1.6(b)5: "—within 10 working days from the date of the Recommended Decision."

This seems very vague. 10 days from date of writing? of mailing? of receipt?

RESPONSE: This clearly states that comments or objections are required within 10 working days from the date of the recommended decision.

23. COMMENT: N.J.A.C. 10:48-1.6(g)4: "A verbatim tape recording of the proceeding shall be made etc."

The ability to tape record the proceeding should be available to any participant.

RESPONSE: Nothing in the rules prohibits an appellant from making a tape recording of a conference; however, the official tape recording and transcript of same must be the responsibility of the Division.

24. COMMENT: N.J.A.C. 10:48-1.6(9)4: "—party requesting a written transcript shall bear the costs, etc."

This imposition of a cost factor seems to be a deliberate inhibition against requesting a transcript and to be directed against the appellant. Obviously, if a DDD representative requests a transcript, he will not personally bear the costs of transcriptions and copies.

Therefore, any participant should be able to record the proceedings and make transcripts available on equal terms. Also there should be a guarantee that no one be excluded from equal access to transcripts because of financial constraints or an unwillingness to surrender personal dignity.

It is therefore suggested that 10:48-1.6(c)4. be struck in its entirety and the following be substituted:

"4. A verbatim tape recording of the proceeding shall be made. A copy or written transcript shall be made available to any participant on request."

RESPONSE: Nothing in the rules prohibits an appellant from taping a conference; however, the official tape recording and transcript of it must be the responsibility of the Division. It is not appropriate to have more than one "official version" of a tape or transcript. It is customary, in other legal forums, for the person requesting a transcript to pay for it. The rules also provide that the person requesting a transcript pay for that transcription.

Sharon Brahs

25. COMMENT: It is important for all handicapped children to be given every chance to enjoy their full potential.

My child was fortunate enough to be included in the early preschool intervention program in Bergen County and I feel this has made such a difference for her in her growth and functioning as a teenager. She had wonderful support right from the first to feel she was a valuable person despite being "imperfect". It is so unfair to find out that she may feel discarded due to an arbitrary age level . . .

RESPONSE: The Division agrees that developmentally disabled individuals should be given opportunities to develop their potentials and provides such services to persons found eligible. The purpose of N.J.A.C. 10:48 is to delineate the method by which disagreements about eligibility for services may be addressed and resolved.

Mr. and Mrs. Richard Acito

26. COMMENT: It is clear to us that the administrative review does not provide an impartial due process forum for the consideration of the issues which are in dispute. We find it incredible that at every stage of the process the decision always comes back to the desk of the Director of DDD. In view of the foregoing, if you were truly interested in making the "appeals procedure more understandable and better organized" you would revamp the entire system by permitting clients and/or their representatives to simply enumerate all disputes in a letter to the Director and schedule an informal hearing. The result of that informal conference should either be a settlement or a transmittal of the case from DDD to the OAL for truly impartial hearing. This would be far less expensive for taxpayers, and would be far more understandable and better organized than the obvious restatement of the existing system which does not, by even the most liberal interpretation, afford an impartial and speedy forum for procedural due process.

Further, we are of the opinion that the procedural and mechanical morass presently in effect and intended to be perpetuated by your proposed amendments effectively dissuades many clients and/or their representatives from pursuing their legal rights. In short, we are convinced that your primary interest in creating and publishing the captioned is not to make "the appeals procedure more understandable and better organized" but is, in fact, your way of assuring that neither administrative hearings nor administrative reviews ever take place.

RESPONSE: The procedure for conducting the Administrative Review Conference is based upon the procedure used by the OAL. It should also be pointed out that even when a contested case is transferred to OAL, the agency head, in this case, the Director, makes the final decision.

The rules point out that if the individual is not satisfied with the final decision of the Director in either a contested or uncontested case, the matter may be forwarded to appellate court. The administrative review is an attempt to administratively resolve a matter before a remedy in the courts is sought.

Brenda Milo

27. COMMENT: Attached please find a flow chart analysis of the proposed regulations for the Department of Human Services as published in the Federal Register, October 15, 1990. Having been the primary complainant in *B.M. v. The N.J. Dept. of Education, 1980,* I feel I must respond to these proposed regulations, which in my opinion, fly contrary to both the intent of P.L. 94-142, the Vocational Rehabilitation Act, and the newly adopted American Disabilities Act of 1990.

All of the above federal regulations, in great length and detail, describe the entitlement and venue of appeals to be provided to a "protected class" of citizens, children and adults, alike. Having lived through 'due process' in the education agency in this state, I would hope that the personal anguish due to the delays incurred by the *Debevoise* decision (1982), would not be in vain. And yet, these proposed regulations clearly defy all reasoning and historical background.

As children transition into young adults, special education services transition into adult developmental disability services. It would appear that the unbiased forum of the OAL for child/education related disputes does not make the same natural transition when the same child ages out of the educational system into the adult world of disability services. Somehow, the rules of the system change even though the child within the biological adult remains the same.

As the flow chart of events shows, it would appear that nothing in the "Due Process" procedure for the Division of Developmental Disabilities (DDD) is without bias and not short of a diabolical hierarchy by the Director of the Division. It would appear that at each and every step within the process that the chain of Due Process for our 'protected class of citizens' is monitored and controlled, from the very beginning to the very end, by the person whom one is litigating against. At no point is our 'protected adult citizen' given an unbiased review, hearing, or decision. Instead, and sadly so, his rights have been diminished to a facad of justice within the very agency from which one is compelled to see relief.

Even if one is fortunate to obtain permission from the Director of th Division to have his case heard by an OAL judge, the bench decisio still remains subject to the whim of the Director to 'adopt, modify, o reject' any part of or all of the judiciary findings of fact.

These proposed regulations are a travesty of justice and make th reference to a 'protected class' a joke at which no one is laughing Furthermore, for our federal and state tax dollars to support this circu of events, when our adult children need real services, not lip service no the pretense of justice, is shameful and demands further public revie and investigation.

RESPONSE: The flow chart describing the process is essentially cor rect. The authority of the agency head, in this case the Division Directo to make final decisions is established in the Administrative Procedure Ac (N.J.S.A. 52:14B-2) and the New Jersey Administrative Code (N.J.A.C 1:1-2.1). Our procedures for uncontested cases merely mirror those man dated under the rules for contested matters. N.J.S.A. 52:14B-12 permit agencies to conduct administrative reviews in other than contested matters.

The Division of Developmental Disabilities does not have direct re sponsibility to implement P.L. 94-142 or the Vocational Rehabilitatio Act. The Division believes the proposal is not in conflict with the Ameri can Disabilities Act of 1990.

Laurene Radaszewski

28. COMMENT: I oppose this Appeals Procedure because it does no allow for impartial judgment.

A case can be ruled out as a non-contested case by the Division o Developmental Disabilities who is the responsible party in providing th services in question.

Parents who are already under stress from dealing with a difficul situation and who are trying to provide for their children's needs are face with a system that is unduly and unfairly challenging to them bot personally and financially.

As a parent and a concerned citizen, I [respectfully] urge the Divisio of Developmental Disabilities to nullify these proposed Amendments an modify the Appeals Procedure to afford the protection of impartial forun and judgment on services for individuals with Developmental Disabilities

RESPONSE: The authority for the agency to decide whether or no a matter is contested is based upon the Administrative Procedures Act In those instances where a matter is determined to be uncontested, th Division provides a forum for review. Where an individual require assistance, the Department of the Public Advocate may be called upo for assistance.

Summary of Changes Made between Proposal and Adoption:

Due to internal comments received, N.J.A.C. 10:48-1.1(j) was revise to utilize the term "Individual Habilitation Plan". N.J.A.C. 10:48-1.4(a was revised to clarify the procedures concerning requests for waivers o informal conferences.

Full text of the readoption can be found in the New Jersey Admin istrative Code at N.J.A.C. 10:48.

Full text of the adopted amendments follows (additions to proposa shown in bold face with asterisks ***thus***; deletions from proposa shown in brackets with asterisks *[thus]*):

10:48-1.1 General provisions

(a) (No change.)

(b) This subchapter pertains to all disputes and disagreements witl service components of the Division of Developmental Disabilitie involving a competent adult receiving services from or applying fo services of the Division, the guardian of a minor or incompeten adult, the proposed guardian, a licensee of the Division or a authorized representative of a competent adult, guardian of a mino or incompetent adult. In the instance of an attorney, written verifi cation of a client/attorney relationship shall be required.

(c) It is expected that, in most disputes between appellants an service components, the appellant will know the identity of the servic component with whom there is disagreement. Where the precis service component is not known, such information may be obtaine by calling the Administrative Practice Office of DDD (609) 633-2209

(d) Disputes relating to decisions on educational program issues involving persons of legal school age shall be discussed at a conference with the appellant and the educational service provider, and/or a conference with the appellant and the Office of Education, Department of Human Services. If agreement is not possible, further resolution of the dispute shall be made by written request to the Department of Education pursuant to N.J.A.C. 6:28-2.7.

(e) Division staff are responsible for informing persons served and their families/guardians about appeals and to supply them with copies of the appeal procedure.

(f) An appeal may be settled at any time by agreement of both parties, if the agreement is accepted by the chairperson, hearing officer or review officer. A settlement agreement shall be included in the decision of the chairperson, hearing officer or review officer. The settlement shall be considered the final decision. The terms of the settlement shall be binding upon the appellant and the Division.

(g) A settlement may be accepted by the chairperson of an informal conference or the review officer in an administrative review in the same manner as an Administrative Law Judge, in the definition of settlement at N.J.A.C. 10:48-1.2.

(h) After an attempt at informal resolution, the Division Director shall determine a matter to be contested or uncontested. Contested matters shall be referred to the Office of Administrative Law (OAL) in accordance with N.J.A.C. 1:1. Uncontested matters shall be referred for administrative review.

(i) Appeals of eligibility or licensure action shall be initiated within 10 calendar days *[of written notification]* ***from the date on the written notification of ineligibility or licensure action***.

(j) Appeals of services shall be limited to those services indicated in the *[current service plan]* ***Individual Habilitation Plan as defined at N.J.S.A. 30:6D-10***.

(k) Except in emergencies, a transfer may be deferred pending the exhaustion of the administrative appeal if the appeal is received verbally or in writing within 30 ***calendar*** days of the proposed transfer and the appellant can demonstrate that there may be irreparable harm to the individual as a result of the transfer. The Division Director shall decide whether or not to defer the transfer.

(l) If a transfer is made on an emergency basis, the appeal may be filed within 30 ***calendar*** days followng the transfer. The individual shall be maintained in the placement to which he or she was transferred during the pending of the appeal.

(m) If an appellant fails to follow the time limits established, the Director's decision is final.

(n) No transcript shall be made of an informal conference.

(o) An initial appeal shall be made in writing to the administrative head of the service component with which the dispute exists.

(p) The administrative head of the component shall review the appeal to ensure that it conforms with the definition herein. If the administrative head determines that the matter does not conform to the definition of appeal, he or she shall review the matter with the Division's Administrative Practice Officer. If the Administrative Practice Officer agrees that the matter does not conform to the definition of an appeal, the administrative head shall set forth the reasons for this conclusion in writing and direct, as applicable, the individual to seek other means of redress.

(q) The appellant shall be notified in writing that the matter does not conform to the definition of an appeal within 10 working days of receipt by the administrative head of the component.

(r) The informal conference may be waived if, prior to the informal conference, the appellant contends that the appeal is a contested matter. The request for waiver shall be forwarded by the administrative head to the Division Director. The Division Director shall review the waiver request and, if he or she concurs that the matter is contested, the informal conference shall be waived. If the matter is determined to be non-contested, the informal conference shall be held.

(s) Evidence may be submitted in informal conferences or administrative reviews. An allegation or conjecture does not constitute evidence.

10:48-1.2 Definitions

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

"Administrative hearing" means a proceeding which is conducted by the Office of Administrative Law.

"Administrative review" means a proceeding which is conducted by a review officer appointed by the Division Director or a paper review as decided by the Division Director following an informal conference concerning a non-contested matter.

"Appeal" means a request made by an authorized person within the established time frames for a review of a disputed decision of the Division which involves eligibility, provision of service or licensure. The decision shall be a specific action or proposed action which is identifiable in terms of date, *[parties involved]* ***"and person(s) making the decision"*** *[and reasons for the decision]*. General complaints or employee grievances shall not be considered appeals.

"Appellant" means the authorized person who may file an appeal with a service component. The authorized person is one of the following:

1. A competent adult receiving services from or applying for services of the Division;
2. The guardian of a minor or incompetent adult who is receiving services from or applying for services of the Division;
3. The proposed guardian of an individual receiving services where that individual has been assessed in need of a guardian but a guardian has not yet been appointed;
4. A licensee of the Division in response to a licensure action; or
5. An authorized representative of a competent adult receiving services, a guardian of a minor, a guardian for an incompetent adult receiving services or a licensee. Written verification from the competent adult or guardian of a minor or incompetent adult authorizing representation shall be required.

"Chairperson" means the individual appointed by the administrative head of the component to hold an informal conference.

"Contested matter" means an *[adversary]* ***adversarial*** proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. (N.J.S.A. 52:14B-2(b), N.J.A.C. 1:1.)

"Evidence" is the means from which inferences may be drawn as a basis of proof in the conduct of contested cases, and includes testimony in the form of opinion and hearsay (N.J.A.C. 1:1-2.1)

"Final decision" means a decision by an agency head that adopts, rejects or modifies an initial decision by an administrative law judge, an initial decision by an administrative law judge that becomes a final decision by operation of N.J.S.A. 52:14B-10 or a decision by an agency head after a hearing conducted in accordance with these rules (N.J.A.C. 1:1-2.1).

"Informal conference" means a meeting in which the respective parties may informally attempt to resolve the issue which is the subject to appeal.

Initial decision" means the administrative law judge's recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing and made a part of the record which is sent to the agency head for a final decision (N.J.A.C. 1:1-2.1).

"Involved parties" means the representative of the appellant, and the service component.

"Office of Administrative Law" (OAL) means an independent unit assigned to the Department of State which has the authority to hear contested matters.

"Recommended Decision" means the initial determination made by a Division review officer. That decision is subject to comments or exceptions by the parties and may be accepted, modified or rejected by the Division Director.

"Service component" means the operational unit of the Division of Developmental Disabilities (for example, Developmental Center, region, bureau, etc.) which has responsibility for the disputed matter.

"Settlement" means an agreement between parties which resolves disputed matters and may end all or part of the case. Various methods may be utilized to help parties reach agreement, including (1) pre-transmission settlement efforts by an agency; (2) pre-transmission settlement efforts by an administrative law judge at the request of an agency; (3) mediation by an administrative law judge; and (4) post-transmission settlement conferences by an administrative law judge (N.J.A.C. 1:1-2.1).

Transfer" means a proposed move from one institution to another, from a community based program to an institution, from an institution to a community based program. (Moves between living units within an institution shall not be considered to be a transfer. Such moves shall be subject to appeal after the move is made).

"Uncontested case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case. The Director, Division of Development Disabilities , may, at his or her discretion with the agreement of the Director of the OAL, transmit a non-contested matter to the OAL (N.J.S.A. 52:14F-5(o); N.J.A.C. 1:1-2.1).

10:48-1.3 Initial step: Informal Conference

(a) Within 10 working days of receipt of the request, an informal conference shall be scheduled by the head of the service component. The informal conference shall be held no more than 20 working days from the receipt of the request. Extension of the conference date beyond 20 working days may only occur upon mutual agreement of both parties.

(b) *[The administrative head of the service component, or the]* ***The*** chairperson, shall prepare a *[statement]* ***report*** specifically identifying the issue(s) under appeal, a summary of the position of both parties and a decision with respect to each issue. The reasons for the decision shall be provided. The summary shall be provided to appellant within 20 working days of the conference. A copy of this summary shall be retained in the individual's file.

1. A copy of the statement shall be provided to the appellant.

(c) If resolution cannot be reached at the informal conference, the appellant may submit a written request to the Director, Division of Development Disabilities, for further appeal within *[10]* ***15*** working days *[of receipt]* of the written summary. The request shall include the following:

1. The name, address and telephone number of the appellant;

2. The name and address of the person with developmental disabilities (if different from appellant);

3. The appellant's relationship to the person with developmental disabilities; and

4. A brief statement of the issue under appeal; witnesses, if any to be called; and reference to the law, rule, regulation, policy or procedure alleged to be violated, if applicable.

(d) Representation and procedure requirements are as follows:

1. Neither the appellant nor the service component designee shall have legal representation at the Informal Conference.

2. Only those persons who have direct knowledge of the issues involved shall be admitted.

3. The Rules of Evidence shall not be strictly enforced.

4. No transcripts of the proceedings shall be made.

(e) Failure to file an appeal within the prescribed time limits shall render the agency action final.

10:48-1.4 Final step: Administrative Review or Administrative Hearing

(a) Should resolution not be possible at the informal conference level, the appellant may submit a written request to the Director, Division of Developmental Disabilities, for administrative appeal.

1. Written request for administrative appeal shall be made within 15 *[calendar]* ***working*** days *[of the mailing of the written response]* ***from the date on the written summary***.

2. If the issue being appealed is thought to be a "contested matter" ***by the appellant*** and the appellant elects to waive the Informal Conference, the written request ***for an appeal*** shall be made within 15 calendar days of the date the head of the service component wa: notified of the *[initial step waiver]* ***waiver of the informal conference***.

3. The request for administrative appeal shall contain the name address and telephone number of the appellant; name and addres: of the client (if different from appellant); the appellant's relationshi to client; the date of the complaint; a brief statement of the com plaint; witnesses, if any to be called; and reference to the law, rule regulation, policy or procedure alleged to be violated, if applicable

(b) The Director, Division of Developmental Disabilities or his o: her designee shall review the complaint and determine if it is a contested or non-contested matter.

10:48-1.5 Contested cases

(a) Those matters determined to be contested shall be referred t the Office of Administrative Law (OAL) for a hearing, in accordanc with the Administrative Procedure Act at N.J.S.A. 52:14B-2(b) an the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

1. While contested cases are being prepared for transmittal t OAL, further efforts may be made to resolve the issue informally

2. The Director, Division of Developmental Disabilities may, a his or her discretion with the agreement of the Director of the OAL transmit a non-contested matter to the OAL (N.J.S.A. 52:14F-5(o))

(b)-(c) (No change)

(d) The Director shall notify the appellant that a matter has beer transmitted to OAL.

10:48-1.6 Non-contested cases

(a) If the matter is determined to be non-contested, the Directo shall offer an administrative review conference with the parties pres ent or a paper review without the parties appearing. The Divisior Director shall appoint an administrative review officer.

(b) Administrative paper review requirements are as follows:

1. Each party shall submit written arguments supporting their po sition to the review officer within 20 calendar days of ***the written*** notification of the paper review. Evidence may also be provided.

2. The Rules of Evidence shall be relaxed to include hearsay. I is also permissible to accept a written statement of an individual int evidence instead of an affidavit.

3. Discovery shall be limited to the client record as defined ir N.J.A.C. 10:41-2.

4. A written decision shall be forwarded to the involved partie: within 20 working days of the receipt of both arguments. The writter decision shall set forth the reasons for conducting a paper review This shall be considered the Recommended Decision.

5. Written comments, objections or exceptions to the Rec ommended Decision may be made by either party and be sent to th Division Director within 10 working days from the date of the Rec ommended Decision.

6. After review of the Recommended Decision and any comments objections or exceptions, the Division Director shall issue a Fina Decision in writing, within 20 working days of the close of th comment period.

7. Upon issuance, the Final Decision shall be sent to the partie: with notice that any further appeal must be made to the Appellat Division of the Superior Court of New Jersey.

(c) Administrative review conference requirements are as follows

1. An administrative review conference shall be scheduled withir 20 working days of receipt of the appeal. Adjournments may b granted by the Division Director for good and valid reason.

2. The appellant may be represented by attorney or spokesperson and may present documentation and such witnesses as have knowl edge of the issues involved.

3. The service component shall be represented by a person desig nated by the administrative head of the component and may produce documentation and such witnesses as have direct knowledge of th issues involved.

4. A verbatim tape recording of the proceeding shall be made. Th party requesting a written transcript shall bear the costs of transcrip tion and shall provide copies to the other party and review office at no cost.

5. The Rules of Evidence shall be relaxed to include hearsay. It is also permissible to accept a written statement by an individual if the individual is not present at the administrative review.

6. Discovery shall be limited to the client record as defined in N.J.A.C. 10:41-2.

7. The administrative review conference shall adhere to the following format:

i. An opening statement by each party;

ii. The presentation of testimony and evidence. There shall be the opportunity for cross examination;

iii. Rebuttal of testimony and evidence. There shall be the opportunity for cross examination; and

iv. A summary.

8. The review officer shall render a written decision within 20 working days of the review conference. This shall be considered the Recommended Decision.

9. Written comments, objections or exceptions to the Recommended Decision may be made by either party and be sent to the Division Director within 10 working days from the date of the Recommended Decision.

10. After review of the Recommended Decision and any comments, objections or exceptions, the Division Director shall issue a Final Decision in writing, within 20 working days of the close of the comment period.

11. Upon issuance, the Final Decision shall be sent to the parties with notice that any further appeal must be made to the Appellate Division of the Superior Court of New Jersey.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medicaid Only Manual

Readoption: N.J.A.C. 10:71

Proposed: November 5, 1990 at 22 N.J.R. 3357(a).
Adopted: December 24, 1990, by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: December 24, 1990 as R.1991 d.33, **without change.**

Authority: N.J.S.A. 30:4D-3; 30:4D-7, 7a, b and c.

Effective Date: December 24, 1990.
Expiration Date: December 24, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:71.

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medicaid Only Manual
Medicaid Eligibility

Adopted Amendments: N.J.A.C. 10:71-4.5, 4.6, 5.4, 5.6, and 5.7
Adopted New Rules: N.J.A.C. 10:71-4.8, 4.9, 5.7 and 5.8

Proposed: January 2, 1990 at 22 N.J.R. 7(a).
Adopted: December 24, 1990, by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: December 24, 1990, as R.1991 d.32, **with substantive and technical changes not** requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and **with the amendments to N.J.A.C. 10:71-4.7 not adopted.**

Authority: N.J.S.A. 30:4D-3, 30:4D-6a(4)(a)b(14), 30:4D-7, 7a, b, and c and 1917(c)(2) and (3) of the Social Security Act, codified as 42 U.S.C. 1396p, and 1924 of the Social Security Act, codified as 42 U.S.C. 1396r-5.

Effective Date: January 22, 1991.
Expiration Date: December 24, 1995.

Summary of Public Comments and Agency Responses:
No comments were received.

Summary of Changes Between Proposal and Adoption:

The Division, on its own initiative is revising several provisions of the proposed amendments as follows:

N.J.A.C. 10:71-4.8(a) provides a formula by which the county welfare agency determines the community spouse's share of a couple's total resources when one member of the couple seeks Medicaid coverage for long-term care. As proposed, the community spouse's share is the greater of the $12,000 or one half of the total resources. The formula limits the community spouse's share of the resources to a maximum of $60,000. Section 1924(g) of the Social Security Act (42 U.S.C. 1396r-5) provides that the minimum and maximum figures are subject to annual indexing based on the percentage increase in the consumer price index for all urban consumers. The Health Care Financing Administration has advised that this year's minimum community spouse's share of resources is $12,516 and the maximum is $62,580. The text of the adoption has been modified to reflect this change.

As proposed, N.J.A.C. 10:71-5.7(c) provides that a maintenance deduction from the institutionalized individual's income for the community spouse is authorized only when the community spouse resided with the institutionalized individual immediately prior to the institutionalization. Upon further review of Federal statutory material, it has been determined that the restriction based on living together immediately prior to institutionalization is not legally supportable. Therefore, the text has been modified to specify that a community spouse maintenance allowance may be authorized whether or not the two spouses resided together immediately prior to institutionalization. The impact of this modification is expected to be insignificant.

Relative to the community spouse allowance standard at N.J.A.C. 10:71-5.7(c) and the allowance authorized for other family members, Section 1924(d)(3) of the Social Security Act (42 U.S.C. 1396r-5(d)(3)) provides that the amounts be updated annually based on increases to the official poverty line. Because the poverty line has been increased since this material was proposed, the allowance standards have been revised.

Finally, in the proposal, N.J.A.C. 10:71-4.7, Transfer of resources, contained text that would modify the policy relating to the effect of resource transfer on Medicaid eligibility. The proposed amendments to N.J.A.C. 10:71-4.7 have been superceded by an emergency adoption at 22 N.J.R. 2604(a). The concurrent proposal was adopted at 22 N.J.R. 3372(b). It is that adopted text that is carried forward with this adoption; the proposed amendments are, therefore, not adopted.

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 4. RESOURCES

10:71-4.5 Resource eligibility standards

(a) For eligibility in the Medicaid Only Program, total countable resources are subject to the following limits. (See N.J.A.C. 10:71-4.1(b) regarding definition of resources, N.J.A.C. 10:71-4.2 regarding countable resources, and N.J.A.C. 10:71-4.8 regarding resources of a couple when one member is applying for Medicaid for institutional services.)

1. and 2. (No change.)

(b) and (c) (No change.)

(d) Resource maximum (institutionalized individuals): The resource maximum for an individual in (c) above applies equally to individuals institutionalized in a Title XIX approved facility. Countable resources held in the institution (for example, trust funds, personal needs accounts) together with those held outside the institution, are to be applied toward the resource maximum. If the resource maximum is exceeded, Medicaid eligibility will cease. See also

N.J.A.C. 10:71-4.8 regarding resource eligibility for institutionalized individuals.)

(e) (No change.)

10:71-4.6 Deeming of resources

(a) and (b) (No change.)

(c) Applicant/recipient couple: In the case of an applicant/recipient couple, the total amount of the husband's and wife's combined countable resources shall be applied to the resource maximum for a couple. Such individuals will continue to have resources treated in this manner until they have been separated for one calendar month. At such time, the individuals will be considered to be living alone.

1. If one member of an eligible couple enters a Title XIX institution, only the resources of the institutionalized individual will be counted in the determination of his or her eligibility beginning with the date of admission except as provided in N.J.A.C. 10:71-4.8.

(d) Applicant/recipient living with ineligible spouse: If the applicant/recipient lives with an ineligible spouse, all countable resources of the ineligible spouse are deemed to the applicant/recipient. The value of the total countable resources is compared to the resource maximum for a couple. Such individuals will continue to have resources treated in this manner until they have been separated for one full calendar month. At such time, the individuals will be considered to be living alone.

1. Separation due to institutionalization: If one member of the couple enters a Title XIX institution, only the resources of the institutionalized individual will be counted in the determination of his or her eligibility beginning with the date of admission except as provided in N.J.A.C. 10:71-4.8.

(e) Applicant/recipient unmarried and under 18 years of age, living with parents: If the applicant/recipient is an unmarried child under the age of 18 years of age who lives with his or her parents (including stepparents), the total value of all countable resources in excess of the appropriate parental resource maximum, cited in (e)2 below, shall be applied toward the resource maximum for an individual (see N.J.A.C. 10:71-4.5). A child will be considered to be not living with his or her parents when he or she has ceased living with them for a period of one calendar month.

1. Child not living with parents due to institutionalization: If a physician has certified that the child's duration of stay in a Title XIX facility (or a combination of such facilities) is expected to be 30 consecutive days or more, such child shall be considered to be not living with his/her parents at the time of such certification. In such circumstances, only the child's own countable resources shall be applied to the resource maximum for an individual.

2. and 3. (No change.)

(f) (No change.)

10:71-4.8 Institutional eligibility; resources of a couple

(a) In the determination of resource eligibility for an individual requiring long term care, the county welfare agency shall establish the combined countable resources of a couple as of the first period of continuous institutionalization beginning on or after September 30, 1989. This determination shall be made upon a request for a resource assessment in accordance with N.J.A.C. 10:71-4.9 or at the time of application for Medicaid benefits. The total countable resources of the couple shall include all resources owned by either member of the couple individually or together. The CWA shall establish a share of the resources to be attributed to the community spouse in accordance with this section. (No community spouse's share of resources may be established if the institutionalized individual's current continuous period of institutionalization began at any time before September 30, 1989.)

1. The community spouse's share of the couple's combined countable resources is based on the couple's countable resources as of the first moment of the first day of the month of the current period of institutionalization beginning on or after September 30, 1989 and shall not exceed *[$60,000]* ***$62,580*** unless authorized in 4 or 5 below. The community spouse's share of the couple's resources shall be the greater of:

i. *[$12,000]* ***$12,516***; or

ii. One half of the couple's combined countable resources.

2. In determining the resource eligibility of the institutionalized spouse, the community spouse's share of the resources is subtracted from couple's total combined resources as of the first moment of the first day of the month of application for Medicaid. If the remaining resources are less than or equal to $2,000, the institutionalized spouse is resource eligible. If the remaining resources exceed $2,000, eligibility may not be established.

i. In the case of an individual whose eligibility for institutional care is determined in accordance with the rules applicable for New Jersey Care (see N.J.A.C. 10:72 et seq.), resource eligibility will exist when the couple's combined resources, less the community spouse's share of the resources, are equal to or less than $4,000.

3. To the extent that the community spouse's share of the combined resources are not already owned by the community spouse, the ownership of the community spouse's share of the resources must be transferred to the community spouse within 90 days of a determination of eligibility for institutional Medicaid services. The CWA may extend the transfer period if individual circumstances warrant a longer period to affect the transfer. Resources not transferred by the end of the 90-day period (or extension) shall be counted in the determination of eligibility for the institutionalized individual.

i. Eligibility for the institutionalized individual shall be established pending the actual transfer of the resources if he or she attests, in writing, that he or she intends to transfer the community spouse's share of the resources to the community spouse.

4. If a court of competent jurisdiction has ordered that resources be transferred to the community spouse in an amount higher than that authorized in (a)1 above, the higher court-ordered amount shall be recognized as the community spouse's share. Any resource transferred under such a court order shall not be subject to the resource transfer penalty described at N.J.A.C. 10:71-4.7.

5. If, in accordance with N.J.A.C. 10:71-5.7(d), additional resources have been authorized to be set aside for the community spouse in order to provide for a sufficient income maintenance level, such additional resources are not subject to the limitation in this section on the community spouse's share of the couple's combined resources. Any resource transferred to the community spouse under this provision shall not be subject to the resource transfer provision described at N.J.A.C. 10:71-4.7.

6. For purposes of this section, an institutionalized individual does not include any individual who is not likely to remain in a Title XIX facility for a period of 30 consecutive days. If a physician has not certified that the individual's stay in the facility is expected to be a period of 30 or more consecutive days, that individual's Medicaid eligibility will be determined as if he or she continued to reside in the community until he or she has been in a Title XIX facility (or a combination of Title XIX facilities) for a period of 30 consecutive days.

7. For purposes of this section, a continuous period of institutionalization means 30 consecutive days of institutional care in a medical institution, and/or Medicaid funded home and community-based waiver services. Continuity is broken by absences from the institution for 30 consecutive days or the non-receipt of home or community based services for 30 consecutive days.

8. For purposes of determining the community spouse's share of the couple's resources only, countable resources of a couple shall include all resources not subject to exclusion under N.J.A.C. 10:71-4.4, except that one automobile shall be excluded without regard to the dollar limits set forth at N.J.A.C. 10:71-4.4(b)2 and personal effects and household goods shall be excluded without regard to the dollar limits set forth at N.J.A.C. 10:71-4.4(b)3.

9. In determining retroactive eligibility (the three-month period immediately preceding the month of application) based on the first Medicaid application in a continuous period of institutionalization, the community spouse's share of the resources shall be deducted from the couple's combined total resources. If the institutionalized individual subsequently files another Medicaid application for the same continuous period of institutionalization, retroactive eligibility will be based on all resources actually owned by the institutionalized individual.

0:71-4.9 Resource assessment

(a) At the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989), the institutionalized spouse or the community spouse (or a representative of either spouse) may request an assessment of the couple's total countable resources. The purpose of the assessment is to establish the community spouse's share of the couple's total countable resources (see N.J.A.C. 10:71-4.8(a)).

(b) The county welfare agency shall, upon a request for a resource assessment, advise the requesting parties of the documentation and verification necessary to make the assessment. When the necessary documentation and verification is not submitted to the county welfare agency in a timely manner, the requesting parties shall be advised that the resource assessment cannot be completed. Upon receipt of all relevant documentation of resources from the couple the county welfare agency shall establish the total countable resources of the couple. The county welfare agency shall notify both members of the couple of the total value assigned to their combined countable resources and the community spouse's share of those resources. A copy of the notice shall be retained at the county welfare agency.

1. The county shall complete the resource assessment and notify the requesting parties of its results within 45 calendar days of the request unless third party verification has not been received by the county welfare agency or the requesting parties request a delay.

(c) At the time of providing the couple with a copy of the resource assessment, the county welfare agency shall advise the couple that there is no immediate right to a fair hearing on the county's resource assessment, but that there will be an opportunity to appeal the findings of the assessment when and if the institutionalized spouse applies for Medicaid.

10:71-5.4 Includable income

(a) (No change.)

(b) Countable income: Income remaining after appropriate income exclusions shall be applied toward the applicable income eligibility standard. The applicant's living arrangement affects the method of treatment of income and its relationship to the standards as stated in the variations appearing below.

1. (No change.)

2. Applicant/recipient couple: In the case of an applicant/recipient couple, living together, the total amount of the husband's and wife's countable income shall be combined and applied to the appropriate income eligibility standard for a couple. Such individuals will continue to have their income combined until they have been separated for a period of six months.

i. One member of a couple institutionalized: When one member of an eligible couple is institutionalized and the other remains in the community, no income of the community spouse will be used in the determination of income eligibility beginning in the month of admission into a Title XIX facility.

ii. (No change.)

3. Applicant/recipient living with ineligible spouse: If the applicant/recipient lives with an ineligible spouse, the income of the ineligible spouse is deemed to the applicant/recipient (see N.J.A.C. 10:71-5.5). Such individual's income shall continue to be deemed until the husband and wife have been separated for one month. At such time the individuals will be considered to be living alone and deeming shall cease.

i. Effect of institutionalization: Income of the community spouse shall not be considered in the determination of income eligibility of the institutionalized individual beginning with the month of admission into a Title XIX facility.

4. (No change.)

10:71-5.6 Income eligibility standards

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

(d) Institutional eligibility: For the purpose of the Medicaid Program, Title XIX approved facilities shall include acute care general hospitals, skilled nursing facilities, intermediate care facilities (level A, B, and C) and Title XIX psychiatric hospitals (for persons under the age of 21 and age 65 and over).

1.-3. (No change.)

4. Temporary absence from the institution: Any temporary absence, during which the individual remains a patient of the institution, does not interrupt a continuous stay in the institution.

10:71-5.7 Post-eligibility treatment of income; institutionalized individuals

(a) The amounts specified in (b) through (h) of this section shall be deducted from the income of an institutionalized individual prior to the application of his or her income to the cost of the long term care. These deductions apply only after the individual is determined eligible for Medicaid and shall not be deducted in the determination of income eligibility.

1. Should the total deductions authorized under this section exceed the institutionalized individual's income, no assistance is available from the Medicaid program to make up the deficit. In such circumstances, available funds shall first be used to provide the institutionalized individual with his or her personal needs allowance. Any remaining deductible income may be distributed to the community spouse or other family members as decided by the institutionalized individual, not to exceed the amount authorized under this section for any individual.

2. The deductions authorized in (c) through (e) below for the maintenance of the community spouse and other family members apply only so long as there is a community spouse as defined in (c) below. Deductions for the community spouse and other family members shall cease in the first full-calendar month after the community spouse dies, becomes divorced, or is institutionalized.

(b) A personal needs allowance in the amount of $35.00 shall be deducted from the institutionalized individual's income. In addition, gross income derived from employment that is considered essential toward satisfying the individual's developmental need to achieve a certain amount of independence shall be deducted from the individual's income. The combination of these deductions shall not exceed the amount in Table B for an individual living alone as found at N.J.A.C. 10:71-5.6(c)5.

(c) There shall be deducted from the institutionalized individual's income an amount for the maintenance of the community spouse. Except as specifically provided below, the deduction for the maintenance of the community spouse shall not exceed *[$815.00]* ***$856.00***. For purposes of this section, a community spouse shall be defined as an individual who is legally married to an institutionalized individual under the provisions of State law*[, who resided with the institutionalized individual immediately prior to the institutionalization,]* and who is not himself or herself institutionalized. In arriving at the amount that may be deducted for the maintenance of the community spouse, the deductions authorized by this section shall be reduced by the gross income of the community spouse. The community spouse deduction is authorized only to the extent that the income deducted is actually made available to (or for the benefit of) the community spouse. No amount of the community spouse's maintenance deduction may be retained by the institutionalized individual.

1. If the community spouse's average monthly shelter expenses for his or her principal place of residence exceed *[$244.00]* ***$257.00***, the amount of that excess shall increase the maximum community spouse maintenance deduction. Shelter expenses are limited to rent or mortgage (including principal and interest), taxes and insurance, a utility standard for the individual's utility expenses, and in the case of a condominium or cooperative, the monthly required maintenance charge.

2. A utility allowance shall not be authorized unless the community spouse directly incurs charges for utilities. A community spouse who directly incurs charges for heating fuel (in accordance with food stamp regulations at N.J.A.C. 10:87-5.10(a)5iv) separate and apart from their rent or mortgage payments, shall be entitled to a utility allowance in the amount specified as the "Heating Utility Allowance" at N.J.A.C. 10:87-12.1. If the community spouse does not directly incur heating fuel charges but does directly incur charges for a utility other than telephone, water, sewerage, or garbage collection, a utility allowance in the amount specified as "Standard Utility Allowance" at N.J.A.C. 10:87-12.1 shall be authorized. If the only

direct utility charge incurred by the community spouse separate and apart from the rent or mortgage is the telephone the amount specified at N.J.A.C. 10:87-12.1 as "Uniform Telephone Allowance" shall be added to the community spouse's monthly shelter costs. The telephone allowance shall not be used if either of the above utility allowances have been used because those standard allowances include telephone charges.

(d) When the institutionalized individual's income is insufficient to provide the maximum authorized deduction for the community spouse, either the institutionalized spouse or the community spouse can request a fair hearing in accordance with N.J.A.C. 10:71-8.4. If either member can establish at the fair hearing that the income generated from the community spouse's share of the couple's resources is inadequate to raise the community spouse's income (together with the community spouse maintenance deduction) to the maximum authorized level, additional resources (beyond the community spouse's share as established at N.J.A.C. 10:71-4.8) may be set aside for the community spouse. The amount of resources to be set aside shall be that amount that is determined sufficient to generate sufficient income to raise the community spouse's gross income to the maximum authorized level.

(e) If either the institutionalized spouse or the community spouse is dissatisfied with the determination of the amount of the community spouse maintenance deduction, he or she may request a fair hearing in accordance with N.J.A.C. 10:71-8.4. If it is established at the fair hearing that the community spouse needs income above the amount established by the community spouse maintenance deduction due to exceptional circumstances resulting in financial duress, there shall be substituted for the community spouse maintenance deduction such amount as is necessary to alleviate the financial duress and for so long as directed in the final hearing decision.

(f) If a court has entered an order against an institutionalized spouse for monthly income for the support of a community spouse and the amount of the order is greater than the amount of the community spouse deduction, the amount so ordered shall be used in place of the community spouse deduction.

(g) A family member maintenance deduction shall be calculated for each family member of the institutionalized individual.

1. For purposes of this section, family members must reside with the community spouse and shall be limited to the following persons:

i. Children of either member of the couple who are under the age of 21;

ii. Children over the age of 21 who are claimed as dependents by either member of a couple for tax purposes under the Internal Revenue Code;

iii. Parents of either member of a couple who are claimed as dependents for tax purposes under the Internal Revenue Code as dependents by either spouse; or

iv. A brother or sister (including half-brothers and half-sisters and siblings gained through adoption) of either member of a couple and who are claimed as dependents for tax purposes under the Internal Revenue Code.

2. The family member deduction shall be computed as follows. The family member's gross income shall be substracted from *[$815.00]* ***$856.00***. One-third of the remaining amount shall be the family member deduction for that family member.

(h) If a physician has certified that the individual will be institutionalized for a temporary period only and is likely to return to the residence within six months of the date of institutionalization, a maximum of $150.00 may be deducted from the institutionalized individual's income for the maintenance of his or her home in the community. This deduction shall be limited to the actual costs of such maintenance (for example, mortgage or rent payments, taxes, insurance, and other incidental costs) or $150.00, whichever is less. This deduction may be applied against the individual's income for no longer than six months. This deduction may not be applied if a deduction has been made for the maintenance of a community spouse or other family member residing in that residence.

1. This deduction must be applied to the costs of maintaining the residence and may not be accumulated by the institutionalized individual.

(i) If the institutionalized individual has health insurance coverin himself or herself, the amount of the insurance premiums shall b deducted.

1. If the premium is billed other than monthly, the amount of th premium shall be prorated and deducted accordingly.

2. If the premium covers other individuals in addition to the ir stitutionalized individual, only that portion of the premium a tributable to the institutionalized individual shall be deducted.

10:71-5.8 Eligibility under life care and pay-as-you-go agreemen

(a) In a contractual agreement where the individual has transferre his available assets to the facility in exchange for full medical ca in the institution, the institution has a legal responsibility to provid such care and Medicaid benefits are not payable for the institution care. However, Medicaid eligibility may exist in the following circum stances (see also N.J.A.C. 10:71-5.4(a)13):

1. When it can be determined that no enforceable contract exis (for example, because the facility is financially unable to fulfill i responsibilities under the contract and all terms of the agreement a thus void), the facility has a legal obligation to refund to the indivic ual any assets which remain from the amount assigned at the tim the contract was signed. The individual may be eligible for Medicai Only as long as all other eligibility criteria (including resources) a met.

2. When a contract is not actually rescinded and the individu retains his or her right under the terms of the contract but, whe his or her contract rights for care in the facility are not fully me Medicaid benefits may be available for those medical expenses n being met by this facility if the individual meets eligibility requir ments.

3. When the contractual agreement for care in the facility does n include all of the medical care (for example, is limited to basic roo and board), Medicaid benefits may be available for those medic expenses not covered by the contract as long as all eligibility criter are met.

4. In those contractual situations above in which Medicai eligibility may exist, the value of in-kind room and board is n considered income.

10:71-5.9 (No change in text.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

Home Energy Assistance
Eligibility Requirements; Income Eligibility Guidelines

Adopted Amendments: N.J.A.C. 10:89-2.2 and 2.3

Proposed: November 19, 1990 at 22 N.J.R. 3590(a).
Adopted: December 27, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: December 31, 1990 as R.1991 d.39, **without change.**

Authority: N.J.S.A. 30:4B-2.

Effective Date: January 22, 1991.
Expiration Date: May 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:89-2.2 Eligibility requirements

(a) The household members shall be residents of New Jersey.

1.-2. (No change.)

3. Strikers and households that include striking members are ir eligible for Home Energy Assistance benefits, in accordance wit N.J.A.C. 10:81-3.47(a) and N.J.A.C. 10:87-10.16(a).

4. Illegal aliens are ineligible for Home Energy Assistance benefit In cases where an illegal alien resides within an applicant household the alien must be excluded from the HEA household size. If the illeg alien has monthly income in excess of $268.00, the amount in exce

of $268.00 shall be counted as income to the household, and must be added to all other household income in determining the household's gross monthly income.

5. (No change.)

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

10:89-2.3 Income eligibility

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

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limits
1	$ 785
2	1053
3	1321
4	1589
5	1857
6	2125
7	2393
8	2661
9	2929
10	3197
Each Additional Member	+268

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Organization Rules
Conference Branch; Hearings
Adopted New Rule: N.J.A.C. 18:1-1.8
Adopted Amendments: N.J.A.C. 18:5-8.10, 18:7-13.2, 18:8-5.1, and 5.2, 18:9-6.7, 6.8 and 6.9
Adopted Repeal: N.J.A.C. 18:9-6.10

Proposed: July 2, 1990 at 22 N.J.R. 1995(a).

Adopted: December 17, 1990 by Benjamin J. Redmond, Acting Director, Division of Taxation.

Filed: December 17, 1990 as R.1991 d.23, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:50-1 and 52:14B-3.

Effective Date: January 22, 1991.

Expiration Dates: July 21, 1994, N.J.A.C. 18:1;
March 14, 1994, N.J.A.C. 18:5 and 18:7;
February 24, 1994, N.J.A.C. 18:8;
June 7, 1993, N.J.A.C. 18:9.

Summary of Comments and Agency Responses:

The Division received several comments on the proposed new rule.

COMMENT: Several grammatical changes to N.J.A.C. 18:1-1.8(a) and .8(b) were suggested.

RESPONSE: The Division agreed to these changes.

COMMENT: The commenter suggested that an express statement be made as to the time for appeal from a final determination to the Tax Court.

RESPONSE: The Division refers the commenter to the cross reference to N.J.S.A. 54:51A-14 in the proposal and has added an explicit reference to the 90-day period in the adoption of the rule, for convenience.

COMMENT: The commenter raised a question as to the Director's authority to make a demand for security at an earlier stage than the filing of a complaint in Tax Court.

RESPONSE: An otherwise satisfactory petition would not be rejected if a check for uncontested tax, penalty, and interest did not accompany it. However, collection procedures will be maintained on the noncontested portion of the claim with the possibility of a certificate of debt being filed.

COMMENT: The commenter agreed that the discretion against waiving of penalties would be supported in the case of frivolous or dilatory action by taxpayers.

RESPONSE: The Division appreciates the support.

COMMENT: A second letter from the same commenter emphasized a number of other points. The shortness of the 30-day period was emphasized, but the commenter recognized that the limit was statutory.

RESPONSE: In practice, the Division will notify taxpayers, whose initial submission is in some respect lacking, by letter requesting supplementary information to be submitted within a 20-day period to perfect the filing.

COMMENT: The second letter from the commenter also emphasized the issue of payment of noncontested tax.

RESPONSE: Such payment is not a condition of protest.

COMMENT: The commenter suggested that the legal significance of the dismissal of a protest as invalid be more clearly delineated, in light of the possibility of appealing to the Tax Court.

RESPONSE: If a protest is held invalid, the Division will provide notice to the taxpayer affording taxpayer time to file a complaint in Tax Court. Since the taxpayer is on notice of what is required to be submitted to the Division to perfect its request for hearing, the taxpayer or taxpayer's representative will have in advance a good idea of the adequacy of its own submission and may be governed accordingly by that knowledge.

COMMENT: A second commenter raised some similar concerns, including possible hardship, particularly to out-of-State taxpayers, of the 30-day period.

RESPONSE: The Division intends to implement a procedure by which an interim letter would be forwarded to taxpayers who have not properly perfected a request for hearing, notifying them of the need to perfect the filing.

COMMENT: The commenter suggested that supplemental submissions be allowed 60 or 90 days after the original protest.

RESPONSE: Additional time would be granted for perfecting requests for hearings, as outlined above.

COMMENT: The commenter objected to the requirements of N.J.A.C. 18:1-1.8(b)7, on the ground that there was no reciprocal obligation on the State to produce documentation.

RESPONSE: This requirement should help limit the cryptic protests received by the Division. Since the taxpayer is making the appeal, the statutory burden of justifying the appeal is on the taxpayer.

COMMENT: The commenter questioned the consequences of failing to remit uncontested tax.

RESPONSE: In a particular case, failure to remit would result in a certificate of debt being entered against the taxpayer.

COMMENT: The commenter felt that, where a protest is deemed invalid, the rules should include a provision for prompt notification of the taxpayer.

RESPONSE: The Division will undertake to advise a taxpayer of any inadequacy in a timely fashion. Since the taxpayer is on notice of what is needed, the taxpayer's representative should have in advance a good idea as to the adequacy of its own submission. The Division declined to change the proposal along the lines suggested, since it concluded this was unnecessary.

COMMENT: A commenter asked whether the protest period could be changed.

RESPONSE: If the statutory protest period is changed through new legislation, the Division will amend the rule as appropriate.

COMMENT: A third commenter had similar concerns. First, he commented upon the shortness of the 30-day period of time to file.

RESPONSE: In practice, the Division would allow, through an interim letter, some extra days for an incomplete claim to be perfected as a court would do, even though the Division could not extend the statutory time limit to 45 days, for example, due to statutory constraints.

COMMENT: The commenter raised the issue of what would happen if uncontested amounts were unpaid.

RESPONSE: A properly perfected complaint would not be dismissed if uncontested amounts were not paid. Collection proceedings, such as the issuance of certificates of debt would go forward, however.

COMMENT: The commenter raised some concerns about amending, amplifying or expanding grounds and specific facts.

RESPONSE: The Division will entertain amendments or corrections to particular submissions if additional or more accurate information became available. The purpose of a hearing is to do justice in an informal setting.

COMMENT: A representative of a professional organization also supplied some comments. First, since New Jersey law provides for daily

compounding of interest, some taxpayers may have difficulties in making the calculation.

RESPONSE: Uncontested tax should nevertheless accompany the protest and request for hearing. If a taxpayer cannot compute the interest, it may request that the Hearing Section do so for it. The Hearing Section will then calculate the amount of interest and penalty required to be paid and will advise taxpayer or taxpayer's representative of that amount which should be remitted forthwith.

COMMENT: The commenter suggested that the Division devise a form to meet the requirements of the rule.

RESPONSE: The Division will give further consideration to this suggestion.

Summary of Changes Upon Adoption:

Some stylistic changes were introduced in N.J.A.C. 18:1-1.8(a) and an explicit reference to a 90-day period was added to the same rule, in response to a commenter's suggestion.

Stylistic changes were also added to N.J.A.C. 18:1-1.8(b), as the result of a commenter's suggestions.

On the initiative of the Division, a reference to railroad tax hearings was added to N.J.A.C. 18:1-1.8(f), for the possible convenience of taxpayers.

The Division made clear that failure to pay uncontested amounts which were due would not bar a taxpayer from an administrative hearing, but the Division would proceed to collect such amounts in accordance with applicable law.

N.J.A.C. 18:1-1.8(e) was deleted from the rule, based on further evaluation by the Division.

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

18:1-1.8 Conference Branch

(a) A Conference Branch within the Division of Taxation exists in accordance with N.J.S.A. 54:49-18 to conduct administrative hearings and reviews of findings or assessments of the director. A protest, and a request for hearing, if any, by a taxpayer to the Conference Branch must be made within the time mandated by the appropriate taxing statute***, if any. Unless the appropriate taxing statute provides for a different period within which a protest must be filed, a protest, and a request for hearing, if any, must be made within 30 days of the giving of the notice or the action of the director sought to be reviewed***. *[A protest, and a request for hearing, if any, must generally be made within 30 days of the giving of the notice sought to be reviewed.]* In the case of a petition for a redetermination under the Gross Income Tax Act, *[however,]* the taxpayer may file a petition within 90 days after the mailing of the notice (or 150 days if the notice is addressed to a person outside of the United States) pursuant to N.J.S.A. 54A:9-9(b). The administrative hearing or protest review results in a Final Determination which confirms, modifies or vacates the finding or assessment under review. The Final Determination is then subject to judicial review in the New Jersey Tax Court ***within 90 days of the date of issuance*** pursuant to N.J.S.A. 54:51A-14 and 54A:9-10.

(b) *[When under any applicable law or rule a taxpayer is entitled to a hearing with the Conference Branch, such]* ***Upon the timely filing of a protest and a request for hearing pursuant to (a) above, the*** hearing process shall be commenced with the submission of a written protest statement as defined by this rule and a request for a hearing, if a hearing is desired. A written protest shall be signed by the taxpayer, by the taxpayer's duly authorized officer or duly authorized representative, under oath, and shall contain the following documents, information and payments:

1. The taxpayer's name, address, telephone number and social security or tax identification number;

2. The name, address and telephone number of taxpayer's representative, if any, for the purpose of the protest. In such case, a written power of attorney (Form M-5008) shall be filed with the notice of protest;

3. The type of tax and period(s) under protest;

4. A copy of the notice at issue;

5. The specific amount of tax, penalty, and/or interest under protest and specific amount of tax, penalty, and/or interest uncontested;

6. A statement of grounds upon which the protest is based;

7. The specific facts supporting each ground asserted, and a summary of evidence or documentation to be presented in support of taxpayer's position. (If this requirement cannot be met within the 30 day period, the Division will, upon written request, extend the time for complying with this submission until 30 days prior to the conference date.); and

8. The taxpayer shall remit the entire uncontested amount of the tax, penalty, and interest, if any, that is due.

(c) A submission which, in particular, does not set forth the information in (b)5 and (b)6 above will not be considered a valid protest and will not result in a hearing or review. ***If a taxpayer does not submit a payment under (b)8 above, a hearing will nevertheless be held The Division may, however, in accordance with applicable law, proceed to collect outstanding amounts which are due.***

(d) The filing of any protest shall not abate penalties and interest for nonpayment, nor shall it stay the right of the Director to collect the tax in any manner provided by law, unless the taxpayer shall furnish security of the kind and in the amount satisfactory to the Director.

[(e) If a protest or any filing or act taken by the taxpayer with respect to it is determined by the Director to be frivolous or for the purpose to delay or impede the administration of State tax law, the waiver of penalty and/or interest above the statutory minimum will not be considered.]

*[(f)]*****(e)*** Hearings are scheduled whenever possible by telephone on a mutually acceptable date for both the taxpayer representative and the conferee, who represents the Division. Cancellation are discouraged except in cases that make attendance unavoidable In the event that a cancellation must be granted, the hearing will be rescheduled on the Conference Branch's soonest available date.

*[(g)]*****(f)*** Transfer inheritance tax hearings are held pursuant to N.J.A.C. 18:26-12.5 to 12.10. ***Railroad tax hearings are held pursuant to N.J.A.C. 18:23-11.2 and 11.3.***

*[(h)]*****(g)*** Protests, petitions for redetermination, and request for administrative hearings should be submitted to the Conference Branch, Division of Taxation, University Office Plaza, 363 Quakerbridge Road, CN 269, Trenton, NJ 08646-0269.

18:5-8.10 Protest against assessments

(a) If any taxpayer is aggrieved by any finding or assessment of the Director, within 30 days of the giving of the notice of assessment or finding, the taxpayer may file a protest in writing in the form and manner described in N.J.A.C. 18:1-1.8 and, if desired, request a informal or formal hearing.

(b) (No change.)

18:7-13.2 Hearing; protest

(a) Rules concerning the right of taxpayer to a hearing are:

1. Any taxpayer aggrieved by any finding or assessment of the Director may, within 30 days of the date of the notice of assessment or finding, file a protest in writing, in the form and manner described in N.J.A.C. 18:1-1.8, and may request a hearing;

2. (No change.)

(b) (No change in text.)

18:8-5.1 Protests, hearings; procedures

(a) Any taxpayer aggrieved by any finding or assessment of the Director may, within 30 days of the giving of notice thereof, file a protest in writing in the form and manner described in N.J.A.C 18:1-1.8.

(b) (No change in text.)

18:8-5.2 Appeal

(a) Any aggrieved taxpayer may within 90 days after any final decision, order, finding, assessment or action of the Director made pursuant to the provisions of the Act, appeal therefrom to the Tax Court in accordance with pertinent provisions of the State Tax Uniform Procedure Law (see N.J.S.A. 54:51A-13 et seq.).

:9-6.7 Protests
(a) Any taxpayer aggrieved by any finding or assessment of the rector may within 30 days of receipt of notice thereof file a protest writing, in the form and manner described in N.J.A.C. 18:1-1.8.
(b) (No change in text.)

:9-6.8 Hearing; format
Hearings before the Conference Branch are to be conducted on informal basis, with or without representation on behalf of the xpayer or other party in interest.

:9-6.9 Right to appeal finding of Director
(a) Any aggrieved taxpayer may within 90 days after any decision, der, finding, assessment or action of the Director appeal therefrom the Tax Court in accordance with pertinent provisions of the State x Uniform Procedure Law (see N.J.S.A. 54:51A-13 et seq.).

:9-6.10 (Reserved)

(a)

IVISION OF TAXATION

orporation Business Tax

IC 338(h)(10) Election

dopted Amendments: N.J.A.C. 18:7-11.12, 11.15, 12.1 and 12.3

oposed: July 16, 1990 at 22 N.J.R. 2125(a).
dopted: December 24, 1990 by Benjamin J. Redmond, Acting Director, Division of Taxation.
led: December 26, 1990 as R.1991 d.35, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
uthority: N.J.S.A. 54:10A-27.
fective Date: January 22, 1991.
xpiration Date: March 14, 1994.

ummary of Public Comments and Agency Responses:
No comments received.

ummary of Changes Between Proposal and Adoption:
Upon adoption and in consideration for the internal consistency of the le, the Division is substituting language in N.J.A.C. 18:7-12.1(c) which rifies the Division's position on the filing of a one-day return.

Full text of the adoption follows (additions to proposal indicated boldface with asterisks ***thus***; deletions from proposal indicated brackets with asterisks *[thus]*).

7-11.12 Extension of time to file return; interest and penalty
a)-(f) (No change.)
g) Where taxpayer makes an election on Federal form 8023, it l be granted an extension of time to file a corporation business return until the Federal election is filed, provided that a T-200T has been properly filed in accordance with these rules.
h) (No change in text.)

7-11.15 Consolidated returns
a)-(c) (No change.)
d) For New Jersey purposes, a selling parent in a consolidated up may not exclude gain on the sale of target stock pursuant to deral election under IRC 338(h)(10). Each corporation is required report income on a separate entity basis under N.J.A.C. 7-5.1(c).
e) Where a target corporation recognizes gain as the result of an C 338(h)(10) election, the target reports and pays tax on such gain rsuant to N.J.A.C. 18:7-5.1(a).

7-12.1 Short period returns; when required
a)-(b) (No change.)
c) *[If a corporation is required to file a one-day return for deral purposes in connection with a Federal IRC 338(h)(10) elec- n, the corporation shall also file a one-day return for New Jersey purposes and pay the tax reflected on such return.]* ***A corporation that has elected Federally to utilize the provisions of IRC 338(h)(10) shall be required to file for New Jersey purposes a one-day return under IRC 338 as if the (h)(10) election had not been made Federally.***

18:7-12.3 Short period returns; allocation
(a)-(b) (No change.)
(c) A taxpayer filing a one-day return recognizing gain on a step up in the basis of its assets would use a business allocation factor which would be based upon the property fraction (reflecting the location of the assets) and the receipts fraction (sourced to the location of the assets). There would be no payroll fraction for the short one-day period.

OTHER AGENCIES

(b)

DELAWARE RIVER BASIN COMMISSION

Administrative Manual—Rules of Practice and Procedure

Commission Review of Landfill Projects

Adopted: December 12, 1990 by the Delaware River Basin Commission, Michael F. Catania, Chairman pro tem.
Filed: December 18, 1990 as R.1991 d.26.
Effective Date: December 12, 1990.

Full text of the adoption follows.

NO. 90-14

A RESOLUTION to reconfirm the policies of Resolution No. 69-7 and to amend the Administrative Manual—"Rules of Practice and Procedure."

WHEREAS, Resolution No. 69-7 provides that the Executive Director is directed to negotiate revisions in Administrative Agreements with signatory states so that sanitary landfill projects will be referred to the Commission only in cases where no state-level review and permit system is in effect; where broad regional consequences are anticipated, or where the standards or criteria used in state-level review are not adequate to protect the water of the Basin for the purposes prescribed in the Comprehensive Plan; and

WHEREAS, the Commission staff has consistently followed this policy and has not subjected landfill projects to additional reviews; and

WHEREAS, the Commissioners recently agreed to revisit this policy; and

WHEREAS, Section 1.3 of the Compact specifies (a) intergovernmental cooperation, (b) responsibility of signatory parties and (c) the coordination of efforts and programs of federal, state, and local governments; and

WHEREAS, Section 1.5 states that the Commission is directed to utilize signatory party agencies to the fullest extent it finds feasible and advantageous; and

WHEREAS, each Commissioner is familiar with the enormous resources and effort expended by state agencies on the review and permitting of landfill projects and recognizes that additional review by DRBC staff would generally be redundant; and

WHEREAS, each member state has adopted comprehensive landfill/solid waste disposal regulations and conducts a detailed review of each solid waste project including its impact on surface and ground water quality; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. The policies established in Resolution No. 69-7 concerning the review of sanitary landfill projects by the Commission are reaffirmed and the Executive Director and staff are directed to continue these policies and to implement these polices as adopted.

2. Section 2-3.5(a) of the Administrative Manual, "Rules of Practice and Procedure" is amended as follows:

a. by the addition thereto of the following new paragraph (15):
(15) Landfill projects which may contain organic or liquid wastes that

have a substantial effect on water resources of the Basin, unless, no state-level review and permit system is in effect; broad regional consequences are anticipated; or the standards or criteria used in state level review are not adequate to protect the water of the Basin for the purposes prescribed in the Comprehensive Plan.

b. Existing paragraph (15) is renumbered (16).

3. Section 2-3.5(b) of the Administrative Manual, "Rules of Practice and Procedure" is amended as follows:

a. by the addition thereto of the following new paragraph (15)
(15) Landfills and solid waste disposal facilities affecting the wate resources of the Basin.

b. Existing paragraph (15) is renumbered (16).

4. These amendments become effective immediately.

OFFICE OF ADMINISTRATIVE LAW NOTE: These rules ar not subject to codification and will not appear in the New Jerse Administrative Code.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Notice of Petition to Amend the Regulations Related to the Establishment of Effluent Parameters for New Jersey Pollution Discharge Elimination System Permits.

Petitioner: Association of Environmental Authorities.

Take notice that on December 5, 1990, the Department of Environmental Protection (Department) received a petition for rulemaking concerning the amendment of the regulations related to the establishment of effluent parameters for New Jersey Pollution Discharge Elimination Permits.

The petitioner requests that the Department amend the regulations related to the establishment of effluent parameters at N.J.A.C. 7:9-4.5 et seq., N.J.A.C. 7:9-5 and N.J.A.C. 7:14A to amend effluent limitations and change testing methods concerning New Jersey Pollution Discharge Elimination System Permits.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on December 7, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Blairstown Township, Warren County. The WMP identifies a proposed Lambert Road wastewater treatment facility. The Blair Academy Sewage Treatment Plant (STP) and the North Warren High School STP will be abandoned and incorporated into the sewer service area of the proposed Lambert Road wastewater treatment facility. The WMP also designates an on-site groundwater disposal area. The remainder of the Township will utilize individual subsurface sewage disposal systems.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on December 18, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware Water Quality Management Pla was adopted by the Department. This amendment adopts a Wastewat Management Plan (WMP) for Harmony Township, Warren County. Th WMP identifies two proposed sewage treatment plants (STPs), th Brainards/Buckhorn Creek and Harmony Station STPs, which will di charge to the Delaware River and the Lopatcong Creek STP which wi utilize groundwater discharge. An area along Route 519 in the norther portion of the Township is designated as an on-site groundwater disposa facility area. The remainder of the Township will utilize individu subsurface sewage disposal facilities.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Sussex County Water Quali Management (WQM) Plan has been submitted for approval. This amen ment proposes an on-site groundwater disposal system to serve th proposed Seneca Garden Apartments in Jefferson Township. The pr jected wastewater flow for this facility is 15,400 gallons per day base on a projected population of 154 in 82 apartment units.

This notice is being given to inform the public that a plan amendme has been developed for the Sussex County WQM Plan. All informatic dealing with the aforesaid WQM Plan and the proposed amendment located at the Sussex County Water Resource Management Prograr 55-57 High Street, Newton, New Jersey 07860; and the New Jers Department of Environmental Protection (NJDEP), Division of Wat Resources, Bureau of Water Quality Planning, CN-029, Third Floor, 4(East State Street, Trenton, N.J. 08625. It is available for inspectic between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appoin ment to inspect the documents may be arranged by calling either th Bureau of Water Quality Planning at (609) 633-7026 or the Sussex Coun Water Resource Management Program at (201) 579-0500.

The Sussex County Board of Chosen Freeholders will hold a **publ meeting** on the proposed Sussex County WQM Plan amendment at whi time all interested persons may appear and shall be given an opportuni to be heard. The public meeting will be held on Tuesday, February 2 1991 at 7:30 P.M. in the Freeholder meeting room, County Admini tration Building, Plotts Road, Newton, New Jersey. **Interested perso** may submit written comments on the amendment to Lyn Halliday at th Sussex County Water Resource Management Program address cit above; and Ed Frankel, Bureau of Water Quality Planning, at the NJDE address cited above. All comments must be submitted within 15 da following the public meeting. All comments submitted by interested pe sons in response to this notice, within the time limit, shall be consider by the Sussex County Board of Chosen Freeholders with respect to th amendment request. In addition, if the amendment is adopted by Suss County, the NJDEP must review the amendment prior to final adoptio The comments received in reply to this notice will also be considered b the NJDEP during its review. Sussex County and the NJDEP thereaft may approve and adopt this amendment without further notice.

EMERGENCY ADOPTIONS

ENVIRONMENTAL PROTECTION

(a)

IVISION OF FISH, GAME AND WILDLIFE

urf Clam Management

dopted Emergency Repeal and New Rules and Concurrent Proposed Repeal and New Rules: N.J.A.C. 7:25-12

nergency Repeal and New Rules Adopted and Concurrent Proposed Repeal and New Rules Authorized: December 27, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

ubernatorial Approval (see N.J.S.A. 52:14B-4(c)): January 4, 1991.

nergency Repeal and New Rules Filed: January 4, 1991, as R.1991 d.49.

uthority: N.J.S.A. 13:1B-3, 13:1D-9, 23:2B-9, 23:2B-14, 23:4-52 and 50:2-6.1 through 6.3.

nergency Repeal and New Rules Effective Date: January 4, 1991.

nergency Repeal and New Rules Operative Date: January 6, 1991.

nergency Repeal and New Rules Expiration Date: March 5 , 1991.

EP Docket Number: 001-91-01.

oncurrent Proposal Number: PRN 1991-78.

Submit comments by February 21, 1991 to:

Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, NJ 08625

The repeal and new rules were adopted on an emergency basis and came effective upon acceptance for filing by the Office of Administ-tive Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 10-4.5). Concurrently, the provisions of the emergency repeal and new les are being proposed for readoption in compliance with the normal lemaking requirements of the Administrative Procedure Act, N.J.S.A. :14B-1 et seq. The readopted repeal and new rules become effective on acceptance of the notice of adoption for filing by the Office of lministrative Law (see N.J.A.C. 1:30-4.5(d)), if filed on or prior to the ıergency repeal and new rules expiration date.

ıe agency proposal follows:

Summary

The Department of Environmental Protection is proposing the repeal existing rules and the adoption of new rules to manage the State's shore surf clam resource and industry. The new rules continue the quirement that participants obtain licenses, the limitation on the mber of available licenses, the limitation on harvest to specific fishing nes and areas and establish a seasonal harvest quota. The new rules ow the holders of valid New Jersey surf clam vessel licenses to annually new these surf clam licenses, each license carrying the privilege of rvesting 1/57th of the total New Jersey season quota of surf clams suming no current licenses are retired). Instead of allowing licensees use only one license per vessel, the new rules allow licensees to use to three licenses, and harvest the allocation of up to three licenses, a single vessel. Thus, the holder of more than one surf clam vessel ense would be able to harvest up to 3/57th's of the total season quota one surf clam vessel (assuming, again, no current licenses are re-ned).

The old rules specified a weekly vessel quota. That portion of the ekly quota not harvested in a given week was forever lost to the rvester. Under the new rules, the harvester will be able to make more ective use of his or her seasonal allocation because he or she would t be constrained to harvest each week. Instead, he or she may respond more flexibly to market and weather conditions over the entire season by electing which days he or she wishes to pursue the surf clam resource.

Control methods include weekly harvest reports, the use of sequentially numbered tags on all cages of clams landed, and the requirement for harvesters to call in their fishing days, locations and time and port of landing to the marine enforcement unit. The surf clam vessel license fee and bait clam vessel license fee shall be the minimum allowed pursuant to N.J.S.A. 50:2-6.3. Currently, N.J.S.A. 50:2-6.3 sets the fee at $5.00 per gross ton of harvesting vessel documented or registered by a bona fide New Jersey resident, with a minimum fee of $35.00 per boat. Transfer of licenses and license tags are limited to three transfer actions during the term of the license. Provisions governing bait clam licensing, harvest and reporting remain essentially the same as under the old rules.

Social Impact

No adverse impact will result on members of the industry or on the general public from adoption of these rules. Allowing vessel owners to retire vessels that are costly to repair and often in poor condition, by allowing the use of up to three licenses per vessel, will make New Jersey's surf clam fleet much safer to operate. In the past, some captains have gambled dangerously with unsafe weather conditions or marginally seaworthy vessels to avoid "losing" a week's harvest. Under the new rules this risk will less likely be taken because a trip not taken in one week can be postponed until conditions are more favorable with no loss in seasonal allotment of surf clams.

Economic Impact

The new rules for surf clam management are anticipated to have a beneficial economic impact on members of the surf clam industry allowing the flexibility of harvesting clams anytime during the season when they deem market conditions most favorable. Allowing up to three shares to be fished on one vessel will allow fuel, insurance and other savings not possible with the one vessel-one quota rule.

Environmental Impact

No adverse impact is anticipated from the proposed adoption. The harvest quota limitations in effect since the mid-1980's are continued to assure a continued viable resource.

Regulatory Flexibility Statement

These rules would apply to those persons involved in the harvest of surf clams. It is estimated that all 30 licensees impacted by these rules are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and will be impacted. In order to comply with these rules, the small businesses will have to comply with requirements set forth in the Summary above, but it is unlikely that small businesses will incur any new initial capital costs because of these rules. Annual costs of compliance will be minimal. By allowing the consolidation of vessels and allowing the harvester to elect which days to harvest, costs of compliance with this subchapter should be less than in the past. In developing these rules, the Department has balanced the need to protect the environment against the economic impact of the proposed rule and has determined that to minimize the impact of the rule would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

Full text of the emergency and concurrent proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:25-12.

Full text of the adopted emergency new rules and concurrent proposed new rules follows:

SUBCHAPTER 12. SURF CLAMS

7:25-12.1 Scope and authority

This subchapter constitutes the rules of the Department of Environmental Protection governing the protection, conservation, management and improvement of the surf clam resource and industry in New Jersey.

7:25-12.2 Purpose

The purpose of this subchapter is to regulate the harvest of surf clams from New Jersey waters in order to conserve, protect, manage and improve the surf clam resource and industry. The surf clam harvest regulatory program includes a limitation on the number of

available licenses, a limitation on harvest to specific fishing times and areas, establishment of a seasonal harvest quota and other control methods as may be necessary.

7:25-12.3 Construction

These rules shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1.5, 50:2-6.1 through 50:2-6.3 and 23:2B-14.

7:25-12.4 Severability

If any section, subsection, provision, clause or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the section, subsection, provision, clause, portion or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this subchapter or the application thereof to other persons.

7:25-12.5 Definitions

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

"Approved waters" means waters meeting established sanitary standards for approved shellfish harvesting, as delineated at N.J.A.C. 7:12.

"Bait clams" means surf clams taken from condemned waters, not for human consumption but only for use as bait.

"Bait clam vessel" means a vessel holding a bait clam vessel license issued pursuant to N.J.A.C. 7:25-12.15.

"Bushel" means 1.88 cubic feet of clams within the shell.

"Cage" means a container with a standard unit of measure containing 60 cubic feet (1,700 liters). The outside dimensions of a standard cage generally are three feet (91 cm) wide, four feet (122 cm) long, and five feet (152 cm) high.

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

"Condemned waters" means waters not meeting established sanitary standards for approved shellfish harvesting, including waters designated as Prohibited, Specially Restricted, Seasonal Special Restricted and Seasonal, as delineated at N.J.A.C. 7:12.

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

"Department" means the Department of Environmental Protection.

"Division" means the Division of Fish, Game and Wildlife in the Department of Environmental Protection.

"Fishing trip" means a departure from port, transit to the fishing grounds, fishing and return to port.

"Land" means to transfer the catch of surf clams from any vessel to any land, pier, wharf, dock, or other man-made structure.

"Licensee" means the holder of a surf clam license or a bait clam vessel license or his or her agent.

"Offload" or "offloading" means to separate physically a cage from a vessel.

"Person" includes the captain, owner or other person responsible for the operation of a vessel.

"Season quota" means the total amount of surf clams, excluding bait clams, that may be harvested by all surf clam license holders from State waters during the annual surf clam season.

"Standing stock" means the amount of the surf clam resource in State waters, measured in bushels as determined by surf clam inventories conducted by the Division.

"Surf clams" means the species Mactra solidissima also known as Spisula solidissima. Unless otherwise specified, the term "surf clams" includes bait clams.

"Surf clam vessel" means a vessel equipped to harvest surf clams by means of a dredge or dredges.

"Vessel," in addition to its normal meaning, includes the captain, owner or other person responsible for the operation of a vessel.

7:25-12.6 Applicability

(a) The rules in this subchapter shall apply to all taking, attemping to take, harvesting, or dredging of surf clams, or the participatio therein, in State waters, except the following:

1. Research, inventory or educational activities involving su clams conducted under a certificate issued by the Division pursuar to N.J.S.A. 23:4-52 or a permit issued by the Department pursuar to N.J.S.A. 50:2-6.1 for research, inventory or educational purpose

2. Gathering from beaches of surf clams cast there by the sea, i areas adjacent to approved waters. Such harvest activities are subje to the provisions of N.J.S.A. 50:2-1 through 50:2-5 and 50:4-2, an a clamming license is required therefor as described in N.J.A.C 7:25-8; and

3. Harvest of surf clams for personal consumption and not for sa from areas in approved waters. Such harvest activities are subject t the provisions of N.J.S.A. 50:2-1 through 50:2-5 and 50:4-2, and clamming license is required therefor as described in N.J.A.C. 7:25-

(b) Compliance with this subchapter shall not exempt any perso from compliance with shellfish rules adopted to protect the publ health by the Department, under authority of N.J.S.A. 58:24-1 seq., or by any department of State government or any Feder agency.

7:25-12.7 General control methods

(a) Except as provided at N.J.A.C. 7:25-12.6(a), a person or vess shall not take, attempt to take, harvest, or dredge for surf clam or participate therein, in any State waters without first obtaining surf clam license and harvest tags as described in N.J.A.C. 7:25-12.1 and 7:25-12.14, or bait clam vessel license as described in N.J.A.C 7:25-12.15.

(b) The general methods by which the Department shall contr the harvest of surf clams from State waters are as follows:

1. The captain of a surf clam vessel possessing a surf clam licens or of a licensed bait clam vessel, or his or her designee, shall noti the Department of the intended fishing location of the vessel and tl intended port and time of landing each day it fishes in State water The notification shall be made by calling the Division's Marir Enforcement Unit, Bureau of Law Enforcement, at (609) 748-205 prior to fishing in State waters and prior to change of locatio Changes in port of landing or time of landing must be given fo hours prior to landing.

2. Except for bait purposes as provided in N.J.A.C. 7:25-12.11(e surf clams shall be harvested from State waters daily only betwe 6:00 A.M. and 6:00 P.M. Eastern Standard Time.

3. Any person fishing for surf clams at any time, or who h reported his intention to fish, in State waters shall have the vessel entire harvest for that fishing trip counted as part of the license season allocation of surf clams.

4. A person shall not transfer surf clams from a surf clam vess or bait clam vessel to any other vessel. All surf clams harvested State waters shall be landed in this State. Specific hours of landir may be designated by the Division. A person shall not operate a su clam vessel or bait clam vessel to fish in or land surf clams fro both State and Federal waters on a single fishing trip. A surf cla vessel shall not land any quahogs or surf clams taken from Feder waters during the same fishing trip for which the Division's Marir Enforcement Unit, Bureau of Law Enforcement, has receive notification of intent to use that vessel in State waters to harvest su clams.

5. All surf clams shall be landed in their shells and offloaded cages. All surf clam cages containing surf clams shall be tagged wi tags obtained from the Division before offloading. The tags must l used sequentially as issued. Tags shall not be removed until cag are emptied at the processing plant, at which point the removed ta shall be destroyed and discarded.

6. It shall be unlawful to possess an empty cage to which a t required at (b)5 above is affixed.

7:25-12.8 Season

Except for bait purposes as provided in N.J.A.C. 7:25-12.11, tl annual season for taking surf clams in State waters shall begin October 1 and extend through and including May 31.

:25-12.9 Prohibited fishing areas
(a) The areas in which surf clams may not be taken are as follows:
1. Those waters enclosed within the following descriptions as delineated by the Division by reference to the National Oceanic and tmospheric Administration Nautical Chart 12318 (35th, August 1/84) available for inspection at the Nacote Creek Shellfish Office:
i. From the shore on the bay side of Little Beach, latitude 39 egrees 28.3 minutes N, longitude 74 degrees 19.4 minutes W;
ii. Thence seaward 090.5 degrees T one nautical mile to a point, titude 39 degrees 28.3 minutes N, longitude 74 degrees 17.2 minutes /, LORAN C 9960-X-26958, 9960-Y-43099;
iii. And thence south following the line of the beach one nautical ile offshore to a point, latitude 39 degrees 21.0 minutes N, longitude 4 degrees 23.6 minutes W, LORAN C 9960-X-26983, 9960-Y-43020 enerally marked by a buoy charted as "1" Fl G 4s GONG);
iv. Thence 333 degrees T to latitude 39 degrees 21.5 minutes N, ngitude 74 degrees 23.9 minutes W, LORAN C 9960-X-26986, 960-Y-43026 (generally marked by a buoy charted as R "2" Fl R 5s); and
v. Thence 309 degrees T to the light charted as Fl G 4 sec. 29 . "7" at the end of the southermost jetty in Absecon Inlet, latitude degrees 21.8 minutes N, longitude 74 degrees 24.5 minutes W, ORAN C 9960-X-26990, 9960-Y-43029;
2. Those waters enclosed within the following description, as delineated by the Division by reference to the National Oceanic and tmospheric Administration Nautical Chart 12323 (19th Edition, ovember 15/80), available for inspection at the Nacote Creek ellfish Office:
i. The area off Island Beach from a point on the southern boundary of the area closed for shellfishing by N.J.A.C. 7:12 with latitude degrees 52.9 minutes N, longitude 74 degrees 3.6 minutes W, ORAN C 9960-X-26924, 9960-Y-43357;
ii. Thence south following the line of the beach one nautical mile f shore to a point; latitude 39 degrees 45.9 minutes N, longitude degrees 4.5 minutes W, LORAN C 9960-X-26914, 9960-Y-43283;
iii. Thence to the shore 270 degrees T to the abandoned lighthouse ith a latitude 39 degrees 45.8 minutes N, longitude 74 degrees 6.4 inutes W; and
3. Those areas closed to shellfishing by N.J.A.C. 7:12.

25-12.10 Harvest limitations; surf clam harvest quota
(a) The Commissioner, with the advice of Council, shall establish nually a season quota of between 250,000 and 700,000 bushels of rf clams. The season quota shall be set at approximately 10 percent the State's estimated standing stock of surf clams.
(b) By September 15 of each year the Department shall send notice all license holders by first class mail, and file notice for publication the New Jersey Register, of the season quota for the upcoming rf clam harvest season.
(c) If the Department does not give notice of the season quota for e surf clam harvest season pursuant to (b) above, the season quota r the upcoming season shall be 500,000 bushels.
(d) Each surf clam license allocation shall be 1/57th of the season uota.

25-12.11 Bait clams
(a) A person or vessel shall not take, attempt to take, harvest, or redge for bait clams, or participate therein, in any State waters ithout first obtaining:
1. A bait clam vessel license as provided for at N.J.A.C. 25-12.15; and
2. A special permit for bait clam harvest from the Division of /ater Resources, as provided for at N.J.A.C. 7:12.
(b) Bait clam vessel licensees shall harvest bait clams only from ondemned waters, but not from condemned waters located within e prohibited fishing areas delineated at N.J.A.C. 7:25-12.9(a)1 nd 2.
(c) Bait clam vessel licensees shall report fishing area daily as rovided at N.J.A.C. 7:25-12.7(b)1 and file weekly harvest reports provided at N.J.A.C. 7:25-12.13.
(d) The season for taking bait clams shall extend throughout the ear.
(e) The time for taking bait clams shall be as follows:
1. October 1 through May 31: Daily, between 6:00 A.M. and 6:00 P.M. Eastern Standard Time; and
2. June 1 through September 30: Monday through Saturday, between one half-hour before sunrise (Trenton Time) and 4:00 Eastern Standard Time.
(f) A weekly bait clam vessel quota may be set by the Commissioner with notice by mail to all license holders.
(g) A person shall not operate the identical vessel to take surf clams in the waters of this State for bait purposes and for human consumption on the same day.

7:25-12.12 Landing fees, tags, transfers of tags
(a) Holders of surf clam license shall pay a landing fee of 15 cents ($0.15) for each bushel landed by the purchase of tags to be attached to each 32 bushel cage ($4.80 for each tag). Tags will be available from the Division's Nacote Creek Shellfish Office, Port Republic, New Jersey, in batches of 50 or more tags. Tags provided under this section shall be valid only for the season for which issued.
(b) Bait clam vessel licensees shall pay a landing fee of 15 cents ($0.15) for each bushel of bait clams harvested from the waters of this State at the time of providing to the Division their weekly surf clam harvest report as required at N.J.A.C. 7:25-12.13.
(c) A licensee may transfer part or all of his or her assigned surf clam tags to another licensee, provided that the other licensee meets all statutory and regulatory criteria for licensing, and receives the Department's approval of a notarized statement of transferor's intent to transfer such tags. The statement of intent shall be signed by the transferor, and shall include the respective sequential surf clam tag numbers. Each license holder shall be limited to a maximum of three tag transfer actions during the term of the license. A transfer which would result in an allocation of tags to a single vessel greater than that allowed under three licenses is prohibited and will not be approved by the Department.
(d) For the 1990-91 season, any surf clams harvested during the season prior to adoption of these new rules shall be deducted from the licensee's seasonal allocation under these new rules.

7:25-12.13 Weekly reporting
(a) All surf clam licensees and bait clam vessel licensees shall provide to the Division weekly surf clam harvest reports on forms supplied by the Division. Weekly reports shall include the following:
1. The harvest vessel name and New Jersey surf clam license or bait clam vessel license number;
2. The dates fished and, for each date fished, the fishing time in hours, the numbers of bushels harvested and the number of the New Jersey Inshore Surf Clam Harvest Zone fished;
3. For each surf clam or bait clam landing, the port at which the clams were landed;
4. The name and signature of the captain of the surf clam vessel or bait clam vessel, or the captain's agent, attesting to the validity of the report (see N.J.A.C. 7:25-12.18); and
5. Sequential listing of surf clam tags used.
(b) The week for surf clam and bait clam harvest reporting purposes shall begin on Sunday and run through the following Saturday.
(c) Weekly surf clam bait harvest reports shall be mailed, together with a check or money order for the proper amount of the landing fee, as determined pursuant to N.J.A.C. 7:25-12.12, made payable to the "Treasurer, State of New Jersey," to:

Nacote Creek Shellfish Office
New Jersey Department of Environmental Protection
P.O. Box 418, Route 9
Port Republic, New Jersey 08241

(d) Weekly surf clam harvest and bait clam harvest reports shall be submitted to the Division by Saturday, 6:00 P.M. of the week following the week fished.
(e) If a surf clam vessel or bait clam vessel does not fish in State waters during a given week, the licensee shall provide a weekly report to that effect. If a surf clam licensee has harvested his or her total season allocation, a final report shall be filed to that effect.

(f) The Division will furnish total State surf clam harvest information to all licensees on an annual basis.

(g) Except for the total State surf clam harvest in bushels, information provided on weekly surf clam and bait clam harvest reports is confidential and shall not be available for public inspection.

7:25-12.14 Issuance of surf clam licenses

(a) An applicant for a surf clam license or licenses shall be the bona fide owner of a surf clam vessel or vessels and a resident of New Jersey.

(b) The holder of a valid 1990 New Jersey surf clam vessel license shall be issued, upon proper application, a 1991 season surf clam license, good until June 30, 1992.

(c) No more than three surf clam licenses may be fished by a single license holder on a single surf clam vessel, to be identified at the time of application. The top and sides of the surf clam vessel shall be marked with the New Jersey surf clam license number or numbers in markings at least 18 inches in size, clearly legible and in good repair with no obstruction.

(d) Application for a surf clam license shall be made in person by the vessel owner or agent of the owner to:

Nacote Creek Shellfish Office
Division of Fish, Game and Wildlife
New Jersey Department of Environmental Protection
P.O. Box 418, Route 9
Port Republic, New Jersey 08241
(609) 748-2040

(e) The license year for surf clam licenses shall be July 1 to June 30, except that 1991 surf clam licenses shall take effect January 1, 1991 and expire on June 30, 1992.

(f) A licensee may transfer a surf clam license to a new licensee, provided that the new licensee meets all statutory and regulatory criteria for licensing (including, without limitation, application for a license under (d) above and payment of the fee prohibited in N.J.A.C. 7:25-12.16(a) below), and receives the Department's approval of a notarized statement of transferor's intent to transfer such tags. The statement of intent shall be signed by the transferor. A license may be transferred no more than three times during its term.

(g) A person shall not transfer a surf clam license or surf clam tags while an enforcement action by the Department for violation of this subchapter is pending. An enforcement action is pending against a license holder from the time the Department issues a Summons or Notice of Violation to the license holder until such time as a final legal disposition of the enforcement action has been rendered. If the final legal disposition of the enforcement action requires that a monetary penalty be paid or orders a suspension of the surf clam license, the surf clam license or surf clam tags shall not be transferred until the monetary penalty has been paid or the suspension time has run, whichever is later.

7:25-12.15 Issuance of bait clam vessel licenses

(a) An applicant for a bait clam vessel license shall be the bona fide owner of the bait clam vessel and a resident of New Jersey, as required by N.J.S.A. 50:2-6.1. Applicants shall submit proof of vessel ownership and proof of residency as part of the bait clam vessel license application.

(b) Application for a bait clam vessel license shall be made in person by the bait clam vessel owner or agent of the vessel owner to:

Nacote Creek Shellfish Office
Division of Fish, Game, Wildlife
New Jersey Department of Environmental Protection
P.O. Box 418, Route 9
Port Republic, New Jersey 08241

(c) The license year for bait clam vessel licenses shall be July 1 to June 30 except that the 1991 bait clam vessel license shall not expire until June 30, 1992.

(d) The top and sides of the bait clam vessel shall be marked with the New Jersey bait clam vessel license number in markings at least 18 inches in size, clearly legible and in good repair and with no visual obstruction.

7:25-12.16 Licensing fees

(a) The annual fee for each surf clam license shall be the minimum provided for at N.J.S.A. 50:2-6.3.

1. The fee for the 1991 surf clam license shall be the minimum provided for at N.J.S.A. 50:2-6.3.

(b) The annual fee for a bait clam vessel license shall be the minimum provided for at N.J.S.A. 50:2-6.3.

1. The fee for the 1991 bait clam vessel license shall be the minimum provided for at N.J.S.A. 50:2-6.3.

7:25-12.17 Renewal of surf clam licenses and bait clam vessel licenses

(a) Surf clam licenses and bait clam vessel licenses for 1990 must be renewed, and the license fee paid, on or before January 31, 1991 to be valid through June 30, 1992. Thereafter, surf clam licenses and bait clam vessel licenses shall be renewed annually by payment of the annual license fee on or before the June 30 immediately preceding the license year. If a surf clam licensee has not paid the annual license fee on or before the expiration date, the Department shall retire that surf clam license from the surf clam fishery.

(b) Surf clam license and bait clam vessel license renewal is specifically conditioned on the continuing compliance of the licensee with all the requirements of this subchapter and all statutory criteria for licensing and harvest. The Department shall not renew a surf clam license or a bait clam vessel license for a licensee who, by June 30 has not filed the required weekly reports in a timely fashion, as specified at N.J.A.C. 7:25-12.13, and, in the case of bait clams, paid the required landing fee in a timely fashion, as specified at N.J.A.C. 7:25-12.12, for any part of the preceding license year.

7:25-12.18 Signatories; certification

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

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

(b) Penalties for false swearing or false reporting may include the penalties set forth in N.J.S.A. 2C:28-3 and the penalties set forth in N.J.A.C. 7:25-12.19.

7:25-12.19 Penalties

Violation of any section of this subchapter, or any license or order issued pursuant to it, shall subject the violator to the penalties set forth in the Marine Fisheries Management and Commerical Fisheries Act, N.J.S.A. 23:2B-1 et seq., at N.J.S.A. 23:2B-14. Penalties may include monetary penalties of $100.00 to $3,000 for a first violation and $200.00 to $5,000 for any further violations. Penalties may also include confiscation of any vessel or equipment used in committing a violation, and revocation of any license issued under this subchapter and N.J.S.A. 50:2-6.1 through 50:2-6.3. The Department may compromise and settle any claim for a penalty under this subsection in such amount as in the discretion of the Department may appear appropriate and equitable under all the circumstances.

HEALTH

(a)

OSPITAL REIMBURSEMENT

ocedural and Methodological Regulations

dopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 8:31B

nergency Amendment Adopted and Concurrent Proposed Amendments Authorized: December 18, 1990, by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

ıbernatorial Approval (see N.J.S.A. 52:14B-4(c)): December 17, 1990.

nergency Amendment Filed: December 31, 1990 as R.1991 d.42.

ıthority: N.J.S.A. 26:2H-1 et seq. specifically 26:2H-5b and 266:2H-18d.

ɔncurrent Proposal Number: PRN 1991-67.

nergency Amendment Effective Date: December 31, 1990.

nergency Amendment Operative Date: January 1, 1991.

nergency Amendment Expiration Date: March 1, 1991.

Submit comments by February 1, 1991 to:

Beatrice E. Manning, Ph.D., Director
Reimbursement Systems Development, Evaluation and Research
Room 602, CN 360
Trenton, New Jersey 08625-0360

e agency emergency adoption and concurrent proposal follows:

Summary and Statement of Imminent Peril

The Department of Health adopts this emergency amendment in order make certain changes in N.J.A.C. 8:31B, Hospital Rate Setting Regu- ions. The amendments have been approved by the Health Care Admin- ·ation Board for initial publication on December 17, 1990, as part of arger body of non-emergent regulatory changes designed to bring ancial stability to the state's hospitals and insurers by increasing the ɔspectivity of the rate setting system (see 22 N.J.R. 3724(a)). That tice of proposal, as it concerns the amendments adopted herein on an ergency basis, is hereby republished as a concurrent proposal, and the nment period for such non-concurrently proposed amendments is here- extended to February 1, 1991. Upon final adoption, all will become art of that group of regulations used to determine payment rates over course of the rate year.

The specific regulations are needed on an emergent basis so that hospi- s can implement rates already issued with additional prospective adjust- nts. They will preserve hospitals' financial viability during the interim iod between implementation of conditional rates and final adoption the regulations governing how these rates are set. The additional /ments they authorize will provide hospitals immediate working capi- , which they need acutely. Letters recently received by the Department licate some of the extreme circumstances hospitals are currently ex- iencing. They reveal an inability to "meet vendor and debt service nands and . . . provide a reasonable level of care to our patients" and very precarious position with an array of our vendors." Situations e this clearly constitute imminent peril for the institutions and their ients.

Payers also need prospective rates set once a year, so that monthly ctuations in payment, with concomitant uncertainty and instability, ı be avoided.

Even one more year of the current rules, which have produced 2,000 e appeals in 1990, would pose severe problems for both hospitals and /ers. These numerous annual rate appeals have created a backlog ing back to 1984. Hospitals must wait for appeals to be adjudicated ore any additional dollars flow into the rates. To address this severe eal backlog, the Department and hospitals participated in a voluntary tlement process during November and December of 1990. Absent this ergency rule, new 1991 appeals would be created that could negate s effort, causing future financial instability.

The following list of needed emergency regulations also includes a statement of the purpose of each:

N.J.A.C. 8:31B-3.9: Particular aspects of the rates may be considered interim, but shall be implemented on schedule and remain in effect until final rates are issued.

N.J.A.C. 8:31B-3.11 and **8:31B-3.57**: To reflect the change in focus from numerous appeals to full rate reviews, automatic adjustments to schedules of rates for same day surgery programs will replace appeals to the Hospital Rate Setting Commission.

N.J.A.C. 8:31B-3.24: Indirect patient care costs shall be paid according to peer group average length of stay within each DRG, rather than the current flat payment per admission. Changes in the appeal process, described below, would allow hospitals to appeal indirect costs only in cases of full rate reviews, so the method of payment has been changed to decrease the need for appeals.

N.J.A.C. 8:31B-3.26: Two new update factors, together with three update factors for 1991 only, have been added to hospitals' rates. As defined in this rule, they will provide funds that hospitals need at the beginning of the year, for which they will no longer need to appeal.

N.J.A.C. 8:31B-3.38: The operating margin, as it currently exists, will be replaced by the update factors listed above.

N.J.A.C. 8:31B-3.42: Except in cases of gross inequity, Commission-approved rate changes will be effective in the following rate year. If a hospital undergoes a full rate review rather than implementation of rates, its rates for the previous year shall remain in effect until such time as final rates are issued. For 1991 only, those rates will be increased by the economic factor.

N.J.A.C. 8:31B-3.51: As part of the restructuring of the appeal process, this rule offers a hospital two options upon receipt of its rates for the coming year: implement rates as issued, or request revised rates based on a full rate review. The entire current rule was deleted, and new language was substituted, in order to describe the process of making these choices and implementing the resultant rates.

N.J.A.C. 8:31B-3.52: This rule describes a full rate review, in which all functions of the hospital are considered, including operations, management, and finances. The existing rule is deleted and new language substituted.

N.J.A.C. 8:31B-3.55: Appeal rights for Capital Facilities Formula Allowance have been converted to automatic adjustments under specified conditions.

N.J.A.C. 8:31B-3.58: Statewide legal and clinical appeals will be replaced by an automatic increase for hospitals implementing their rates, and, like all other issues, will be considered as part of a full rate review.

N.J.A.C. 8:31B-3.59: Similarly hospital-specific clinical rate appeals will be considered part of a full rate review.

N.J.A.C. 8:31B-3.63: As a result of the restructuring of the appeal process, certain Commission procedures related to the previous process are now obsolete, and are deleted.

N.J.A.C. 8:31B-3.65: Rate implementation shall take place on January 1 of the rate year, except for the one hospital whose rates do not align with the calendar year. Any adjustments shall occur in the following rate year.

Social Impact

Because of the cash infusions available on January 1, 1991, hospitals will be able to maintain services and level of care. Possible hospital closures will also be avoided. As a result, access to care will be maintained, and patients will benefit.

In addition, payers will be spared unpredictable rates which make budgeting difficult.

Finally, these changes will decrease confusion on the part of patients because billing rates will not fluctuate monthly. The amount billed to patients will have fewer adjustments related to the care of patients in previous years and thus more closely match the resources used by the patient.

Economic Impact

The immediate changes that can be anticipated as a result of the emergency regulations will have a positive impact in New Jersey. For hospitals, the additional cash infusion would become available on January 1, 1991 rather than later in the year or subsequent years, at the conclusion of the regulatory process. Hospitals will have cash available immediately, and problems with vendors will decrease. Planning and budgeting for hospitals and payers will also be easier because payment rates will be known throughout 1991, rather than after mid-March, as

would be the case with implementation according to the usual regulatory timeframe.

These changes will provide predictability for payers who have long indicated their need for certainty in establishing premiums. It is expected that the new system, once fully operational, will result in a predictable and stable rate of change for hospital payments. Since appeals will be adjudicated only in the context of the hospital's **entire** financial situation, there will be a greater incentive for hospitals to optimize internal efficiencies before petitioning for rate increases. Overall savings will be realized by payers in two ways. First, interest expense associated with retrospective adjustments will decrease. Second, since it is expected that only the truly unique hospitals will seek a full rate review, the overhead costs now associated with the preparation and adjudication of numerous hospital rate appeals will be reduced.

Regulatory Flexibility Statement

The proposed amendments apply only to the 85 hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and, therefore, does not fall into the category of small business as defined in Section 2 of New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

8:31B-3.9 Conditional proposal

The Commissioner may issue an otherwise prospective Proposed Schedule of Rates in which particular aspects of the rates are made conditional. Any such aspects shall be specified and, with respect to these aspects, the rate shall be considered interim and may be implemented pursuant to N.J.A.C. 8:31B-3.44 through 3.45. A hospital may [accept] **implement** the rate; however, such [acceptance] **implementation** shall be considered conditional [acceptance and with respect to those aspects shall be appealable by any party under N.J.A.C. 8:31B-3.51 through 3.62] **until final rates are issued.**

8:31B-3.11 Same Day Surgery

(a) (No change.)

(b) Hospitals shall report to the Commissioner in writing the existence, removal or other change in status of same day surgery programs and a description of the type of procedures performed and a list of the affected DRGs no later than November 15 of the year prior to the issuance of the Proposed Schedule of Rates or Adjusted Rate Order. [Hospitals found by the Commissioner to have duly designated programs may petition the Commission for an adjustment to their Schedule of Rates in accordance with N.J.A.C. 8:31B-3.51 through 3.62.]

8:31B-3.24 Reasonable indirect patient care costs

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

(c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) shall be determined for those hospitals that shall receive an initial PCB/**CRB**. Disincentive amounts shall be calculated in the Physician and Teaching Related Centers, **according to N.J.A.C. 8:31B-3.22**. The screening methodology shall compare base year actual cost data. Screens shall not be applied to sales and real estate taxes, outside collection costs, employee health insurance, malpractice insurance, PCC (Phy), EDR (Non-Phy) and OGS. The above indirect costs are not considered volume variable and are therefore included in the Preliminary Cost Base/**Certified Revenue Base** spread to all rates through the use of the overhead mark-up factor.

[1. The following indirect costs shall be equalized and then totaled by peer group: A&G/FIS, PLT and PCC (non-physician). This total cost shall be divided by the peer group adjusted admissions to create the equalized peer group standard unit cost. An adjusted admission is defined as admissions multiplied by total gross revenue divided by inpatient gross revenue. This standard unit cost shall be multiplied by the operating margin of 1.01 as set forth in N.J.A.C. 8:31B-3.38(a)3.

2. The UTC indirect costs are totaled (but not equalized) by peer group, and divided by adjusted admissions to create a peer group (unequalized) standard unit cost. This standard unit cost shall be multiplied by the operating margin of 1.01 as set forth in N.J.A.C 8:31-3.38(a)3.

3. The costs used to calculate these peer group indirect standard shall be the actual base-year costs. The standard shall not be re calculated except for the inclusion of Statewide generic issues affec ing one or more peer groups. If a loss of program accreditation woul result in a hospital's reclassification into a lower peer group, tha change shall be implemented in the rate year following the prograr loss. If as a result of an appeal a hospital moves to a higher pee group, its payment shall change, based on the existing standard un cost of the new peer group into which it moves.

4. The adjusted admissions used to calculate these peer grou standards shall be the base year adjusted admissions.

5. The equalized peer group standard unit cost is equalized usin a hospital's equalization factor, and added to the peer group ur equalized standard unit cost to form a hospital's unequalized indirec standard unit cost.

6. Hospitals that have an overall teaching adjustment factor c 18% or greater, or physical plants older than 10 years, may appea for unit costs that reflect a portion of their own base-year cost: provided their base-year unit costs exceeded the peer group mean b 1.0 standard deviation. Specialty hospitals as recognized in ac cordance with N.J.A.C. 8:31B-3.22(b)5 and 3.24(c)5 may appeal fc unit costs that reflect their own base-year costs. The hospitals makin appeals under these options must also demonstrate that they are we utilized as measured by occupancy rates in the base years and subse quent rate years.]

1. The following indirect costs shall be equalized and then totale by peer group: Administrative and General/Fiscal (A&G/FIS), Plar (PLT), and Patient Care Coordination/non-physician (PCC/non-phys ician). The inpatient portion of this peer group total equalized cost sha be divided by the total patient days to yield a peer group per die amount. For each DRG, a peer group average length of stay shall b calculated. The peer group per diem shall be unequalized by the hospit unequalization factor and multiplied by the DRG specific peer grou average length of stay to derive a DRG-specific payment rate.

2. The Utilities (UTC) indirect costs are totaled (but not equalizec by peer group, and the inpatient portion of these costs divided by th total patient days to derive a peer group standard per diem by DRC The peer group standard per diem shall be multiplied by the peer grou average length of stay by DRG to create a DRG-specific payment rat

3. The costs used to calculate peer group indirect per diem standarc shall be the actual base-year costs. The inpatient portion is determine by total actual indirect costs divided by adjusted admissions multiplie by admissions. The DRG-specific average length of stay shall be calcu lated from base-year length of stay data. Standards so developed sha remain unaffected during the rate period, and no adjustments, mod fications, or changes to the standards shall be made during a rate perio unless so ordered by the Commission.

4. If a change in graduate medical education would result in hospital's reclassification into a different peer group, that change sha be implemented in the rate year following the change.

[7.] **5.** Inpatient indirect costs are volume variable with the excep tion of those cost centers described in this subsection. **These cos shall be reconciled as described in N.J.A.C. 8:31B-3.73.** [Hospita shall be reconciled to inpatient discharges multiplied by the standar rate.] Projected total indirect costs shall be collected during the yea through the use of the overhead mark-up factor. Outpatient indire costs shall remain fixed except for same-day surgery patients. **Outp tient costs are calculated by multiplying the hospital unit cost by th outpatient equivalent cost, defined as the difference between adjuste admissions and admissions.** Same-day surgery indirect costs shall b volume variable, subject to a unit cost which represents the pro ra portion of outpatient indirect costs which were attributable to sam day surgery in the base year. [The Department shall examine ac ditional refinements to the methodology for reimbursement of i direct costs, for possible implementation in the 1990 rate year.

i. As part of an entire reimbursement reform package, the Depar ment shall recognize an operating margin for hospitals. When fu standard reimbursement is in effect, then the phase-in of an operatir margin shall begin.]

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

:31B-3.26 Update factors

(a) (No change.)

(b) Technology Factor: Base-year direct patient care and indirect ıtes shall be multiplied in succeeding years by a technology factor) provide prospective funds to support hospital adoption of quality-ıhancing technologies. The technology factor shall be based on the :ientific and Technological Advancement Allowance recommended ınually to the Secretary of the United States Department of Health ıd Human Services by the Prospective Payment Assessment Com-ission (ProPAC). The factor shall be composed of the proportion f incremental operating costs associated with ProPAC's identified)st-increasing technologies, and ProPAC's allowances for :hnologies not included in the technology-specific projections, less ıe proportion of incremental operating costs of cost-decreasing chnologies identified by ProPAC.

1. (No change.)

2. For each year that a hospital [accepts its rates] **implements its ıtes as initially issued, and does not undergo a full rate review**, the ıtes shall be updated prospectively by the technology factor calcu-ted for that rate year.

(c) Prospective Operating Adjustment: For hospitals not receiving a ıll rate review, an additional two percent of direct and indirect costs ıall be added to their current cost base.

1. The purpose of this adjustment is to compensate hospitals prospec-vely for expenses that may arise subsequent to the base year, including, ıt not limited to, the purchase of equipment, unusual cost increases goods or services used by hospitals, changes in service mix, capital ıprovements, costs of mergers, acquisitions, and consolidations, and)erating costs associated with Certificate of Need.

2. For direct patient care and indirects, if a portion of payment is ısed on standard, this adjustment shall assume 100 percent standard; there is no standard in the rate, it shall be based on 100 percent of e payment rate. The rates thus generated shall be increased by the nount of the prospective operating adjustment, based on base year ılume and case-mix. For 1992 and subsequent years, it shall be based ı actual volume and case-mix.

(d) In lieu of Statewide clinical and legal adjustments, hospitals not :eiving a full rate review shall also have added to their current cost ıses an additional 0.5 percent of direct and indirect costs, calculated ; described in (c)2 above.

(e) For 1991 only, payment for CN-approved psychiatric short-term ıre facility beds shall be in accordance with the Hospital Rate Setting ommission approved methodology for 1990 based on FTE cost per osed bed. The amounts shall be inflated by the appropriate economic :tor as described in (a) above.

(f) For 1991 only, payment for patients in CN-approved child/ lolescent psychiatric units shall be based on average costs for the)spitals reporting rates in base year 1988, inflated by the appropriate :onomic factor as described in (a) above, and resulting in an ap-·opriate DRG adjustment.

(g) For 1991 only, educational costs related to sickle cell disease ıall be based on 1990 annualized Commission-approved adjustments flated by the economic factor as described in (a) above.

(h) Beginning in 1991, on or before July 1 of each year, the DOH, consultation with representatives of hospitals, payers, and other terested parties, may recommend to the Hospital Rate Setting Com-ission other adjustments to hospital rates if it is determined that ıanges in the hospital environment that affect a significant number hospitals have been so extraordinary as to substantially exceed the)date factors described in (a) through (d) above. Taking into account e effectiveness and efficiency of the health care system as a whole, e Commission may approve such adjustments for inclusion in the llowing year's Preliminary Cost Base/Certified Revenue Base.

(i) Once a hospital has had its rates determined by a full rate review, ose rates shall not be increased by any of the update factors described (a) through (h) above. Rates for years subsequent to the full rate view shall be adjusted by annual update factors. If additional full rate views are undergone only update factors for the rate years after the ost recent full rate review shall be used in calculating rates until a :w base year is used.

8:31B-3.38 Derivation from Preliminary Cost Base

(a) Apportionment of full financial elements based on direct costs shall be as follows:

1.-2. (No change.)

3. An operating margin shall be calculated and added to hospital rates as follows:

[i. Standard per unit indirect reimbursement as defined in N.J.A.C. 8:31B-3.24 shall be multiplied by 1.01.]

[ii.] **i.** The standard amount in each DRG shall be multiplied by 1.01 **in rate years 1989, 1990 and 1991. For 1991 and subsequent rate years, the 1 percent operating margin shall be replaced by the 2 percent prospective operating adjustment as described in N.J.A.C. 8:31B-3.26(c). For 1991 only, the 1 percent operating margin that is included in direct standard costs shall be netted from the 2 percent prospective operating adjustment. After that time, the 1 percent operating margin shall be removed from direct standard costs and shall no longer be netted from the prospective operating adjustment. The 1 percent operating margin shall be removed from indirect standards for 1991, and shall therefore not be netted from the prospective operating adjustment for 1991 or beyond.**

(b) Revenue requirements: Definition and calculation:

1. Revenue requirements shall be defined as the Gross Revenue Related to Patient Care estimated to produce New Revenue Related to Patient Care equal to an institution's Preliminary Cost Base as defined in N.J.A.C. 8:31B-3.20. Gross Revenue Related to Patient Care shall be projected by each hospital based upon the hospitals' projections of volumes and projected price increases, uncompensated care, Commission approved [payor] **payer** differentials and [working capital requirements] **prompt payment discounts** for each hospital in order to set payment rates. Appendix IV illustrates the calculation of gross revenue requirements relative to the Preliminary Cost Base for Commission approved deductions from revenue. Once the gross revenue requirements have been established (i.e., Revenue Budget) hospitals shall be required to align charges in direct patient care volume and case-mix as estimated by each hospital as reported on Appendix V.

2. Appendix IV shall be produced for each hospital at the time the Schedule of Rates is issued by the Commission, detailing the relationship of Commission approved gross to net revenue requirements. All approved deductions from revenue shall be shown on Appendix IV at Current Cost Base levels. Hospitals may project increases or decreases in these levels (except for increases in [working capital] **prompt payment discounts**) subject to the Commissioner's review.

3.-4. (No change.)

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

8:31B-3.42 Schedule of rates—effective date

(a) Subject to N.J.A.C. 8:31B-3.71 through 3.86 Reconciliation, all rates issued pursuant to this subchapter, as approved or modified, shall be effective as of January 1[,] of the rate year except for fiscal year hospitals whose rates shall be effective as of the first day of the "fiscal" rate year. However, except where a substantial inequity may result, any [appeal,] adjustment or modification approved by the Commission pursuant to these regulations shall be implemented prospectively [on an interim basis in accordance with N.J.A.C. 8:31B-3.65] **in the following rate year**. For hospitals currently on Chapter 83, rates and charge masters in effect prior to January 1 of the rate year should be adjusted by the [economic factor] **appropriate update factors** until such time as a new Rate Order is issued. The Commission shall notify [payors] **payers** of the hospital's [economic factor adjustment to be applied] **rate adjustments** no less than 10 working days prior to implementation of changes. Any subsequent changes to the Schedule of Rates or mark-up factors shall be effective with discharges as of a particular date.

(b) If a hospital is to receive a full rate review, and does not have Commission approved rates for implementation, that hospital shall continue on the previous schedule of rates until the new rates are issued, effective on the first day of the month following 30 days after the issuance of the rates (see also 8:31B-3.65). For 1991 only, the previous schedule of rates shall be increased by the economic factor.

[8:31B-3.51 Notification appeal and review

(a) All hospitals within 15 working days of receipt of the Proposed Schedule of Rates, shall notify the Commissoner of any calculation errors in the rate schedule. If upon review it is determined by the Commissioner that the error is of substantive value, a revised rate shall be issued to the hospital within 10 working days. If the discrepancy is determined to be substantive and a revised Schedule of Rates is not issued by the Department within 10 working days, notification time frames above shall not become effective until the hospital received a revised Schedule of Rates.

(b) Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing of their decision to:

1. Accept the Certified Revenue Base or Preliminary Cost Base whichever is appropriate: Acceptance is contingent upon approval by the Commission of the Schedule of Rates. Following Commission approval, rates accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. Rates accepted shall include an additional one percent of all direct patient care costs. The amount shall be fixed and included as an indirect cost in the mark-up factor. Rates accepted shall also include an increase to direct patient care and indirect costs equal to the technology factor as described in N.J.A.C. 8:31B-3.26 and the operating margin as described in 8:31B-3.38. Prior to obtaining a Certified Revenue Base, a hospital with an overall direct patient care disincentive shall be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being allowed to accept the Certified Revenue Base. The reduction in its rates shall reflect the hospital's plan to eliminate inefficiencies. A hospital accepting the Schedule of Rates may appeal only the costs associated with the following:

i. Changes in number of residents:

(1) An increase in the number of residents that does not exceed the Statewide number approved by the Commissioner for the 12-month period beginning July 1, 1985, plus or minus subsequent adjustments as approved by the Commission, and is offset corresponding decreases in resident costs in other New Jersey hospitals:

(2) A decrease in the number of approved residency positions caused by the hospital's inability to meet accreditation requirements as specified in N.J.A.C. 8:31B-3.22(b)1 through 3, its inability to hire residents meeting the criteria specified in N.J.A.C. 8:31B-3.22(b)6, or its voluntary reduction of its number of residency positions. In such cases the hospital must demonstrate that a decline in the services needed by the area population shall occur as the result of such reductions. In no case may the amount of revenue appealed for or the amount approved by the Hospital Rates Setting Commission exceed the costs associated with residency positions that were lost. Adjustments shall be limited to a maximum of two rate years.

ii. Statewide legal and clinical appeals as defined in N.J.A.C. 8:31B-3.58.

iii. Capital and MME projects subject to the requirements and limits as defined in N.J.A.C. 8:31B-3.27 and meeting all the following criteria:

(1) The costs result from approved certificates of need;

(2) Capital costs of the hospital do not exceed the applicable statewide limit as defined in N.J.A.C. 8:31B-3.27(a)1vii and viii; and

(3) Major Moveable equipment costs satisfying the Certificate of Need application and review process as defined in N.J.A.C. 8:33-27(a)1 through 3 and the definitions of "major moveable equipment" and "equipment unit" or "equipment systems" as defined in N.J.A.C. 8:33-1.6. Adjustments shall be net of any disincentive. No more than the total disincentive shall be removed for all appeals granted while rates are calculated using the same base-year. Replacement equipment costs are excluded from appeal under this option.

iv. Mergers, acquisitions or consolidations, provided that projected cost savings exceeding the appealed dollars can be demonstrated for one or more subsequent rate years or the Commission determines there is a quantifiable economic benefit to the system as a whole. If required, certificate of need approval must be granted. Adjustments shall be limited to operating costs for a maximum of two years.

v. Capital Facilities Formula Allowances as defined in N.J.A.C 8:31B-3.55(b).

vi. Revenue adjustments as defined in N.J.A.C. 8:31B-3.56.

vii. Physician Compensation Arrangements which are defined a a change in the method of reimbursement of physicians from/t hospital compensation basis to/from a direct billing basis. Chang in compensation due to salary or fee increases and/or the additio of personnel is not appealable for a hospital which has accepted it proposed Schedule of Rates.

viii. Indirect standard unit costs if the criteria in N.J.A.C 8:31B-3.24(c)6 are met.

ix. 1987-1988 Commission-approved continuing adjustments no captured in the base year.

x. Operating costs associated with Certificates of Need provide that:

(1) The costs were submitted by the hospital as part of its CN application as defined in N.J.A.C. 8:33 and as approved by th Commissioner of Health.

(2) The costs are for services added since the base year.

(3) The costs are not associated with a regionalized service a defined in N.J.A.C. 8:31B-3.58(a)2.

(4) In evaluating operating costs related to new technologies, th overall adequacy of the technology factor to cover these costs shal be considered.

2. Not Accept the Certified Revenue Base or Preliminary Cos Base whichever is appropriate: A hospital not accepting the Propose Schedule of Rates or adjusted Rate Order retains the right of appea all issues subject to the guidelines described in (b)2iii below.

i. In evaluating appeals brought under this section, the Com mission shall consider the relative efficiency of the hospital in th Current Cost Base year. The Commission shall examine in detail th degree to which cost increases between the Current Cost Base yea and rate year can be attributed to activities intended to be covere by the update factors.

ii. A hospital not accepting its Proposed Schedule of Rates sha retain the operating margin and economic factor components of th rates. The one percent Accept option bonus and the rate year tech nology factor shall not be included in the rates. If a hospital choose the Accept option in years subsequent to not accepting its rates, th technology factor for the year not accepted shall be included in futur compounding.

iii. Under this option:

(1) Hospitals may not appeal indirect costs that are reimburse on a volume-variable basis except as described in N.J.A.C 8:31B-3.24(c).

(2) Appeals of issues described in sections 8:31B-3.55 through 3.5 are also subject to the criteria described in those sections.

3. Notwithstanding the above, effective for the 1986 Propose Schedule of Rates, hospitals may only appeal under the not accep option for Statewide increases in costs associated with numbers o graduate medical residents in excess of the total number of FTI residents approved by the Commission for reimbursement for th period beginning July 1, 1985, plus or minus subsequent adjustment as approved by the Commission.]

8:31B-3.51 Rate notification, approval, and implementation

(a) Within 30 days of receipt of the Proposed Schedule of Rate issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals sha notify in writing both the Commissioner and the Commission, of thei decision to:

1. Implement rates as initially issued

i. Rates set prospectively in accordance with N.J.A.C. 8:31B-3.2 through 3.38, and approved by the Commission, shall constitute th hospital's Certified Revenue Base or Preliminary Cost Base, whicheve is appropriate, and shall be implemented as set forth in N.J.A.C 8:31B-3.42 through 3.45.

ii. Hospitals electing implementation of rates as initially issued sha have added to their rates a rate year technology factor and a prospectiv operating adjustment of two percent, calculated and implemented a described in N.J.A.C. 8:31B-3.26. Also added shall be 0.5 percent i lieu of statewide clinical and legal adjustments.

ii. Implementation of rates precludes a full rate review (as defined N.J.A.C. 8:31B-3.52), unless initiated by the Department.
v. Within 30 days of hospitals' notification of intent to implement ial rates, the Commission shall take action on the initial rates.
?. Undergo a full rate review and not implement rates as initially ied
. If a hospital elects not to implement its initial rates, it shall receive ther the technology factor, the prospective operating adjustment, the percent adjustment in lieu of statewide clinical and legal adjustments described in N.J.A.C. 8:31B-3.26(b)-(d), nor, for rate years 1992 l subsequently, the economic factor.
i. The hospital shall automatically undergo a full rate review, as ined in N.J.A.C. 8:31B-3.52, that shall include total review of hospi- operations, including but not limited to management structure, ser- e components, efficiency, and finances.
ii. As part of the process of the full rate review thus initiated, the partment shall determine the appropriateness of an adjustment to hospital's Preliminary Cost Base/Certified Revenue Base. This justment shall take the place of all update factors described in J.A.C. 8:31B-3.26.
v. Based on the results of a full rate review, the Department shall ke a recommendation to the Hospital Rate Setting Commission garding the need for a rate adjustment and any related conditions. e Commission shall take action on the rates prior to implementation.
b) Should a hospital fail to notify the Department of its decision hin the alloted time, it shall be assumed to have elected implementa- n of rates as initially issued.

31B-3.52 Submission of exceptions

'a) Within 60 working days of receipt of the Proposed Schedule Rates, hospitals shall submit in writing one copy to the Com- ssion and two copies to the Commissioner, a list of exceptions, :luding Statewide appeals as defined in N.J.A.C. 8:31B-3.58, or- nized pursuant to the subsections immediately below, together with itten documentation concerning all exceptions. Unless otherwise 'ected by the Commission, the Commissioner shall schedule a tailed review to be conducted by the Department not more than working days following receipt of exceptions and documentation.
(b) Exceptions under either option shall be justified by a full esentation of the dollar value of the cost, the dollar value of the nefits and a complete explanation of any other benefits which nnot be given a dollar value. This documentation shall specify each ception, the costs associated with each exception, and the hospital's tionale for the request. Should the hospital fail to submit its appeal ıcument within the allotted time or fail to appeal at the scheduled tailed review on the established date, it shall have forfeited its right appeal and the Commissioner's Proposed Schedule of Rates shall ve been accepted by the hospital.
(c) At the detailed review, the Analyst shall indicate which excep- ›ns are not supported by the sufficient documentation to permit resolution, and the hospital shall be permitted 10 working days in ıich to submit such documentation. Any adjustments to the 'oposed Schedule of Rates shall be proposed to the Commission thin 30 working days. The Analyst may give consideration only documentation submitted pursuant to the deadline set forth im- ediately above in deciding upon any proposed exceptions. Should e hospital pursue any further appeal, the hospital may not submit ›cumentation other than that provided to the Analyst unless the ›spital can demonstrate to the satisfaction of the Commission the istence of good cause for failure to provide the documentation to e Analyst within the deadline set forth above.
(d) Any changes to the Proposed Schedule of Rates which may : approved by the Commission shall be implemented in accordance ith N.J.A.C. 8:31B-3.63 through 3.70, and are subject to the 'ocedures set forth in N.J.A.C. 8:31B-3.71 through 3.86.]

31B-3.52 Full rate review

(a) A full rate review may be initiated by a hospital or by the epartment of Health.
(b) A hospital which believes that the proposed rates are inadequate support operation of an efficient and needed institution may request full rate review. A hospital must submit a request for a full rate review, together with all information required in (d) below, within 30 days of receipt of the proposed Schedule of Rates. The hospital shall submit two copies to the Department of Health, and one to the Hospital Rate Setting Commission.
(c) A full rate review shall consist of an evaluation of the hospital's total operations, including its management, services, and finances in order to assess the adequacy of proposed payment and to determine the reasons for any shortfall. Specific components to be evaluated shall include, but not be limited to financial stability, role of the hospital in relation to identified patient care needs in the area, efficiency of operations, management structure, relationship with affiliated organizations, payment issues, service mix, and management initiatives. Specific areas in which a hospital experiences shortfalls shall be considered only in the context of total operations, including all areas in which revenues exceed costs.
(d) A full rate review shall include, but not be limited to, an evaluation of the following information:
1. Audited financial statements for the hospital and all related entities;
2. Financial ratios;
3. Efficiency indexes;
4. Current budget, income statements, cash flow, and liabilities;
5. Current incentives and disincentives in proposed schedule of rates;
6. Debt structure;
7. Occupancy, case-mix, acuity, and LOS information;
8. Occupancy and services in the surrounding area;
9. Changes in revenue, costs, services;
10. Comparison to appropriate state and national norms; and
11. Analysis of patient care needs in the geographic area.
(e) Based on its assessment using the data listed in (d) above, the Department may propose an adjustment in the Preliminary Cost Base/ Certified Revenue Base for an efficient and needed facility. The adjustment may represent an increase or a decrease in payment, compared to the initial rates. This adjustment shall consider the extent to which any payment shortfall has a significant negative impact on total hospital operations. The Department may use the overspending challenge at N.J.A.C. 8:31B-3.32 in recommending a rate adjustment; it may also make recommendations regarding Certificate of Need restrictions, expense reductions, service composition changes, or any other aspect of hospital operations, and may pursue further review and monitoring of hospital operations as a condition of any recommended adjustment.

8:31B-3.55 Capital facilities

(a) (No change.)
[(b) At any time during the rate period, a hospital may petition the Commission regarding the Capital Facilities Formula Allowance approved in the hospital's Preliminary Cost Base.]
[(c)] **(b)** (No change in text.)
[(d) Under the "Not Accept" option (N.J.A.C. 8:31B-3.51(b)2), a hospital may petition the Commission to include in its Certified Revenue Base or Preliminary Cost Base, whichever is appropriate, the interest expense associated with the purchase of major movable equipment as set forth in N.J.A.C. 8:31B-4.66(e).]

8:31B-3.57 Same Day Surgery

(a) [Hospitals may appeal the reasonableness of their DRG rates due to trim point exclusion of those patients who have undergone same day surgery as defined in N.J.A.C. 8:31B-3.11. Where appropriate, the Commission shall establish a reasonable charge for same day surgical services. The ancillary charges and the Same Day Surgical services constitute the reasonable payment for Same Day Surgical services. The Same Day Surgical charges shall be comprised of an incentive reward for the provision of Same Day surgical services, as approved by the Commission. Additionally, the Commission shall adjust the inpatient DRG cost per case to reflect the effect of those hospitals not performing same day surgery on the standard cost per case.]
[(b)] The Commission or the Commissioner may inquire why hospitals that do not provide same day surgical services are not providing these services and the Commission may make appropriate adjustments to the inpatient DRG rates in such hospitals.

8:31B-3.58 [Statewide legal and clinical appeals] **(Reserved)**

[(a) A Statewide appeal is either a legal appeal or a clinical appeal as defined below:

1. A legal appeal is a request for an adjustment in reimbursement for costs associated with changes in statutes and regulations since the base year. Under the accept option, a hospital must demonstrate that each statutory or regulatory change affects the cost of delivering health care, including reasonable costs of reporting fees related to these statutes or rules, and it must meet a materiality standard of $10,000 per issue. Hospital-specific adjustments shall be considered if the hospital submitted the issue in its rate appeal document and demonstrated reasonable costs meeting the materiality standard. For each rate year, the hospital accepting its rates shall receive a legal appeals adjustment for only those dollars exceeding .1 percent of its direct patient care rates.

2. A clinical rate appeal is a request for adjustment in the non-physician patient care costs resulting from a change in the treatment program or the relative frequency of a medical practice, or the use of new technologies defined as scientific advances in drugs, devices and medical and surgical procedures used in medical care. A statewide clinical appeal must at a minimum be raised by 35 percent of the hospitals or apply to 35 percent of the patients within the affected DRGs, or be associated with an approved Certificate of Need for a regionalized service as defined in planning rules or designated or recognized by the Department in the State Health Plan as a regionalized service. It may be raised under the Accept or Not Accept options in accordance with N.J.A.C. 8:31B-3.51 and 3.52. If the Statewide clinical appeal relates to a new technology, it must:

i. Not be addressed in the technology-specific portion of the technology factor.

ii. Exceed in aggregate the portion of the technology factor that accounts for technologies not included in the technology-specific projections of the Prospective Payment Assessment Commission (ProPAC).

(b) A Statewide legal or clinical appeal that meets the criteria in (a) above shall be submitted by individual hospitals as discrete parts of their rate appeal documents. Additionally, a Statewide clinical appeal may be raised by the Commission on its own motion, the Department of Health or another interested party. Interested parties must raise these issues in writing to the Department and the Hospital Rate Setting Commisson within 60 working days of issuance of the rates.

(c) With recommendations from the Department, the Hospital Rate Setting Commission shall determine which appeals merit consideration as the rate year's statewide legal and clinical appeals. A Statewide clinical appeal shall be evaluated in accordance with N.J.A.C. 8:31B-3.59(b), (c) and (d).]

8:31B-3.59 [Hospital specific clinical rate appeals] **(Reserved)**

[(a) A hospital-specific clinical rate appeal must meet the definitional criteria in N.J.A.C. 8:31B-3.58(a)2 except for the Statewide impact requirements. It may be submitted by a single hospital as part of its rate appeal under the Not Accept option in accordance with N.J.A.C. 8:31B-3.51 and 3.52.

(b) Evaluation of all clinical rate appeals shall consider but not be limited to the following types of information:

1. The DRGs affected;

2. Volume of patients and changes in the frequency of specific procedures or medical practices;

3. Percent of total hospital admissions or patient care costs;

4. Length of stay and inlier/outlier statistics;

5. Patient care costs by cost center;

6. Type of patient population and areas served by the institution;

7. UB-PS patient-specific data for the affected Diagnosis Related Groups;

8. Positive and negative effects of the appeal issues as well as quality outcome measures with justification referenced in the medical literature;

9. Whether the medical practice is experimental or research in nature; and

10. In cases involving new technologies, indications for use; comparative analyses with old procedures; cost per procedure; length of stay impact; cost/benefit report if applicable; institutional resou requirements; and evaluation of patient outcomes.

(c) As part of the evaluation of any clinical rate appeal, the D partment of Health may request further study by a qualified Utiliz tion Review Organization in accordance with N.J.A. 8:31B-3.78(a)1iv.

(d) As part of the evaluation of any clinical rate appeal, the D partment of Health may request a recommendation by the Co missioner's Physician Advisory Committee (CPAC) or another a propriate medical group.]

8:31B-3.63 Commission: Procedures

(a) [Unless otherwise ordered by the Commission within 15 wo ing days from receipt of the notification the proposed Schedule Rates, said rates shall be considered approved for purposes of i plementation. Unless otherwise ordered by the Commission, with 15 working days from receipt of the hospital's notification, the D partment and the institution shall conduct a detailed review regardi all exceptions arising under N.J.A.C. 8:31B-3.51 through 3.62. F lowing the completion of the review the Commissioner shall ma recommendations regarding the settlement, disposition, or lack resolution concerning all exceptions raised, within 85 working da of receipt of exceptions. Determination by the Commission shall made within 45 working days of receipt of the Commissioner's re ommendation.

(b)] [For issues that are common to more than one institutio **Where appropriate**, the Commission may direct that the appellan arguments be consolidated and that the issue be heard by an admin trative law judge. Following issuance of the report of the Admin trative Law Judge, the hospital and the Department shall have days in which to petition the Commission concerning objections the report. Such a petition should state what issues the petition wishes to have reviewed and what relevant facts were not address fully by the **Administrative** Law Judge in reaching his recomme dation. The Commission shall review the petitions in reaching its fin determination, and, at its discretion may recall witnesses from t hospital, the Department of Health, and any other parties involv to hear additional testimony on the issues. Final Determination the Commission on all issues shall be made within 45 days of recei of the recommendations from the **Administrative** Law Judge.

[(c) Final determination on all issues other than those heard a Law Judge shall be made by the Commission after receipt of t recommendations from the Commissioner following the detailed r view. The hospital shall have 10 working days after issuance of t Department's recommendation in which to petition the Commissi concerning its objections to the report. Such a petition should sta what issues the hospital wishes to have reviewed and what releva facts were not addressed fully by the Department in reaching i recommendations. The Commission shall review the petitions reaching its final determination on the documents submitted.

(d)] **(b)** The Commission shall render its final decision within [14 **120** working days of receipt of notification by the appellant, exce for matters referred to an Administrative Law Judge and exce where a hospital fails to submit financial, statistical, or patient info mation required by law, or to fully document its appeal witho demonstrating good cause for its failure to provide the informatio

8:31B-3.65 [Interim adjustment following appeal] **Schedule of Rat Adjustments**

(a) **For 1991** [Rates] **rates** issued pursuant to these regulation except as modified, shall be effective as of January 1 of the rate yea except for fiscal year hospitals whose rates shall be effective as the first day of the "fiscal" rate year. Unless a substantial inequi shall result, adjustments or modifications which may be approv [as a result of appeals determined] during the rate period shall implemented through an appropriate [interim] adjustment to t Schedule of Rates for a given hospital, groups of hospitals, DR or group of DRGs, and shall take effect [in 30 days or on the fir of month following the Commission's Order] **at the beginning of t following rate year**. At the direction of the Commission, the Co missioner shall make an appropriate [interim] adjustment to t Schedules of Rates for affected Diagnosis Related Group(s), indire costs, revenue, or [payor] **payer** adjustments. The hospital(s) sha

ke an appropriate adjustment to its charge master(s), and third :ty [payors] **payers** shall make appropriate adjustments to their :e-mix adjusted periodic intermittent payment. However, where ›propriate, the Commission may order lump sum, pro rata, auto-tic, periodic or deferred adjustments. All adjustments shall be .de prospectively. **(See also N.J.A.C. 8:31B-3.42.)**

(b) (No change.)

HUMAN SERVICES

(a)

VISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

edicaid Only
ow Eligibility Computation Amounts
lopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 10:71-5.4, 5.5, 5.6, and 5.7

ıergency Amendments Adopted and Concurrent Proposed Amendments Authorized: December 19, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.

ıbernatorial Approval (N.J.S.A. 52:14B-4(c)): December 21, 1990.

ıergency Amendments Filed: December 31, 1990 as R.1991 d.37.

ıthority: N.J.S.A. 30:4D-3i(7); a, b, and c; 42 CFR 435.210 and 435.1005; 20 CFR 416.1163 and 416.2025.

ıncurrent Proposal Number: PRN 1991-65.

ıergency Amendments Effective Date: December 31, 1990.

ıergency Amendments Operative Date: January 1, 1991.

ıergency Amendments Expiration Date: March 1, 1991.

Submit comments and inquiries by February 21, 1991 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, New Jersey 08625-0712

These amendments were adopted on an emergency basis and became ective upon acceptance for filing by the Office of Administrative Law e N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concur-ıtly, the provisions of these emergency amendments are being proposed · readoption in compliance with the normal rulemaking requirements the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The ıdopted amendments become effective upon the acceptance for filing the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if such ng occurs on or before the emergency expiration date.

e agency emergency adoption and concurrent proposal follow:

Summary

The amendments to N.J.A.C. 10:71 increase the Medicaid Only gibility computation amounts at N.J.A.C. 10:71-5.4(a)12, 5.5(g) and '(e) and the income eligibility standards at N.J.A.C. 10:71-5.6(c)5. The ıendments align Medicaid Only eligibility for the aged, blind, and ıabled with those of the Supplemental Security Income (SSI) program. ction 1902(a) of the Social Security Act requires that Medicaid Only gibility be determined using the same criteria as applies in the SSI ›gram. The revised income eligibility and computation amounts reflect ; 5.4 percent Federal cost-of-living increase in the SSI payment levels ective January 1, 1991. The Medicaid "cap", the income standard plicable for persons in Title XIX long term care facilities, is set at 300 rcent of the Federal SSI benefit (not including any State supplement ıount) for an individual, the maximum level authorized by the Social curity Act. The amendments must be implemented effective January 1991 to maintain compliance with Federal law.

As proposed, two of the income computation figures increase beyond at which would normally occur in a cost-of-living adjustment. The ected figures (at N.J.A.C. 10:71-5.5(g)) pertain to the deeming of the come of an ineligible spouse to an eligible individual when both spouses ide together. The two figures are the eligibility level for residential health care facilities which increases from $729.05 to $1,095.36 and the level used when the couple resides in the household of another which increases from $430.31 to $499.76. These increases are required as a result of a change in Federal regulations at 20 CFR 416.1163 and 20 CFR 416.2025. In the past, the eligibility levels for all spouse-to-spouse deeming situations were based on the Federal SSI benefit rate for a couple and the amount of State supplementation for an individual based on living arrangement. Under the revised Federal requirements, in such deeming situations, the formula must be based on the higher of the state supplementation rates for SSI for an individual or a couple.

Only two living arrangements in New Jersey were affected by the change in Federal regulations. This change is expected to have negligible impact on program eligibility. While the most significant increase is in the living arrangement of residential health care facility, few married couples are living together in the same facility. A somewhat larger number of married couples would be classified as living in the household of another. However, the major controlling factor on eligibility in deeming situations is that, under Federal regulations, eligibility does not exist if the applicant would be ineligible in his or her own right without consideration of the spouse's income. This rule remains unaltered with the regulatory change. Therefore, a married individual residing in a residential health care facility with his or her ineligible spouse is ineligible for Medicaid if his or her own countable income exceeds $557.05. Likewise, if the applicant lives with his or her ineligible spouse in the living arrangement of "living in the household of another", the applicant is ineligible if his or her own countable income exceeds $315.65.

Additionally, language has been modified at N.J.A.C. 10:71-5.6, Table B to reflect that effective October 1, 1990 the designations of skilled nursing facilities and intermediate care facilities were combined into a new classification of nursing facilities with the exception of intermediate care facilities/mental retardation.

Social Impact

The increase in the standard and income computation amounts used in the eligibility process theoretically expands the population of potentially eligible persons. However, based on past experiences with increases in the Medicaid "cap", little, if any, increase in the Medicaid caseload because of these amendments is anticipated.

The Medicaid "cap" income eligibility standard is used to determine eligibility for the Community Care Program for the Elderly and Disabled and other home and community-based waiver programs, as well as for persons in Title XIX long term care facilities. The increase in the "cap" standard will help preserve the eligibility of persons who are receiving a 5.4 percent cost-of-living increase in their Social Security benefits also scheduled for January 1, 1991.

Economic Impact

Past experience with similar increases in these standards has demonstrated that there will be an insignificant economic impact on the public, the State and county agencies administering the program. These increases affect only eligibility for Medicaid and do not result in receipt of cash assistance.

Regulatory Flexibility Statement

The increase in these income standards affects only the eligibility of individuals for Medicaid. Because program eligibility is determined by the State and county governments, these rules have no effect on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, the Department concludes that no regulatory flexibility analysis is necessary.

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

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 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 income in the amount of:

$[148.67]**155.67** for an individual
$[213.00]**223.33** 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	$[193.00]**203.00**	
2. Remaining income amount	Head of Household $[193.00]**203.00**	Receiving Support and Maintenance $[128.67]**135.33**
3. Spouse to Spouse Deeming—Eligibility Levels		
a. Residential Health Care Facility		$[729.05]**1,095.05**
b. Eligible individual living alone with ineligible spouse		$[793.36]**839.36**
c. Living alone or with others		$[610.25]**641.25**
d. Living in the household of another		$[430.31]**499.76**

4. Parental Allowance—Deeming to Children		
Remaining income is:	1 Parent	Parent & Spouse of Parent
a. Earned only	$[772.00]**814.00**	$[1,158.00]**1,220.00**
b. Unearned only	$[386.00]**407.00**	$[579.00]**610.00**
c. Both earned and unearned	$[386.00]**407.00**	$[579.00]**610.00**

10:71-5.6 Income eligibility standards
(a)-(b) (No change.)
(c) Non-institutional living arrangements
1.-4. (No change.)
5. Table B follows:

TABLE B

Variations in Living Arrangements	Medicaid Eligibility Income Standards	
	Individual	Couple
I. Residential Health Care Facility	$[536.05]**557.05**	$[1,053.36]**1,095.36**
II. Living Alone or with Others	$[417.25]**438.25**	$[604.36]**635.36**
III. Living alone with Ineligible Spouse	$[604.36]**635.36**	
IV. Living in the Household of Another	$[301.65]**315.65**	$[479.09]**499.76**
V. Title XIX Approved Facility: $[1,158.00]**1,221.00**† Includes persons in acute general hospitals, [skilled] nursing facilities, intermediate care facilities/**mental retardation** [(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 ali the CWA shall proceed as follows:
1. (No change.)
2. Subtract $[386.00]**407.00** for the sponsor, $[579.00]**610.50** the sponsor if living with his or her spouse, $[772.00]**814.00** for t sponsor if his or her spouse is a co-sponsor.
3. Subtract $[193.00]**203.50** for any other dependent of the spons who is or could be claimed for Federal Income Tax purposes.
4. (No change.)
(f) (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

Service Programs for Aged, Blind, or Disabled Supplemental Security Income Payment Levels

Adopted Emergency Amendment and Concurrent Proposed Amendment: N.J.A.C. 10:83-1.11

Emergency Amendment Adopted and Concurrent Proposed Amendment Authorized: December 13, 1990 by Alan J. Gibb Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): December 27, 1990.

Emergency Amendment Filed: December 31, 1990 as R.1991 d.38.

Authority: N.J.S.A. 44:7-87 and Section 1618(a) of the Social Security Act.

Concurrent Proposal Number: PRN 1991-66.

Emergency Amendment Effective Date: December 31, 1990.

Emergency Amendment Operative Date: January 1, 1991.

Emergency Amendment Expiration Date: March 1, 1991.

Submit comments and inquiries by February 21, 1991 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and becai effective upon acceptance for filing by the Office of Administrative L (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Conc rently, the provisions of this emergency amendment are being propos for readoption in compliance with the normal rulemaking requireme of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. T readopted rule becomes effective upon acceptance for filing by the Off of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed on or bef the emergency expiration date.

The agency emergency adoption and concurrent proposal follows.

Summary

Section 1618(a) of the Social Security Act requires that any st providing a Supplemental Security Income (SSI) supplement to "pa through" to SSI recipients the full amount of any Federal cost-of-livi adjustment (COLA) or, if it chooses to pass along the increase to cert classifications of recipients selectively, it must maintain the level of st expenditures during the current year, at a minimum, to the level perienced during the preceding year. New Jersey has chosen to "pa through" to eligible SSI recipients the full amount of the 5.4 perce Federal cost-of-living increase effective January 1, 1991.

The 1990 maximum monthly payment for recipients living in a pub general hospital or long term health care facility were erroneously pu lished last year as $45.00 for an individual and $90.00 for a couple. Thc amounts are being revised to reflect the correct payments issued by t Social Security Administration to such recipients which are $40.00 f an individual and $80.00 for a couple.

Social Impact

The proposed amendment provides for an increase in payment lev to eligible low-income aged, blind, and disabled individuals. The increa will enable such persons to maintain a measure of parity with the i creased cost of living.

Economic Impact

The increase in State expenditures over existing levels is estimated to $483,350 through the end of calendar year 1991. Increased cost to nty government is estimated at $69,050 for the first six months of ndar year 1991. Beginning July 1, 1991, the State is assuming 100 cent of the SSI State supplement costs pursuant to P.L. 1990, c.66. s amendment will not impact administratively on the Department or nty governments as the SSI program is administered by the Social urity Administration.

Regulatory Flexibility Statement

This amendment has been revised with regard to the Regulatory Flexity Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no report-, recordkeeping or other compliance requirements on small businesses; refore, a regulatory flexibility analysis is not required. The rules govern ublic assistance program designed to certify eligibility for the Supmental Security Income program to a low-income population by a ernmental agency rather than a private business establishment.

Full text of the emergency adoption and concurrent proposal fols (additions indicated in boldface **thus**; deletions indicated in ckets [thus]):

83-1.11 New Jersey Supplemental Security Income payment levels

a) New Jersey Supplemental Security Income payment levels are follows:

Living Arrangement Categories	Payment Level [1/1/90] 1/1/91
Eligible Couple	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	[$90/579.00†] **$80/610.00†**
Residential Health Care Facilities and certain residential facilities for children and adults	[$1053.36] **$1095.36**
Living Alone or with Others	[$604.36] **$635.36**
Living in Household of Another, Receiving Support and Maintenance	[$479.09] **$499.76**
Eligible Individual	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	[$45/386.00†] **$40/407.00†**
Residential Health Care Facilities and certain residential facilities for children and adults	[$536.05] **$557.05**
Living Alone or with Others	[$417.25] **$438.25**
Living with Ineligible Spouse (No other individuals in household)	[$604.36] **$635.36**
Living in Household of Another, Receiving Support and Maintenance	[$301.65] **$315.65**

†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.

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 propos in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in tl 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 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 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 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 fi 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 tl Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that y have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the December 3, 1990 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 one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubn 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 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 propos rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequent 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 propos 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 t year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 19

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopt 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 Coc 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 iss of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT NOVEMBER 19, 1990

NEXT UPDATE: SUPPLEMENT DECEMBER 17, 1990

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
N.J.R. 89 and 272	January 16, 1990	22 N.J.R. 2203 and 2386	August 6, 1990
N.J.R. 273 and 584	February 5, 1990	22 N.J.R. 2387 and 2622	August 20, 1990
N.J.R. 585 and 686	February 20, 1990	22 N.J.R. 2623 and 2860	September 4, 1990
N.J.R. 687 and 884	March 5, 1990	22 N.J.R. 2861 and 3072	September 17, 1990
N.J.R. 885 and 1010	March 19, 1990	22 N.J.R. 3073 and 3182	October 1, 1990
N.J.R. 1011 and 1182	April 2, 1990	22 N.J.R. 3183 and 3274	October 15, 1990
N.J.R. 1183 and 1290	April 16, 1990	22 N.J.R. 3275 and 3420	November 5, 1990
N.J.R. 1291 and 1408	May 7, 1990	22 N.J.R. 3421 and 3606	November 19, 1990
N.J.R. 1409 and 1648	May 21, 1990	22 N.J.R. 3607 and 3666	December 3, 1990
N.J.R. 1649 and 1806	June 4, 1990	22 N.J.R. 3667 and 3896	December 17, 1990
N.J.R. 1807 and 1964	June 18, 1990	23 N.J.R. 1 and 144	January 7, 1991
N.J.R. 1965 and 2062	July 2, 1990	23 N.J.R. 145 and 248	January 22, 1991
N.J.R. 2063 and 2202	July 16, 1990		

.C. TION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
MINISTRATIVE LAW—TITLE 1				
3.2, 14.10	Interlocutory appeal for review of hearing location	22 N.J.R. 3278(a)	R.1991 d.34	23 N.J.R. 194(a)
3.3, 9.6, 12.1, 4.4, 14.7, 14.14, 3.4, 19.2	Scheduling, processing, and conclusion of contested cases	22 N.J.R. 3278(b)		
9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
)-8.1	Transmission of Economic Assistance cases	23 N.J.R. 3(a)		
)-18.2	Economic Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)		
)B-18.2	Medical Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)		
)-14.4	Motor Vehicle cases: failure to appear	22 N.J.R. 3278(b)		
)A-14.1	Lemon Law hearings: failure to appear	22 N.J.R. 3278(b)		
)	Agency rulemaking	22 N.J.R. 3281(a)		
	Most recent update to Title 1: TRANSMITTAL 1990-6 (supplement November 19, 1990)			
RICULTURE—TITLE 2				
1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
)	Plant certification	22 N.J.R. 3285(a)	R.1991 d.28	23 N.J.R. 194(b)
)	Dairy industry rules	22 N.J.R. 2625(a)	R.1990 d.572	22 N.J.R. 3619(a)
)	Retail milk stores	22 N.J.R. 3609(a)		
	Most recent update to Title 2: TRANSMITTAL 1990-9 (supplement November 19, 1990)			
NKING—TITLE 3				
	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
	General provisions of Department	22 N.J.R. 3425(a)		
4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)		
)-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
)-10.5	Secondary mortgage licensees	22 N.J.R. 2868(a)	R.1990 d.603	22 N.J.R. 3619(b)
)	Savings and loan associations	22 N.J.R. 3428(a)	R.1991 d.41	23 N.J.R. 205(a)
)-1.1–1.4, 1.6, 1.7, .8	Savings and loan associations: audit requirements	22 N.J.R. 1968(a)		
)-1.5	Secondary mortgage licensees	22 N.J.R. 2868(a)	R.1990 d.603	22 N.J.R. 3619(b)
	Most recent update to Title 3: TRANSMITTAL 1990-7 (supplement November 19, 1990)			
/IL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			
RSONNEL—TITLE 4A				
	Most recent update to Title 4A: TRANSMITTAL 1990-5 (supplement November 19, 1990)			
MMUNITY AFFAIRS—TITLE 5				
)-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
)-22.5	Ceiling heights in multiple dwellings	22 N.J.R. 3430(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)	R.1990 d.604	22 N.J.R. 3734(a)
5:19-3.1	Continuing care retirement communities: financial feasibility study for proposed facility	23 N.J.R. 3(b)		
5:23-2.14	Uniform Construction Code: gas utility meters	22 N.J.R. 3609(b)		
5:23-7.13, 7.18	Barrier-free Subcode: parking spaces; platform lifts	22 N.J.R. 2869(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.6	UCC interpretation: casino stools	22 N.J.R. 3610(a)		
5:23-11	Uniform Construction Code: preproposal on indoor air quality subcode	22 N.J.R. 3209(a)		
5:24-1.5	Full plan of property conversion documents	22 N.J.R. 3669(a)		
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)		
5:28	State Housing Code	22 N.J.R. 1456(a)	R.1991 d.18	23 N.J.R. 57(a)
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
5:30-6.1	Local Finance Board: address correction	_____	_____	23 N.J.R. 57(b)
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)	R.1990 d.595	22 N.J.R. 3639(a)
5:34	Local public contracts	22 N.J.R. 724(a)	R.1990 d.595	22 N.J.R. 3639(a)
5:34-4.2	Local public contracts: administrative correction	_____	_____	23 N.J.R. 57(b)
5:37	Municipal, county and authority employees deferred compensation programs	22 N.J.R. 3076(a)	R.1991 d.19	23 N.J.R. 57(c)
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)		
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 3670(a)		
5:91	Council on Affordable Housing: procedural rules	22 N.J.R. 3610(b)		
5:92	Council on Affordable Housing: substantive rules	22 N.J.R. 3671(a)		
5:92-7.1(b)	Council on Affordable Housing: notice of invalidation of 1,000 unit cap	_____	_____	23 N.J.R. 58(a)
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: extension of comment period regarding central air conditioning in income-qualified units	22 N.J.R. 1975(a)		

Most recent update to Title 5: TRANSMITTAL 1990-11 (supplement November 19, 1990)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)

EDUCATION—TITLE 6

6:3-7	Education of homeless children and youth	22 N.J.R. 2630(a)	R.1990 d.615	22 N.J.R. 3734(b)
6:12	Governor's Teaching Scholars Program	22 N.J.R. 3672(a)		
6:20-1.1, 1.2, 4.1–4.4, 4.7–4.10, 4.11	Attendance and pupil accounting	22 N.J.R. 2633(a)	R.1990 d.610	22 N.J.R. 3736(a)
6:20-2A.11	Accounting in local districts: administrative correction	_____	_____	23 N.J.R. 59(a)
6:22-2.1, 5.2, 5.3, 5.4, 5.5	School Facility Planning Service: administrative corrections	_____	_____	23 N.J.R. 59(b)
6:24	Controversies and disputes	22 N.J.R. 2841(a)		
6:28-3.6, 11.5	Special education: administrative corrections	_____	_____	23 N.J.R. 59(c)

Most recent update to Title 6: TRANSMITTAL 1990-8 (supplement November 19, 1990)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1E-2.2, 4.3, 4.4	Bureau of Discharge Prevention: address correction	_____	_____	23 N.J.R. 60(a)
7:11-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:7-2.3	Waterfront development: administrative correction	_____	_____	23 N.J.R. 60(b)
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:9	Water pollution control	22 N.J.R. 3297(a)		
7:9	Water pollution control: extension of comment period	23 N.J.R. 29(a)		
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir Complex: schedule of rates	22 N.J.R. 3676(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: schedule of rates	22 N.J.R. 3678(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)	R.1990 d.629	22 N.J.R. 3741(a)
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:14A-1.8	NJPDES fee schedule	22 N.J.R. 3679(a)		

A.C. ITION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
3-1.1, 1.3, 1.4, 1.6, .7, 1.9, 2.1–2.4, .6, 2.7, 2.10–2.15, .2–5.5, 5.7, 5.8	Radon laboratory certification program	23 N.J.R. 29(b)		
2A-1.1, 1.2, 1.3, .4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)		
5	Division of Fish, Game, and Wildlife	23 N.J.R. 37(a)		
5-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
5-6	1991-92 Fish Code	22 N.J.R. 2071(a)	R.1990 d.617	22 N.J.R. 3746(a)
5-12	Surf clam management	Emergency (expires 3-5-91)	R.1991 d.49	23 N.J.R. 223(a)
5-18.1	Taking of striped bass	22 N.J.R. 3078(a)	R.1990 d.607	22 N.J.R. 3628(b)
5-18.1	Winter flounder and red drum: size and possession limits	23 N.J.R. 43(a)		
5-18.5	Bait net and gill net regulation	22 N.J.R. 3685(a)		
5-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
5-22.3	Fishing for Atlantic menhaden	22 N.J.R. 3611(a)		
6-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
6-4.3, 4.4, 4.6, 5.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
6-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
6-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
6-8.15, 8.16	Hazardous waste management: ferric dextran and strontium sulfide	23 N.J.R. 44(a)		
6-8.17, App. I	Delisting of hazardous waste at Beecham Laboratories	22 N.J.R. 3430(b)		
6-8.19	Listing of hazardous wastes	22 N.J.R. 3299(a)		
6-8.19	Listing of hazardous waste: extension of comment period	23 N.J.R. 45(a)		
6-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
6-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
6A	Solid waste recycling	22 N.J.R. 3088(a)		
7-3.2	Air Pollution Control: administrative correction	———	———	23 N.J.R. 61(a)
7-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(b)		
8-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)		
8-16.2	Dental radiographic installations: qualified individual	22 N.J.R. 3303(a)		
6-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
6-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
0-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

Most recent update to Title 7: TRANSMITTAL 1990-11 (supplement November 19, 1990)

EALTH—TITLE 8

	Handling of human remains	22 N.J.R. 3458(a)		
8-1.2, 1.5, 1.6, 1.8, 1.18, App. I	Catastrophic Illness in Children Relief Fund program	22 N.J.R. 2669(b)	R.1990 d.619	22 N.J.R. 3754(a)
1A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
1A-1, 2, 5, 7, 9, 10	Standard Hospital Accounting and Rate Evaluation (SHARE) Manual	22 N.J.R. 3460(a)		
1B	Hospital reimbursement	22 N.J.R. 3724(a)		
1B	Hospital rate setting	Emergency (expires 3-1-91)	R.1991 d.42	23 N.J.R. 227(a)
1B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
1C-1.15, 1.18	Residential alcoholism treatment facilities: reimbursement methodology	22 N.J.R. 3468(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:33H-3.3	Long-term care beds for AIDS and HIV-infected patients	Emergency (expires 2-11-91)	R.1991 d.22	23 N.J.R. 124(a)
8:33L-2.4	Home health services for AIDS and HIV-infected patients	Emergency (expires 2-11-91)	R.1991 d.22	23 N.J.R. 124(a)
8:39-19.5, 20.1, 29.1, 29.3, 30.1	Long-term care facilities: Mantoux tuberculin testing of staff; pharmacy organization	22 N.J.R. 3612(a)		
8:41-8.1	Mobile intensive care units: administration of medications	22 N.J.R. 3104(a)	R.1991 d.12	23 N.J.R. 61(b)
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)		
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)		
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:65	Controlled dangerous substances	22 N.J.R. 3190(a)		
8:65-10.5	Controlled substances: administrative correction to Schedule V	————	————	22 N.J.R. 3619(c)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a))	22 N.J.R. 1214(b)	R.1990 d.569	22 N.J.R. 3581(b)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 3582(a))	22 N.J.R. 2501(a)	R.1991 d.29	23 N.J.R. 206(a)
8:71	Interchangeable drug products	22 N.J.R. 3191(a)	R.1991 d.30	23 N.J.R. 206(b)

Most recent update to Title 8: TRANSMITTAL 1990-11 (supplement November 19, 1990)

HIGHER EDUCATION—TITLE 9

9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
9:2-13.9, 13.11	Auxiliary organizations: personnel; purchasing	22 N.J.R. 1656(a)		
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:5	Tuition policies for public institutions	22 N.J.R. 3437(a)		
9:7-4.4	Garden State Scholarships: award amounts	23 N.J.R. 4(a)		
9:11-3	C. Clyde Ferguson Law Scholarship	22 N.J.R. 3439(a)		

Most recent update to Title 9: TRANSMITTAL 1990-7 (supplement November 19, 1990)

HUMAN SERVICES—TITLE 10

10:6	Administrative hearings	22 N.J.R. 3115(a)	R.1991 d.13	23 N.J.R. 61(c)
10:13-2.2	Legal Assistance for Medicare Patients: eligible services	22 N.J.R. 2216(a)		
10:37	Community Mental Health Services Act rules	22 N.J.R. 2915(a)	R.1990 d.591	22 N.J.R. 3620(a)
10:37-6.79	Community mental health programs: disclosure of client records	22 N.J.R. 2216(b)		
10:43-7.1	Determination of need for a guardian	22 N.J.R. 2671(a)		
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:47	Private licensed facilities for mentally retarded	22 N.J.R. 2915(b)	R.1990 d.593	22 N.J.R. 3620(b)
10:48	Developmental Disabilities: appeal procedure; viral hepatitis and legal poisoning control programs	22 N.J.R. 3192(a)	R.1991 d.27	23 N.J.R. 209(b)
10:49-6.6	Recoveries involving county welfare agencies/boards of social services	22 N.J.R. 2672(a)		
10:50	Transportation Services Manual	23 N.J.R. 5(a)		
10:50-1.1, 1.3, 1.4, 1.5, 1.6, 2.6, 3.2, App. I, II	Medicaid transportation services: provider reimbursement	22 N.J.R. 1513(a)	R.1990 d.592	22 N.J.R. 3620(c)
10:50-1.3, 1.4, 1.5, 3.2	Transportation Services Manual: administrative corrections	————	————	23 N.J.R. 63(a)
10:54	Physician's Services Manual	22 N.J.R. 3711(a)		
10:57	Podiatry Services Manual	22 N.J.R. 3439(b)		
10:58	Nurse-Midwifery Services Manual	22 N.J.R. 3613(a)		
10:59	Medical Supplier Manual	22 N.J.R. 3712(a)		
10:60	Home Care Services Manual	22 N.J.R. 3116(a)		
10:61	Independent Laboratory Services Manual	22 N.J.R. 3713(a)		
10:64	Hearing Aid Services Manual	22 N.J.R. 3614(a)		
10:65	Medical Day Care Services Manual	22 N.J.R. 3327(b)		
10:65-2.1	Medical day care reimbursement	22 N.J.R. 3253(a)	R.1990 d.609	22 N.J.R. 3755(a)
10:67	Psychologist's Services Manual	22 N.J.R. 3615(a)		
10:69A-5.3, 6.1, 6.2, 6.10	Pharmaceutical Assistance to Aged and Disabled: eligibility and renewal	22 N.J.R. 2218(a)	R.1990 d.614	22 N.J.R. 3756(a)
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)		
10:71	Medicaid Only Manual	22 N.J.R. 3357(a)	R.1991 d.33	23 N.J.R. 215(a)

.C. TION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
1-4.5–4.9, 5.4, 5, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)	R.1991 d.32	23 N.J.R. 215(b)
1-5.4, 5.5, 5.6, 7	Medicaid Only: new eligibility computation amounts	Emergency (expires 3-1-91)	R.1991 d.37	23 N.J.R. 233(a)
1-1.12, 2.2, 2.8, 9, 2.17, 2.18, 16, 3.18, 3.19, 31, 4.7, 4.10, 16, 4.23, 5.4, 5.6, 9, 6.11, 6.14, 7.1, 4, 7.20, 8.22, 24, 9.1, 10.7, .1, 12.3, 12.4, .6, 12.7, 12.8, .11, 14.1–14.8, .10–14.15, 14.17, .19–14.22, 14.24	Public Assistance Manual: JOBS program	22 N.J.R. 2405(b)	R.1991 d.8	23 N.J.R. 63(b)
1-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
2-1.6, 1.7, 1.8, 1, 2.3, 2.8, 2.9, 10, 2.19, 3.2, 14, 4.1, 4.4, 4.8, 14, 5.1, 5.2, 5.3, 6, 5.7, 5.8, 5.9	Assistance Standards Handbook: JOBS program	22 N.J.R. 2445(a)	R.1991 d.7	23 N.J.R. 93(a)
3-1.11	Supplemental security income payment levels	Emergency (expires 3-1-91)	R.1991 d.38	23 N.J.R. 234(a)
5-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)		
5-4.6	Emergency assistance: public hearing and extension of comment period	22 N.J.R. 2674(a)		
9-2.2, 2.3	Home Energy Assistance: eligibility criteria	22 N.J.R. 3590(a)	R.1991 d.39	23 N.J.R. 218(a)
9-2.2, 2.3	Home Energy Assistance eligibility criteria: administrative correction	_____	_____	22 N.J.R. 3766(a)
1-4.4, 7.1	Commission for Blind and Visually Impaired: administrative corrections	_____	_____	23 N.J.R. 99(a)
09-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)		
21A-1.3, 1.5, 2.2, 8	Manual of standards for adoption agencies	22 N.J.R. 2674(b)	R.1991 d.6	23 N.J.R. 99(b)
23A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
23A	Personal Attendant Services Program: extension of comment period	22 N.J.R. 2082(a)		
28	Children's group homes	22 N.J.R. 2916(a)		

Most recent update to Title 10: TRANSMITTAL 1990-11 (supplement November 19, 1990)

RRECTIONS—TITLE 10A

.:18-1.4, 6.7	Attorney-client visits	23 N.J.R. 14(a)		
.:18-2.6	Inspection and identification of incoming correspondence: withdrawal of proposal	22 N.J.R. 3714(a)		
.:18-7.7	Court ordered funeral visits: administrative correction	_____	_____	22 N.J.R. 3625(a)
.:21-5	Reporting unusual incidents or events within facilities	22 N.J.R. 3304(a)		
.:21-8	Reporting violations of criminal statutes	22 N.J.R. 3440(a)		
.:31-3.5, 22.2	Adult county facilities	22 N.J.R. 3714(c)		
.:31-13.9, 13.10, 3.18	Adult county facilities: pregnant inmates; dental care	23 N.J.R. 15(a)		
.:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 3714(b)		

Most recent update to Title 10A: TRANSMITTAL 1990-10 (supplement November 19, 1990)

SURANCE—TITLE 11

)	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
)	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
1	Administration: miscellaneous rules	22 N.J.R. 3686(a)		
1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
1-29	Insurer's temporary certificate of authority	22 N.J.R. 2453(a)	R.1991 d.15	23 N.J.R. 100(a)
1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
2	Insurance group rules	22 N.J.R. 1673(a)	R.1991 d.4	23 N.J.R. 103(a)
2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
2-29	Orderly withdrawal of insurance business	23 N.J.R. 15(b)		
2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
2-32	Custodial deposits	22 N.J.R. 2640(a)	R.1991 d.14	23 N.J.R. 105(a)
3	Automobile insurance	22 N.J.R. 1678(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:3-8.2–8.7, App. A and B	Nonrenewal of automobile policies	Emergency (expires 1-25-91)	R.1990 d.626	22 N.J.R. 3766(b)
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-14.8, 37	Benefit determination between automobile personal injury protection and health insurance plans	Emergency (expires 1-25-91)	R.1990 d.625	22 N.J.R. 3777(a)
11:3-16	Automobile insurance rate filings	Emergency (expires 1-25-91)	R.1990 d.621	22 N.J.R. 3790(a)
11:3-19	Private passenger automobile insurance: standard/non-standard rating plans	Emergency (expires 1-25-91)	R.1990 d.628	22 N.J.R. 3804(a)
11:3-20.3, 20.6, 20.8, 20.11, 20.12, App.	Automobile insurers: filing Excess Profits Report	22 N.J.R. 2082(b)	R.1991 d.17	23 N.J.R. 106(a)
11:3-24.4	Automobile insurance coverage: policy constants	22 N.J.R. 3441(a)		
11:3-25.4	Automobile insurance coverage: residual market equalization charges	22 N.J.R. 3442(a)		
11:3-29	Automobile insurance: medical fee schedules for PIP coverage	Emergency (expires 1-25-91)	R.1990 d.624	22 N.J.R. 3809(a)
11:3-29.6	Medical fee schedules for PIP coverage: administrative correction	———	———	23 N.J.R. 125(a)
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:3-34	Voluntary market automobile insurance coverage: eligible persons qualifications and eligibility points schedule	Emergency (expires 1-25-91)	R.1990 d.620	22 N.J.R. 3847(a)
11:3-35	Private passenger automobile insurance: underwriting rules	Emergency (expires 1-25-91)	R.1990 d.627	22 N.J.R. 3856(a)
11:3-36	Automobile physical damage coverage: inspection procedures prior to issuance	Emergency (expires 1-25-91)	R.1990 d.622	22 N.J.R. 3861(a)
11:3-38	Automobile towing and storage fee schedule	Emergency (expires 1-25-91)	R.1990 d.623	22 N.J.R 3874(a)
11:4	Actuarial services	22 N.J.R. 1689(a)	R.1991 d.3	23 N.J.R. 111(a)
11:4-16.4, 16.5, 28.2, 28.5	Benefit determination between automobile personal injury protection and health insurance	Emergency (expires 1-25-91)	R.1990 d.625	22 N.J.R. 3777(a)
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:5-1.36	Real Estate Guaranty Fund: special assessment	22 N.J.R. 3688(a)		
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)	R.1990 d.594	22 N.J.R. 3625(b)
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)	R.1991 d.16	23 N.J.R. 112(a)
11:16	Fraud prevention: claim from statement of liability; reporting of automobile theft or salvage	22 N.J.R. 3688(b)		
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:17A-1.3	Insurance producers and limited insurance representatives: licensure and registration	22 N.J.R. 3444(a)		

Most recent update to Title 11: TRANSMITTAL 1990-8 (supplement November 19, 1990)

LABOR—TITLE 12

12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment and temporary disability insurance: 1991 rates	22 N.J.R. 2885(a)	R.1990 d.597	22 N.J.R. 3627(a)
12:17	Unemployment benefit payments	22 N.J.R. 3445(a)		
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
12:46–12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:105	Arbitration through State Board of Mediation	22 N.J.R. 3616(a)		
12:196-1.10	Dispensing of retail gasoline: signs	22 N.J.R. 3306(a)		
12:235-1.6	Workers' Compensation: 1991 maximum rates	22 N.J.R. 2886(a)	R.1990 d.596	22 N.J.R. 3628(a)
12:235-3.11–3.23	Conduct of Judges of Compensation: notice of rule invalidation	———	———	23 N.J.R. 207(a)

Most recent update to Title 12: TRANSMITTAL 1990-9 (supplement November 19, 1990)

.C. TION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
MERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A				
80-2	Urban Development Corporation: public and nonpublic information	23 N.J.R. 20(a)		
Most recent update to Title 12A: TRANSMITTAL 1990-3 (supplement August 20, 1990)				
V AND PUBLIC SAFETY—TITLE 13				
7.2	Police Training Commission: drug screening of police trainees	22 N.J.R. 2256(b)		
	Division on Civil Rights: practice and procedure	22 N.J.R. 3689(a)		
4	Family Leave Act rules: public hearing	22 N.J.R. 2395(a)		
4-1	Family Leave Act rules	22 N.J.R. 2129(a)		
3-4.2–4.6, 4.9, 14–4.19	Motor Fuels Use Tax	22 N.J.R. 3104(b)		
9-1.1, 1.2, 1.3, 5, 1.8, 1.13, .2–12.9	Motor Vehicles: administrative hearings regarding proposed license suspension or surcharge collection actions	22 N.J.R. 3446(a)		
0	Motor Vehicles enforcement service	22 N.J.R. 3307(a)	R.1991 d.20	23 N.J.R. 207(b)
0-10.1	Automatic vehicle identification systems: traffic management	23 N.J.R. 21(a)		
1	Motor Vehicles licensing service	22 N.J.R. 3311(a)	R.1991 d.21	23 N.J.R. 207(c)
4-1.1, 2.3, 2.8, 1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
7-5.8	Architectural services: certificate of authorization for general business corporations	22 N.J.R. 3314(a)	R.1991 d.40	23 N.J.R. 207(d)
7-6.2–6.5	Certified landscape architects: site planning services	23 N.J.R. 21(b)		
9-1.13	Accountancy: sponsors of continuing professional education	22 N.J.R. 3314(b)		
0-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
0-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
0-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)		
1-1.11	Board of Examiners of Electrical Contractors: fee schedule	23 N.J.R. 22(a)		
2-1.2, 1.7, 1.8, 10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
5-3.6	Bioanalytical laboratories: acceptance by director of requests for test of human material	23 N.J.R. 23(a)		
5-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
5-6.13	Board of Medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
5-6.15	Delegation of tasks to physician assistants	22 N.J.R. 2135(b)		
6-10	Mortuary science: continuing education	21 N.J.R. 3655(a)	R.1990 d.608	22 N.J.R. 3756(b)
6-10	Mortuary science: withdrawal of continuing education adoption	————	————	23 N.J.R. 117(a)
7-12.1	Certification of homemaker-home health aide: application fee	23 N.J.R. 24(a)		
9-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
9A-5.1	Licensure as physical therapist: foreign trained applicants	22 N.J.R. 2259(a)		
0-6.1	Engineering and land surveying services: certificate of authorization for general business corporations	22 N.J.R. 3315(a)		
0-7.2–7.5	Certified landscape architects: site planning services	23 N.J.R. 21(b)		
1-4.2–4.5	Certified landscape architects; site planning services	23 N.J.R. 21(b)		
4-2.12	Close of veterinary practice: maintenance of medical records	22 N.J.R. 1868(a)	R.1991 d.11	23 N.J.R. 117(b)
4-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
5A	Division of Consumer Affairs administrative rules	22 N.J.R. 2396(a)	R.1990 d.606	22 N.J.R. 3758(a)
8	Charities Registration and Investigation Section	22 N.J.R. 3108(b)		
0-1.30	Thoroughbred racing: annual contribution to horsemen's pension program	22 N.J.R. 1232(a)		
0-1.30	Thoroughbred racing: "horseman" defined	22 N.J.R. 1232(b)		
0-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
0-14A.11	Thoroughbred racing: licensee violations of drug use prohibition	22 N.J.R. 3451(a)		
1-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
1-18.2	Harness racing: licensee violations of drug use prohibition	22 N.J.R. 3452(a)		
5-1.6	Victims of domestic violence: eligibility of claims	22 N.J.R. 3690(a)		
5-1.6, 1.7	Victims of drunk driving: payment of compensation	22 N.J.R. 3691(a)		
1-2.1, 2.2, 2.4, .2	Statewide 9-1-1 emergency telecommunications system	22 N.J.R. 3453(a)		

Most recent update to Title 13: TRANSMITTAL 1990-10 (supplement November 19, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PUBLIC UTILITIES—TITLE 14				
14:0	Energy conservation: preproposal and public hearing	22 N.J.R. 1692(a)		
14:1	Rules of practice of Board of Public Utilities: waiver of expiration provision of Executive Order No. 66 (1978)	23 N.J.R. 24(b)		
14:3	All utilities	22 N.J.R. 1112(a)		
14:3	All utilities: public hearing	22 N.J.R. 1330(a)		
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)		
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)		
14:3-4.7	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:3-5.1	Closure or relocation of utility office	22 N.J.R. 2404(a)		
14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)		
14:3-7.13	Late payment charges	22 N.J.R. 619(b)		
14:9	Water and sewer utilities	22 N.J.R. 907(a)		
14:9	Sewer and water utilities: public hearing	22 N.J.R. 1330(a)		
14:9-3.3	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:10-5	InterLATA telecommunications carriers	22 N.J.R. 2887(a)		
14:12	Demand Side Management Resource Plan: public hearing	22 N.J.R. 3616(b)		
14:12	Demand Side Management Resource Plan	22 N.J.R. 3699(a)		
14:17-6.22	Cable television: petitions for approval to curtail service	22 N.J.R. 2889(a)		
14:18-3.2	Cable television: requests for service	22 N.J.R. 2890(a)		
14:18-3.5	Cable television: outage credit	22 N.J.R. 2890(b)		
14:18-3.5	Cable television outage credit: withdrawal of proposed amendment	23 N.J.R. 24(c)		
14:18-3.13	Cable television: restoration standards	22 N.J.R. 2891(a)		
14:18-3.16	Cable television: notice of rate change	22 N.J.R. 2892(a)		
14:18-3.23	Cable television: reimbursement	22 N.J.R. 2892(b)		
14:18-3.24	Cable television: late fees and charges	22 N.J.R. 2893(a)		
14:18-5.1	Cable television: location	22 N.J.R. 2894(a)		
14:18-7.5	Cable television: use of PEG channels	22 N.J.R. 2894(b)		
14:18-7.6, 7.7	Cable television: telephone system information and performance	22 N.J.R. 2895(a)		
14:18-12.2	Cable television: pole plant rearrangement verification	22 N.J.R. 2897(a)		
14:32	Submission and handling of information	22 N.J.R. 2649(a)	R.1991 d.31	23 N.J.R. 208(a)
	Most recent update to Title 14: TRANSMITTAL 1990-3 (supplement August 20, 1990)			
ENERGY—TITLE 14A				
14A:2	Energy emergency	22 N.J.R. 3692(a)		
14A:3	Energy conservation	22 N.J.R. 3315(b)		
14A:7	Submission and handling of information	22 N.J.R. 2649(a)	R.1991 d.31	23 N.J.R. 208(a)
14A:20	Repeal (see 14:12)	22 N.J.R. 3699(a)		
14A:21	Home Energy Savings Program (HESP)	22 N.J.R. 2956(a)		
	Most recent update to Title 14A: TRANSMITTAL 1990-2 (supplement August 20, 1990)			
STATE—TITLE 15				
	Most recent update to Title 15: TRANSMITTAL 1990-1 (supplement November 19, 1990)			
PUBLIC ADVOCATE—TITLE 15A				
	Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)			
TRANSPORTATION—TITLE 16				
16:4-1	Construction subcontracting: disadvantaged and female-owned businesses	22 N.J.R. 2898(a)		
16:20A-4.4	Right-of-way acquisition (county and municipal aid): relocation assistance	22 N.J.R. 2900(a)	R.1990 d.582	22 N.J.R. 3629(a)
16:20B-4.3	Right-of-way acquisition (municipal fund): relocation assistance	22 N.J.R. 2901(a)	R.1990 d.581	22 N.J.R. 3630(a)
16:21B	Bridge Rehabilitation and Improvement and Railroad Right-of-Way Preservation Bond Act rules	22 N.J.R. 2901(b)	R.1990 d.589	22 N.J.R. 3630(b)
16:22	Urban revitalization, special demonstration and emergency projects	22 N.J.R. 3196(a)	R.1991 d.25	23 N.J.R. 209(a)
16:28-1.10, 1.67	Speed limit zones along U.S. 46 in Dover and U.S. 202 in Morristown and Morris Township	22 N.J.R. 3704(a)		
16:28-1.22, 1.30	Speed limit zones along Route 109 in Cape May and Route 70 in Medford Township	22 N.J.R. 3111(a)	R.1990 d.598	22 N.J.R. 3633(a)
16:28-1.38	Speed limit zones along Route 57 in Warren County	23 N.J.R. 50(a)		
16:28-1.39, 1.40, 1.41	Speed limit zones along Route 71-35 ramps in Brielle, Route 138 in Wall Township, and U.S. 9 in Cape May	22 N.J.R. 3705(a)		
16:28-1.41, 1.96	Speed limit zones along U.S. 9 in Ocean County and Route 45 in Salem County	22 N.J.R. 3617(a)		
16:28-1.72	Speed limit zones along U.S. 206 in Sussex County	22 N.J.R. 3112(a)	R.1990 d.599	22 N.J.R. 3633(b)

..C. TION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
3-1.97, 1.167	Speed limit zones along Route 77 in Cumberland, Salem and Gloucester counties, and Route 181 in Morris and Sussex counties	22 N.J.R. 3113(a)	R.1991 d.1	23 N.J.R. 118(a)
3-1.123	Speed limit zones along U.S. 9W in Bergen County	22 N.J.R. 3196(b)	R.1990 d.612	22 N.J.R. 3759(a)
3A-1.1, 1.23	No stopping or standing zones along U.S. 1 in South Brunswick and Route 33 in Hightstown	22 N.J.R. 2904(a)	R.1990 d.587	22 N.J.R. 3634(a)
3A-1.7, 1.13, 19, 1.104	Parking and stopping restrictions along U.S. 9 and U.S. 40-322 in Atlantic County, U.S. 22 in Hunterdon County, and Route 28 in Union County	23 N.J.R. 51(a)		
3A-1.7, 1.15	Restricted parking and stopping along U.S. 9 in Freehold and Route 23 in Jefferson Township	22 N.J.R. 3319(a)	R.1991 d.9	23 N.J.R. 118(b)
3A-1.7, 1.21, 24, 1.105	Restricted parking and stopping along U.S. 9 in Little Egg Harbor, Route 34 in Colts Neck, Route 54 in Hammonton, and U.S. 30 in Berlin	22 N.J.R. 2905(a)	R.1990 d.583	22 N.J.R. 3634(b)
3A-1.8, 1.9, 1.33, 41, 1.104	Restricted parking and stopping along Route 10 in Livingston, Route 47 in Vineland, Route 17 in Upper Saddle River, U.S. 40-322 in Atlantic City, and Route 77 in Bridgeton	22 N.J.R. 2906(a)	R.1990 d.584	22 N.J.R. 3635(a)
3A-1.14, 1.38, 41, 1.46, 1.111	Restricted parking and stopping along U.S. 22 Alternate in Warren County, Route 71 in Monmouth County, Route 77 in Cumberland County, U.S. 130 in Burlington County, and Route 184 in Middlesex County	22 N.J.R. 3197(a)	R.1990 d.611	22 N.J.R. 3759(b)
8A-1.15, 1.25	No stopping or standing zones along Route 23 in Kinnelon Borough and Route 35 in Dover Township	23 N.J.R. 52(a)		
8A-1.28, 1.100	No stopping or standing zones along U.S. 40 and Route 50 in Atlantic County	22 N.J.R. 3706(a)		
8A-1.39, 1.57	No stopping or standing zones along Route 72 in Ocean County and U.S. 206 in Burlington County	22 N.J.R. 3617(b)		
8A-1.41	No stopping or standing zones along Route 77 in Upper Deerfield Township	22 N.J.R. 2908(a)	R.1990 d.585	22 N.J.R. 3636(a)
8A-1.57	No stopping or standing zones along U.S. 206 in Princeton	23 N.J.R. 53(a)		
8A-1.104	Bus stop zone along U.S. 40 and Route 322 in Egg Harbor	22 N.J.R. 2908(b)	R.1990 d.586	22 N.J.R. 3636(b)
9-1.47, 1.68, 69, 1.70	No passing zones along Route 15 in Sussex County, Route 7 in Hudson, Bergen and Essex counties, Route 10 in Essex County, and Route 50 in Cape May	22 N.J.R. 2909(a)	R.1990 d.600	22 N.J.R. 3637(a)
0-10.4	Midblock crosswalk on Route 33 in Hamilton Township	23 N.J.R. 53(b)		
0-10.13	Midblock crosswalk on Route 91 in New Brunswick	23 N.J.R. 54(a)		
0-11.2	Traffic control in rest areas along I-80, Roxbury Township	22 N.J.R. 3114(a)	R.1990 d.601	22 N.J.R. 3637(b)
1-1.4, 1.28	Turning restrictions along Route 35 in Monmouth, Middlesex and Ocean counties, and Route 4 in River Edge	22 N.J.R. 2910(a)	R.1990 d.588	22 N.J.R. 3638(a)
1-1.5, 1.29	Restricted turning along U.S. 40 in Hamilton Township and U.S. 9 in Dover Township	22 N.J.R. 3320(a)	R.1991 d.10	23 N.J.R. 119(a)
1-1.22, 1.26	Turning prohibitions along U.S. 130 in Brooklawn Borough and Route 27 in Metuchen	22 N.J.R. 3198(a)	R.1990 d.613	22 N.J.R. 3760(a)
1-1.26	Left turn prohibition on Route 27 in Franklin and South Brunswick townships	23 N.J.R. 55(a)		
-1-2	Repeal (see 16:47)	22 N.J.R. 1061(b)		
-1-8	Outdoor advertising along Federal Aid Primary System: preproposal	22 N.J.R. 157(b)		
-1-8	Outdoor advertising along Federal Aid Primary System: public meeting on preproposal	22 N.J.R. 621(a)		
-2	Road equipment rental	22 N.J.R. 3114(b)	R.1990 d.602	22 N.J.R. 3638(b)
-7	State Highway Access Management Code	22 N.J.R. 1061(b)		
-7	State Highway Access Management Code: public hearings	22 N.J.R. 1346(b)		
7	State Highway Access Management Code: extension of comment period	22 N.J.R. 1347(a)		
7	State Highway Access Management Code: extension of comment period	22 N.J.R. 1699(a)		
9-1.3	Transportation of hazardous materials: cargo seals	23 N.J.R. 55(b)		
3D-1.3	Autobus operations: zone of rate freedom exemptions	22 N.J.R. 3199(a)	R.1990 d.631	22 N.J.R. 3760(b)
2	NJ TRANSIT: procurement policies and procedures	22 N.J.R. 2460(a)	R.1990 d.539	23 N.J.R. 119(b)
8	Senior Citizen and Disabled Resident Transportation Assistance Act Program	22 N.J.R. 2911(a)	R.1990 d.616	22 N.J.R. 3761(a)

Most recent update to Title 16: TRANSMITTAL 1990-11 (supplement November 19, 1990)

EASURY-GENERAL—TITLE 17

2-1.13	Public Employees' Retirement System: age determination for enrollment or retirement purposes	22 N.J.R. 3707(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:2-6.6	Public Employees' Retirement System: service credit and back pay awards	22 N.J.R. 3321(a)		
17:3-6.6	Teachers' Pension and Annuity Fund: service credit and back pay awards	22 N.J.R. 3321(b)		
17:4-1.3, 1.4, 1.7, 2.4, 3.4, 4.7, 5.4, 6.10, 6.12, 6.13, 6.14, 7.3	Police and Firemen's Retirement System: officers, elections, and rate assignments	23 N.J.R. 24(d)		
17:4-6.6	Police and Firemen's Retirement System: service credit and back pay awards	22 N.J.R. 3322(a)		
17:4-6.17	Police and Firemen's Retirement System: accidental disability and death benefits	22 N.J.R. 3707(b)		
17:5	State Police Retirement System	22 N.J.R. 3200(a)	R.1991 d.2	23 N.J.R. 123(a)
17:5-5.6	State Police Retirement System: service credit for back pay awards	22 N.J.R. 3474(a)		
17:16	State Investment Council rules: waiver of expiration provision of Executive Order No. 66 (1978)	23 N.J.R. 26(a)		
17:16-51	State pension fund investments: guaranteed income contracts	22 N.J.R. 1044(a)		
17:40-1.3, 3.6	Governor's Council on Alcoholism and Drug Abuse: annual funding formula	23 N.J.R. 26(b)		
17:41	Capital City Redevelopment Corporation: project review	22 N.J.R. 3475(a)		
17:41	Capital City Redevelopment Corporation: extension of comment period for project review procedure	22 N.J.R. 3708(a)		

Most recent update to Title 17: TRANSMITTAL 1990-9 (supplement November 19, 1990)

TREASURY-TAXATION—TITLE 18

18:1-1.8	Administrative hearings	22 N.J.R. 1995(a)	R.1991 d.23	23 N.J.R. 219(a)
18:5-8.10	Administrative hearings	22 N.J.R. 1995(a)	R.1991 d.23	23 N.J.R. 219(a)
18:7-3.18	Corporation Business Tax: recycling equipment credit	22 N.J.R. 789(a)		
18:7-11.12, 11.15, 12.1, 12.3	Corporation Business Tax: IRC 338(h)(10) election	22 N.J.R. 2125(a)	R.1991 d.35	23 N.J.R. 221(a)
18:7-13.2	Administrative hearings	22 N.J.R. 1995(a)	R.1991 d.23	23 N.J.R. 219(a)
18:8-5.1, 5.2	Administrative hearings	22 N.J.R. 1995(a)	R.1991 d.23	23 N.J.R. 219(a)
18:9-6.7–6.10	Administrative hearings	22 N.J.R. 1995(a)	R.1991 d.23	23 N.J.R. 219(a)
18:14-1.1, 2.1–2.4, 2.8, 2.10, 3.3, 3.7, 3.9, 3.10	Property tax deduction for qualified low income groups	22 N.J.R. 3200(b)		
18:18A	Petroleum Gross Receipts Tax	22 N.J.R. 3715(a)		
18:21-1	Automobile insurance premium surtax	22 N.J.R. 1351(a)		
18:22-1.3	Public utility corporations: "public street, highway, road or other public place"	22 N.J.R. 2249(a)		
18:23-1.1, 3.6, 5.6, 6.3, 7, 8.1, 8.2, 8.6, 11.2, 11.3, App.	Railroad Property Tax	22 N.J.R. 2250(a)	R.1990 d.630	22 N.J.R. 3762(a)
18:25	Luxury Tax	22 N.J.R. 3323(a)		
18:26-11.20, 11.21, 11.22, 11.23, 11.27	Transfer Inheritance and Estate Tax: release of safe deposit box contents	23 N.J.R. 27(a)		

Most recent update to Title 18: TRANSMITTAL 1990-8 (supplement November 19, 1990)

TITLE 19—OTHER AGENCIES

19:6-1, 3	Hackensack Meadowlands District Building Code	22 N.J.R. 2126(a)		
19:9-2.9, 2.10	License to cross Authority property and resolution of related disputes	22 N.J.R. 3324(a)		
19:25-1.7, 7.8	Election Law Enforcement Commission: personal interest disclosure statement	22 N.J.R. 331(a)		
19:25-1.7, 7.8	Personal interest disclosure statement: public hearing	22 N.J.R. 1242(b)		
19:25-1.7, 7.8	Personal interest disclosure statement: withdrawal of proposal	22 N.J.R. 3618(a)		
19:75-1.1, 4.4, 6.2, 9.2, 9.3, 9.4, 10	Fee schedule for review of applications	22 N.J.R. 1999(a)		

Most recent update to Title 19: TRANSMITTAL 1990-9 (supplement November 19, 1990)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40-2.1	Organization of Commission	Exempt	R.1990 d.618	22 N.J.R. 3763(a)
19:41-7.14	Personal history disclosure forms	22 N.J.R. 1551(a)		
19:41-11.1	Filing of agreements	22 N.J.R. 3202(a)		
19:43-1.2	Determination of casino service industries	22 N.J.R. 3203(a)		
19:45-1.1, 1.14, 1.15, 1.24, 1.24A, 1.25, 1.25A, 1.26, 1.27, 1.29, 1.34, 1.43	Credit for slot play	22 N.J.R. 3205(a)		

A.C. ATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5-1.1, 1.16, 1.33, 36–1.40, 1.40A, 41, 1.43	Slot machine terminology	22 N.J.R. 3325(a)		
5-1.1, 1.26, 26A	Redemption of checks	22 N.J.R. 1911(b)		
5-1.1, 1.34, 1.35, 46, 1.46A	Automated coupon redemption	22 N.J.R. 3708(b)		
5-1.1, 1.34, 1.35, 46, 1.46A	Automated coupon redemption machines: 90-day experiment	Expires 3-10-91	_____	22 N.J.R. 3638(c)
5-1.9A	Transportation expense reimbursements	22 N.J.R. 2913(a)	R.1990 d.605	22 N.J.R. 3764(a)
5-1.9A	Patron travel reimbursement	22 N.J.R. 3710(a)		
5-1.24A	Wire transfer of funds	22 N.J.R. 1700(a)		
5-1.25	Patron credit verification	22 N.J.R. 3711(a)		
5-1.39	Progressive slot machines: resetting of meters	22 N.J.R. 2253(b)		
5-1.39	Progressive slot machine submissions	23 N.J.R. 28(a)		
5-1.40A, 1.40B	Annuity jackpots	22 N.J.R. 3455(a)		
6-1.5	Redemption of slot tokens	22 N.J.R. 3327(a)		
6-1.6	Gaming equipment	22 N.J.R. 2914(a)		
6-1.26	Slot machine terminology	22 N.J.R. 3325(a)		
7-1.6	Five times odds at craps	22 N.J.R. 2254(a)		
7-1.6	Five times odds at craps: 90 day experiment	Expires 2-10-91	_____	22 N.J.R. 3392(a)
7-2.3, 2.16	Five cards totalling 21 in Blackjack: 90 day experiment	Expires 4-14-91	_____	23 N.J.R. 123(b)
7-2.3, 2.16	Blackjack: five cards totalling 21 rule	23 N.J.R. 28(b)		

Most recent update to Title 19K: TRANSMITTAL 1990-10 (supplement November 19, 1990)

OFFICE OF ADMINISTRATIVE LAW PUBLICATIONS

Subscription rates effective February 1, 1991

NEW JERSEY ADMINISTRATIVE CODE

☐ **FULL SET** (INCLUDES ALL TITLES BELOW)	$1600
INDIVIDUAL TITLES	
1. Administrative Law	$ 70
2. Agriculture	$ 70
3. Banking	$ 70
4A. Personnel (formerly Civil Service)	$ 70
5. Community Affairs (two volumes)	$140
5A. Military and Veterans' Affairs	$ 70
6. Education (two volumes)	$140
7. Environmental Protection (six volumes)	$420
7:14A. NJPDES Program Rules	$ 70
8. Health (four volumes)	$280
9. Higher Education	$ 70
10. Human Services (four volumes)	$280
10A. Corrections	$ 70
11. Insurance (two volumes)	$140
12. Labor (two volumes)	$140
12A. Commerce, Energy and Economic Development	$ 70
13. Law and Public Safety (four volumes)	$280
13:2 Alcoholic Beverage Control; 13:3 Games Control	$ 70
14/14A. Public Utilities/Energy	$ 70
15. State	$ 70
15A. Public Advocate	$ 70
16. Transportation (two volumes)	$140
17. Treasury-General	$ 70
18. Treasury-Taxation (two volumes)	$140
19. Expressway Authority, Hackensack Meadowlands Commission, Highway Authority, Turnpike Authority, Public Employment Relations Commission, Sports and Exposition Authority, Election Law Enforcement Commission, Economic Development Authority, Public Broadcasting Authority, Executive Commission on Ethical Standards, Atlantic County Transportation Authority (two volumes)	$140
19K. Casino Control Commission	$ 70
Gubernatorial Executive Orders	$ 70
Full Code Index	$ 70

(Prices include first year of Update Service. Thereafter, Annual Update Service, $40 per volume. Full Set, $750.)

New Jersey Register (one year, 24 issues)
By second class mail, $125
By first class mail, $215

NEW JERSEY ADMINISTRATIVE REPORTS

I. Full Set of NJAR. Twelve hardbound volumes and quarterly update service for one year. Hardbound volumes include a table of contents for the volume. Quarterly looseleaf update service includes a cumulative listing of statutes cited; cumulative listing of rules cited; cumulative topical index, and cumulative listing of cases reported $400

II. Looseleaf Update Service Only: Quarterly update service and bound volume(s) of decisions issued in quarterly service for one year. Cumulative indices $200/year

III. Individual Hardbound Volumes (1-12) can be purchased separately. Each volume has a table of contents ..... $45/volume (specify volume or volumes desired)

Prepayment is required for all subscriptions.

Please return form with your payment to:

OAL Publications
9 Quakerbridge Plaza
CN 049
Trenton, New Jersey 08625

If you want multiple copies of a Title, please specify on the "Amount Enclosed" line. Example: $140 (two copies, Title 1).

Name and Delivery Address:

_____

_____

_____

Billing Address, if different:

_____

_____

_____

Telephone Number _____

Amount Enclosed _____

12/